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THE FRENCH RULES OF THE CONFLICT OF LAWS

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The subject of the Conflict of Laws has been cultivated perhaps in France more than in any other country. Some of the greatest names connected with its science are French, such as Dumoulin and d'Argentré, of the 16th century, Boullenois, Bouhier and Froland of the 18th century and Lainé, Weiss and Pillet of the present century. Before the enactment of the Code Napoléon the questions of the conflict of laws arose between the different provinces of France; since then they have arisen between France and foreign countries.¹ The residence of many foreigners in Paris and other parts of France has caused a large variety of problems in the Conflict of Laws to be presented to the French courts during the last century, a fact lending particular interest to the study of French decisions on this subject.

PRELIMINARY NOTIONS

1. *Domicil*

(a) *Domicil* and Nationality. *Domicil* plays a very important rôle in the Conflict of Laws of England and the United States and it occupied a like rôle in France until the adoption of the French Civil Code, which introduced into the French Conflict of Laws the rule that status and capacity were to be governed hence-

¹ The Code itself contains very few provisions relating to the Conflict of Laws. The only articles relating to the subject are art. 3 of the Preliminary Title and arts. 47-48 (acts concerning civil status), 170-171 (marriage), 999 (wills), 2123 and 2228 (hypothees).

The only general provisions are contained in art. 3 of the Preliminary Title which reads as follows:

"Laws of police and security are binding upon all inhabitants.

"Immovables, even those possessed by foreigners, are governed by French law.

"Laws concerning the status and capacity of persons govern French citizens, even when they reside in a foreign country."

The principles of the French Conflict of Laws were introduced into Alsace and Lorraine by a law of July 24, 1921. See NIROYET, *CONFLICTS ENTRE LES LOIS FRANÇAISES ET LES LOIS LOCALES D'ALSACE ET LORRAINE* (1922) *passim*.

forth by the law of the country to which the party in question owed allegiance. Notwithstanding this innovation the notion of domicile occupies still an important place in the French system of the Conflict of Laws, particularly in the matter of the jurisdiction of courts and in succession. It will be applied also as a subsidiary rule to questions affecting status and capacity if the national law of the party cannot be ascertained or the party is not a national of any country.

(b) Definition of Domicil. Article 102 of the Civil Code provides:

"The domicile of every Frenchman as to the enjoyment of his civil rights is at the place of his principal establishment."

The central thought of domicile, according to this article, is "the principal establishment," whereas in Anglo-American law the court tends to predicate the existence of a domicile of choice upon the notion of "home." The conception of domicile in the two systems is, therefore, not identical. Domicil is regarded by the Court of Cassation as a question of fact, to be determined by the trial judge without control by the highest court.² The decisions on the subject, relatively few in number, have done little to assign a more concrete meaning to the definition of domicile contained in the Code.

(c) French "authorized" domicile. Article 13 of the French Civil Code, as amended by the law of June 26, 1889, provides:

"An alien who has been authorized by decree to establish his domicile in France, shall have the enjoyment of all civil rights.

"The effect of the authorization shall cease at the expiration of five years if the alien does not ask to be naturalized or if his application is rejected."

Article 13 in its original form was intended, it seems, to create a status intermediate between that of citizen and foreigner, for a foreigner having obtained by decree the permission to establish a domicile in France was to be entitled to all civil rights.³ As

² Cass. (civ.), Nov. 10, 1920, 50 *Clunet*, 71. See 1 PILLET, *TRAITÉ PRATIQUÉ DE DROIT INTERNATIONAL PRIVÉ* (1923) 298-304; Wahl, *La notion du domicile* (1905) 1 *REV. DE DR. INT. PR.* 80, 615, 620.

³ What are the civil rights to which foreigners are entitled in France by virtue of an "authorized" domicile? The following may serve as illustrations: (1) the right to sue or to be sued in the French courts by virtue of articles 14 and 15 of the Civil Code; (2) the right of a foreign married woman to a lien on her husband's property by virtue of art. 2121 of the Civil Code; (3) the lien of a foreign ward on the guardian's property under art. 2121 of the Civil Code.

⁴ Aliens having obtained by decree authorization to establish a domicile in France may become naturalized within three years after the filing of such application. In exceptional cases the naturalization may take place after one year. Art. 8, § 5, Civ. Code.

modified by the law of 1889, the effect of an authorized domicile is completely changed. It is to-day merely a step in the process of naturalization, and is lost automatically if the application for naturalization is not made within five years subsequent to the decree, or such application is denied.⁴

(d) Can a foreigner establish a domicile in France apart from the "authorized" domicile referred to in article 13 of the French Civil Code? To this question the Court of Cassation has given a negative answer.⁵ This conclusion is derived from the co-existence of articles 102 and 13 of the Civil Code. As the former speaks only of the domicile "of every Frenchman," the inference is drawn that it must have been intended to exclude foreigners. It is urged also that if foreigners could establish a domicile without such authorization article 13 would be meaningless.⁶ Notwithstanding this, it is well recognized that a foreigner may have a *de facto* domicile in France. While it is not easy always to tell for what purposes such a domicile will have legal significance in the French system of the Conflict of Laws, it is certain that such a domicile is sufficient to confer jurisdiction on the French courts⁷ and for the application of the "renvoi" doctrine.⁸

Much confusion has arisen in the matter of succession from the position taken by the French Court of Cassation. The personal estate of a citizen of the United States having only a *de facto* domicile in France must be distributed, it is said, in accordance with the law of his "legal" domicile, which would be the domicile he had before taking up his residence in France. Usually this will amount to an application of his national law. In view of the fact, however, that the French courts understand these rules of the Conflict of Laws in matters of succession as referring to the foreign law inclusive of its Conflict of Laws, they

⁴ *Greck v. Altard & Sultana*, Cass. (civ.), Mar. 8, 1909, 5 REV. DE DR. INT. PR. 887; *In re Forgo*, Cass. (civ.), May 5, 1875, S. 1875, 1, 403; D. 1875, 1, 343.

⁵ The text writers deny the correctness of the above reasoning and hold that the Court of Cassation should have recognized that a foreigner might establish a regular domicile in France without complying with art. 13 of the Civil Code but that only those having an "authorized" domicile would be entitled to the enjoyment of all civil rights possessed by French citizens. PILLET & NIBOYET, *MANUEL DE DROIT INTERNATIONAL PRIVÉ* (1924) 275.

⁷ According to art. 59 of the French Code de Proc. Civ. the defendant must be sued at his domicile in personal causes of action. For this purpose a *de facto* domicile in France suffices. *Guerrier Capatrick v. Arthur Guerrier*, App. Douai, Nov. 18, 1901, 29 Clunet, 1043; *Dekker v. Magnin*, App. Grenoble, Dec. 21, 1906, 34 Clunet, 706.

According to the same article the place for the "opening of the succession" of a person on death is determined by the domicile of the decedent. Here again a *de facto* domicile in France confers jurisdiction. *Guzman v. Guzman*, App. Paris, July 9, 1902, 30 Clunet, 181.

⁸ *In re Forgo*, Cass. (civ.), June 24, 1878, S. 1878, 1, 429; D. 1879, 1, 56; *Humann v. Soulié*, Cass. (req.), Mar. 1, 1910, 37 Clunet, 888; 6 REV. DE DR. INT. PR. 870; S. 1913, 1, 105; D. 1912, 1, 262.

actually distribute the personal property of an American citizen de facto domiciled in France, but formerly domiciled in the United States, in accordance with the local provisions of the French Civil Code. In this situation the same result is reached as if the French courts had applied the local law of the de facto domicile in the first place.⁹ The rule that the law of the "legal" domicile controls is of importance, however, with respect to French subjects domiciled in the United States. Their "legal" and de facto domiciles coincide, so that the personal property of a French subject domiciled in New York at the time of his death would be distributed in accordance with the New York statute of distribution.¹⁰

(e) Domicils other than those mentioned in Articles 102 and 13 of the Civil Code. (i) Domicil for political and fiscal purposes. At the time of the enactment of the Civil Code a person might have a special political domicile, apart from his general domicile, by registration in a commune and residence there for one year, which was lost also by one year's absence.¹¹ This special political domicile exists no longer and under the existing law political rights must be exercised at the ordinary domicile. The Court of Cassation holds, however, that a French citizen may establish his domicile in a foreign country without losing his French domicile for political purposes.¹²

For fiscal purposes, also, the notion of domicile may not coincide in all respects with the definition laid down by article 102 of the Civil Code.¹³

(ii) "Commercial" Domicil. Besides a "principal" domicile a person may have under certain circumstances a "special" domicile. The most noteworthy instance of this is the "commercial" domicile of a married woman. A woman takes her husband's domicile on marriage, which remains her principal domicile, but if she is authorized to engage in business, the place where her business is conducted will constitute her "commercial" domicile. Bankruptcy proceedings, for example, would have to be brought in this place, instead of at her principal domicile.¹⁴

⁹ Humann v. Soulié, *supra* note 8.

¹⁰ Gautier v. Murphy, Cass. (req.), June 21, 1865, D. 1865, 1, 418; Jeannin v. Jeannin, Cass. (civ.), Apr. 27, 1868, D. 1868, 1, 302.

¹¹ PLANIOL, 1 TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL (8th ed. 1920) § 557.

¹² In re Larue, Cass. (civ.), May 1, 1899, 3 REV. DE DR. INT. PR. 182 and note by Martini; Froidure v. Guesnay, Cass. (civ.), Mar. 24, 1908, 8 REV. DE DR. INT. PR. 741; In re Larocquerie, Cass. (civ.), Mar. 15, 1909, *ibid.* 742.

The French courts say that a person cannot have more than one domicile. Grandin v. Bernard, Cass. (req.), Aug. 4, 1896, S. 1900, 1, 515.

This means, therefore, that he can have but one domicile for purposes of private law.

¹³ See Wahl, *op. cit. supra* note 2.

¹⁴ Sentex & Bozano v. Canavy, Cass. (req.), June 12, 1883, S. 1884, 1, 257, and note by Esmein; D. 1883, 1, 281.

2. *The Qualification of Legal Transactions*

The rules of the Conflict of Laws applicable to a certain situation may be explained in the same terms in two countries and yet different results may be reached because the terms have different meanings in the two countries. "Domicil" has one meaning in France and another in the United States. The *lex loci contractus* means in our law the place where the letter of acceptance is mailed, whereas on the continent the contract is frequently not deemed concluded, and this is true also of the French law according to one line of decisions, until the letter of acceptance reaches the offeror. The significance of the terms used is determined in the nature of things by the law of the forum.¹⁵

Differences in result will arise likewise from the fact that the institutions to which such terms are to be applied are not classified in the same manner. Two countries may have the same rules governing capacity, formality, contracts, matrimonial property rights, succession, etc., and yet one country may regard a particular matter as relating to "formality," whereas another regards it as relating to "capacity"; one may say the matter is one of contracts, and another that it belongs to the law of succession. In all these cases recourse must be had as a rule to the law of the forum. The general problem is discussed in the French literature under the title of "Qualification of Legal Transactions."¹⁶

3. *Renvoi*

According to French law, "status" and capacity are determined by the national law of the party in question, the "formality" of legal acts, by the law of the place of execution, and the distribution of personal estate on death by the law of the decedent's

¹⁵ The courts are sometimes confused in this matter. See, for example, *X v. Z & Moraël*, Trib. civ. Seine, July 20, 1923, 51 *Clunet*, 403, 19 *REV. DE DR. INT. PR.* 87. An exception should be recognized according to PILLET & NIBOYET, *op. cit. supra* note 6, at 536, in cases where the French courts apply renvoi, as to which, see *infra*. For example, where the French courts apply the national law of a party (say, of state X) and the law of state X applies in the case the law of domicil, the French courts accepting such reference to the law of the domicil should determine it, according to these writers, with reference to the views concerning domicil entertained by State X.

¹⁶ The first French writer to call attention to this problem in France was BARTIN, *De l'impossibilité d'arriver à la suppression définitive des conflits de lois* (1879) 24 *Clunet*, 225, 466, 720; see also KAHN, *Latente Gesetzkollisionen* (1891) 30 *JHERING'S JAHRBÜCHER* 107; LORENZEN, *The Theory of Qualifications and the Conflict of Laws* (1920) 20 *COL. L. REV.* 247; ARMINJON, *Les qualifications légales en droit international privé* (1923) 4 *REV. DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE*, 272.

PILLET & NIBOYET calls attention to the problem in connection with each topic under discussion. See *op. cit. supra* note 6, at 489, 490, 522, 533, 600, note 1, 603, note 1, 626, 643, 665.

"legal" domicil. Suppose now that a contract is made in state X by a Dane whose domicil is in France and that under Danish law capacity to contract is governed by the law of domicil. Is the French court to apply the French rule as to capacity or the Danish rule? Suppose, again, that a contract is made in state X, but is to be performed in France, and that by the law of state X the formalities of execution are governed by the law of the place of performance. Is the French court to apply the rule as to formalities existing in state X or the rule obtaining in France? Suppose again that a citizen of the United States at the time of his death had his "legal" domicil in Connecticut but a de facto domicil in France. Is his personal estate in France to be distributed in accordance with the Connecticut statute of distributions or in accordance with the corresponding provisions of the French Civil Code?

The above hypothetical cases involve the so-called problem of *renvoi*. If the French court applies in the first case the Danish law inclusive of its rules of the Conflict of Laws governing capacity, in the second case the law of state X inclusive of its rule of the Conflict of Laws governing formality, and in the third case the Connecticut law, inclusive of its rule of the Conflict of Laws governing the distribution of personal property on death, that is, whenever the court considers not only the domestic rule of the foreign state, but also its Conflict of Laws rule applicable to the case in hand, it is said to adopt *renvoi*. On the other hand, if it considers merely the foreign domestic rule, exclusive of its rule of the Conflict of Laws, it is said to reject *renvoi*.

The *renvoi* problem is one that has given rise to a vast literature on the continent.¹⁷ The English decisions have tended to accept the *renvoi*,¹⁸ but a recent well considered case has squarely rejected it.¹⁹ In the United States the decisions have not given direct support to the *renvoi* doctrine, except in one or two cases relating to marriage and divorce.²⁰ The French Court of Cassation first sanctioned the *renvoi* doctrine in the *Forgo* case

¹⁷ See POTU, *LA QUESTION DU RENVOI EN DROIT INTERNATIONAL PRIVÉ* (1913) and literature there cited; see also Lorenzen, *The Renvoi Theory and the Application of Foreign Law* (1910) 10 COL. L. REV. 190, 327; *id.*, *The Renvoi Doctrine in the Conflict of Laws* (1918) 27 YALE LAW JOURNAL, 509; Schreiber, *The Doctrine of Renvoi in Anglo-American Law* (1918) 31 HARV. L. REV. 523.

¹⁸ DICEY, *CONFLICT OF LAWS* (3d ed. 1922) 771-781.

¹⁹ *Davidson v. Annesley* [1926] 1 Ch. 692.

²⁰ *In re Lando's Estate*, 112 Minn. 257, 127 N. W. 1125 (1910) (marriage); *Ball v. Cross*, 231 N. Y. 329, 132 N. E. 106 (1921) (divorce); *Dean v. Dean*, 241 N. Y. 240, 149 N. E. 844 (1925) (divorce).

In matters involving title of land the *renvoi* doctrine would no doubt be recognized by the American courts. See *In re Baines*, unreported, decided Mar. 19, 1903, by Mr. Justice Farwell; DICEY, *op. cit. supra* note 18, at 552.

in 1878.²¹ Notwithstanding the opposition of a majority of text writers²² it was reaffirmed by the Court of Cassation in 1910.²³ It is supported also by a vast preponderance of the decisions by the lower courts.²⁴ The two cases before the Court of Cassation involved the distribution of personal property on death and in this class of cases *renvoi* has been applied most frequently.²⁵ It has been approved also frequently in matters deemed to relate to "status" or capacity, for example in the matter of marriage,²⁶ divorce,²⁷ the right to a name,²⁸ legitimacy and legitimation,²⁹ the recognition of natural children,³⁰ paternal power,³¹ custody of children³² and the capacity of married women.³³ *Renvoi* has been applied likewise to the formality of legal acts.³⁴

4. *Public Policy and Fraud upon the Law*

A great deal has been written by French writers on the sub-

²¹ *Supra* note 8. See also Cass. (req.), Feb. 22, 1882, D. 1882, 1, 301.

²² Most of the French writers are opposed to the *renvoi* doctrine, even in its application to status. BARTIN, *ETUDES DE DROIT INTERNATIONAL PRIVÉ* (1899) 83; Lainé, *La théorie du renvoi en droit international privé* (1906) 2 REV. DE DR. INT. FR. 605; (1907) 3 *ibid.* 43, 313, 661; (1908) 4 *ibid.* 729; (1909) 5 *ibid.* 12; PILLET, *PRINCIPES DU DROIT INTERNATIONAL PRIVÉ* (1903) §§ 63-66; 1 *id.*, *op. cit. supra* note 2, § 56; *id.*, *Contre la doctrine du renvoi* (1913) 9 REV. DE DR. INT. FR. 5.

All agree that if the national legislation applies different bodies of law to distinct groups of people living within its territory the foreign courts will follow its direction. See PILLET & NIROYER, *op. cit. supra* note 6, at 395 n.; also, Trib. civ. Seine, July 3, 1914, and App. Paris, July 5, 1921, 48 *Clunet*, 958 (succession to the estate of an Ottoman, the question being whether Ottoman or Greek law was applicable, both being in force in Turkey).

²³ *Humann v. Soulié*, *supra* note 8.

²⁴ The principal decisions rejecting *renvoi* are: *Eastabrook v. Eastabrook*, App. Rouen, June 30, 1897, 2 REV. DE DR. INT. FR. 511; *In re Samory*, App. Paris, Aug. 1, 1905, 33 *Clunet*, 178, D. 1906, 2, 169; *Knowles v. Rigby*, App. Pau, June 11, 1906, 34 *Clunet*, 156, 2 REV. DE DR. INT. FR. 765; D. 1907, 2, 1; *X v. Z & Moraël*, *supra* note 15.

²⁵ It has been applied also where immovable property was involved. *Rainerie v. Bourillon & Bisso*, App. Aix, July 19, 1906, 34 *Clunet*, 152, 4 REV. DE DR. INT. FR. 805.

²⁶ *O'Rorke v. Grados*, App. Paris, Mar. 23, 1888, 16 *Clunet*, 638.

²⁷ *In re Grivot de Grandcourt*, Trib. civ. Seine, Mar. 7, 1908, 4 REV. DE DR. INT. FR. 627.

²⁸ *In re Oberkampff de Dabrun*, App. Lyon, July 29, 1898, 26 *Clunet*, 569; *Grant v. Grant-Scott*, App. Paris, June 16, 1904, 1 REV. DE DR. INT. FR. 146.

²⁹ *O'Rorke v. Grados*, *supra* note 26; *Ferguson v. Ferguson*, Trib. civ. Seine, July 26, 1894, 21 *Clunet*, 1007.

³⁰ *Lathoud v. Col.*, App. Chambéry, Feb. 23, 1885, 12 *Clunet*, 665.

³¹ *Etchegoyen v. Etchegoyen*, Trib. civ. Laval, Apr. 12, 1902, 29 *Clunet*, 1044.

³² *Etchegoyen v. Etchegoyen*, *supra* note 31.

³³ *Abdy v. Delpey & Co.*, Trib. civ. Pontoise, July 11, 1894, 22 *Clunet*, 105; *L. v. G.*, Trib. civ. Pau, July 28, 1904, 32 *Clunet*, 195.

³⁴ *Sanchez v. Cromwell & Wallerstein*, Trib. civ. Seine, July 13, 1910, 38 *Clunet*, 912, 8 REV. DE DR. INT. FR. 414.

ject of public policy in the Conflict of Laws with a view to determining its scientific character and the scope of its application.³⁵ In the decisions of the courts, also, the notion of *l'ordre public*, as it is called in France, plays a very prominent part, but neither courts nor writers have succeeded in elucidating the subject. As long as legislators, courts and writers in dealing with problems in the Conflict of Laws talk in terms of "general" principles, some safety-valve—and the doctrine of public policy is nothing else—will be found necessary to enable the judge to escape from the conclusion to which such general principles would lead, where under the particular circumstances of the case such conclusion appears highly undesirable.³⁶ In accordance with the contention of a recent writer, a distinction should be made between the notion of public policy and fraud upon the law.³⁷ It would appear, however, that no general statement can be made with respect to either doctrine that will be of practical aid in the solution of concrete problems. Applications of these doctrines will be found in the discussion of particular topics below.

JURISDICTION OF COURTS

Anglo-American notions concerning the jurisdiction of courts and the French notions in that regard are very far apart. A most fundamental difference relates to the conception of the jurisdiction of courts in personal causes of action. In our law personal service within the state will confer jurisdiction, although the defendant is not domiciled within the state and the cause of action did not arise in the state and has no other connection therewith. In French law service of process within the state does not confer jurisdiction. Another fundamental difference arises from the fact that the jurisdiction of the French courts is affected vitally by the nationality of the parties to the suit.

1. *Jurisdiction in General*

The general rules of jurisdiction governing the French courts are to be found in articles 59 and 420 of the Code of Civil Procedure. The rules were laid down for domestic causes of action but have been extended by the courts to foreign causes of action. The fundamental rule of the French law governing jurisdiction, going back to Roman law, is that the defendant is to be sued

³⁵ PILLET, *PRINCIPES DE DROIT INTERNATIONAL PRIVÉ*, *supra* note 22, at 367; 1 *id.*, *op. cit. supra* note 2, at 110-118; BARTIN, *op. cit. supra* note 22, at 189; Despagnet, *De l'ordre public en droit international privé* (1889) 16 *Clunet*, 5, 207.

³⁶ Lorenzen, *Territoriality, Public Policy and the Conflict of Laws* (1924) 33 *YALE LAW JOURNAL*, 736.

³⁷ Arminjon, *La fraude à la loi en droit international privé* (1920) 47 *Clunet*, 409; (1921) 48 *Clunet*, 62, 419.

at his domicile (*actor sequitur forum rei*).³⁸ The justification for this rule is said to be, that, in order to avoid costs of litigation, a suit should be brought ordinarily either at the domicile of the plaintiff or at the domicile of the defendant, and inasmuch as the defendant is deemed to be in the right until the plaintiff makes out a case against him, it is but just that the plaintiff should have to sue at the defendant's domicile. This rule holds true not only in the case of personal actions in the strict sense, but also in all actions relating to status, capacity, or family rights. If there are several defendants the court at the domicile of either of them has jurisdiction and suit may be brought in France, although only one of the defendants is domiciled in France.³⁹

The following are some of the principal exceptions to the rule that the defendant must be sued at his domicile:

1. "Immovable real actions" must be brought where the land is situated.⁴⁰

2. Certain suits relating to partnerships or corporations must be brought at the seat of such partnership or corporation. Suits between partners or stockholders, or between them and the managers or directors, belong to this class, as do winding-up proceedings and all matters incidental thereto.⁴¹

3. Suits against an estate must be brought at the domicile of the deceased. Actions by creditors, legatees, or devisees prior to the partition of the estate belong to this class, as well as all actions between co-heirs.⁴²

³⁸ Art. 59, § 1, Code de Proc. Civ. If the defendant has no domicile in France, but a fixed residence, he is to be sued at such residence, and if he has no fixed residence in France, he may be sued at the plaintiff's domicile. *Formann & Co. v. Pugh*, Cass. (civ.), Mar. 9, 1863, D. 1863, 1, 176; *Lanier & Co. v. Caferrata & Co.*, App. Aix, Feb. 28, 1889, D. 1890, 2, 59. According to some authorities he may sue the defendant in the latter case wherever he can find him. *Augendre v. Rondard*, App. Bourges, Nov. 17, 1902, D. 1904, 2, 7.

³⁹ *Misa v. Blandy & Co.*, Cass. (req.), Dec. 26, 1899, 27 *Clunet*, 335; S. 1901, 1, 30, D. 1900, 1, 90.

A defendant who is held on a distinct cause of action must be sued at his domicile. *Pelletan v. Harmel*, App. Paris, Dec. 16, 1897; D. 1899, 2, 8.

⁴⁰ Art. 59, § 3, Code de Proc. Civ.; PILLET & NIBOYET, *op. cit. supra* note 6, at 644, holds that the same is true of in rem actions relating to chattels.

In the older French law the plaintiff had an option between the courts of the situs and the courts of the defendant's domicile. 1 GLASSON, PRÉCIS DE PROCÉDURE CIVILE (2d ed. 1908) 286.

⁴¹ Art. 59, § 5, Code de Proc. Civ.; *Chemin de fer Victor-Emanuel v. Brouillet*, App. Chambéry, Dec. 1, 1866, S. 1867, 2, 182; 1 GLASSON, *op. cit. supra* note 40, §§ 281, 282; 1 GARSONNET & CÉZAR-BRU, TRAITÉ DE PROCÉDURE CIVILE ET COMMERCIALE (3d ed. 1912) §§ 560-563.

⁴² Art. 59, § 6, Code de Proc. Civ.; 1 GLASSON *op. cit. supra* note 40, §§ 277-280; 1 GARSONNET & CÉZAR-BRU, *op. cit. supra* note 41, §§ 556-559; JAPIOT, TRAITÉ ÉLÉMENTAIRE DE PROCÉDURE CIVILE ET COMMERCIALE (1916) § 319.

In some cases the plaintiff has an option as to where he will bring his suit.

1. In "mixed" actions,⁴³ which are deemed to be both "real" and personal, suit may be brought either at the domicile of the defendant or at the situs of the property.⁴⁴ Actions for the specific performance of contracts to convey land or for the creation of other rights therein and actions for the annulment of conveyances belong to this class. In these cases French courts have jurisdiction either if the land is situated in France or the defendant has his domicile in France.⁴⁵

2. In commercial transactions the plaintiff may bring his suit (1) at the defendant's domicile; (2) before the court of the district in which the promise was made or the goods were to be delivered; or (3) before the court of the district where payment was to be made.⁴⁶ In these cases French courts have jurisdiction over foreign contracts if the defendant is domiciled in France, if the promise was made in France, or if the delivery or payment was to be made in France.⁴⁷

3. The local jurisdiction of French courts in matters involving liability on insurance policies is regulated by a law of January 2, 1902, according to which the plaintiff may sue the insurance company (1) at the domicile of the insured; (2) at the situs of the property in the case of fire insurance; and (3) at the place where the accident occurred in the case of accident insurance.⁴⁸ Extending this point of view to international transactions, French courts are competent if the insured is domiciled in France, if the property is situated in France, or the accident occurred in France.⁴⁹ In accordance with the general rule, jurisdiction on the part of the French courts exists, of course, also if the defendant is domiciled in France.

4. An action to recover damages for a tort may be brought since the Law of November 26, 1923, amending article 59 of the Code of Civil Procedure, where the wrongful acts were com-

⁴³ As to what are mixed actions, see 1 GLASSON, *op. cit. supra* note 40, § 238; 1 GARSONNET & CÉZAR-BRU, *op. cit. supra* note 41, §§ 387-394.

⁴⁴ Art. 59, § 4, Code de Proc. Civ.

⁴⁵ *Plubel v. Campa*, Cass. (req.), Nov. 9, 1868, S. 1869, 1, 122; *Debaillet v. Divuy*, App. Douai, Apr. 3, 1848, S. 1848, 2, 625.

⁴⁶ Art. 420, Code de Proc. Civ.

⁴⁷ *Mohr & Co. v. Quieu-Haldy*, Cass. (req.), Nov. 27, 1875, S. 1876, 1, 213; *De Munitiz v. Kufas*, Cass. (civ.), June 5, 1905, S. 1905, 1, 305; *D'Oliveira v. Rymkiewietz*, App. Paris, Mar. 14, 1905, 2 REV. DE DR. INT. FR. 502.

⁴⁸ 102 DUVERGIER, COLLECTION DES LOIS (1902) 5. The jurisdiction is determined by the situs of the chattels at the time the cause of action arose. *Demon v. Comp. d'Assurances*, App. Dijon, May 27, 1909, and Trib. civ. Douai, Nov. 19, 1909, S. 1913, 2, 22; D. 1912, 2, 215.

⁴⁹ PILLET & NIBOYET, *op. cit. supra* note 6, at 647.

mitted.⁵⁰ From the standpoint of the Conflict of Laws, the French courts will be competent in matters of tort if the tort was committed in France, or, in accordance with the general rule, if the defendant is domiciled in France.⁵¹

In case of collisions the law of December 14, 1897, allows the plaintiff to bring his suit before the court of the defendant's domicile or before the court of the port of refuge, or, if the collision occurred within French territorial waters, before the court of the place where the collision occurred. The French courts will, therefore, have jurisdiction if the defendant's domicile, or the port of refuge, was in France, or if the collision occurred in French territorial waters.⁵²

Jurisdiction may be conferred upon the French courts by agreement. This may be done by an express provision in a contract that all suits arising therefrom shall be determined by a specified French court, or by what is known as an "election of domicile."⁵³ Electing a domicile with a particular solicitor in Paris is tantamount to an agreement that the courts of Paris shall have jurisdiction with respect to all litigation arising out of the contract, and that the solicitor designated shall be regarded as his agent for the purpose of receiving any process or notice in the proceedings. If the election of domicile is made in the plaintiff's interest he may waive his rights and bring the suit before the court at the defendant's domicile.

Stipulations modifying the ordinary rules of jurisdiction are not allowed, however, in all cases. Certain laws expressly declare such agreements to be null and void. For example, the law of January 2, 1902, prohibits such stipulations in the case of insurance contracts other than marine insurance.⁵⁴

So far as the jurisdiction of courts may be modified by agreement the parties may validly confer exclusive jurisdiction upon a particular court.⁵⁵

⁵⁰ 123 DUVERGIER, *op. cit. supra* note 48 (1923) 682. This result was reached already by the courts prior to the statute of 1923. *De Rohan-Fénis v. De Rohan-Rochefort*, App. Paris, Mar. 21, 1862, S. 1862, 2, 411; *Misa v. Blandy & Co.*, App. Rouen, Nov. 24, 1897, 25 Clunet, 344.

⁵¹ But art. 14 of the Civil Code is applicable, according to which a French plaintiff, if the defendant has no domicile in France, may sue him at his own domicile. *Agaccio and Comp. Gén. Transatlantique v. Taylor*, App. Paris, Nov. 15, 1900, 28 Clunet, 132.

⁵² 97 DUVERGIER, *op. cit. supra* note 48, at 539.

⁵³ Art. 59, § 9, Code de Proc. Civ.

⁵⁴ 2 RIPERT, *DROIT MARITIME* (1914) 800, 801; *Greslé v. Comp. L Foncière-Transport*, Trib. Com. Seine, Nov. 17, 1904, 21 REV. INT. DE DROIT MARITIME, 732. Is this statute applicable also on grounds of public policy to foreign contracts?

⁵⁵ *Chemin de fer de l'Ouest v. Coignet*, Cass. (civ.), Aug. 13, 1879, D. 1880, 1, 85; *Comp. Florio Rubattino v. Bernex*, Cass. (civ.), Feb. 29, 1883, 3 REV. INT. DE DROIT MARITIME, 657; *Comp. d'Assurances Maritime, l'Italia v. Waller Bros.*, Cass. (civ.), Mar. 13, 1899, S. 1889, 1, 200; *Comp. Gén.*

2. *The Jurisdiction of French Courts as Affected by the Character of the Plaintiff or the Defendant*

(a) Suit by French citizen. French law is peculiar and exorbitant in claiming jurisdiction in all cases where the plaintiff is a French citizen. According to article 14 of the Civil Code "an alien, even not residing in France, may be summoned by the French court for the fulfillment of obligations contracted by him in France towards a French person. He may be called before the French courts for obligations contracted by him in a foreign country towards French people." This article, although referring only to contractual obligations, is given an extensive interpretation and is held to include all causes of action of a personal or mixed character.⁵⁶ The rule is applicable also to partnerships and corporations that have their seat in France.⁵⁷ It applies also to foreigners who, as the result of treaty provisions or of an "authorized" domicile, are entitled to the enjoyment of all civil rights.⁵⁸ The above jurisdiction exists although only one of the plaintiffs is a French citizen.⁵⁹

A plaintiff is entitled to the special privileges conferred by article 14 if he has acquired the French nationality prior to the commencement of the action.⁶⁰ Jurisdiction cannot be conferred upon the French courts, however, by an assignment to a Frenchman, if the original cause of action belonged to a foreigner.⁶¹ An

Transatlantique v. Armeilla, Cass. (civ.), July 16, 1912, 28 REV. INT. DE DROIT MARITIME, 332; *Magalhaes v. Lescarret & Duffau*, App. Bordeaux, June 13, 1922, 34 REV. INT. DE DROIT MARITIME, 1047.

⁵⁶ So as to obligations arising from agreements, delicts or quasi delicts. *Comp. l'Industrie Française v. Ryde & Co.*, Cass. (civ.), Aug. 12, 1872, D. 1872, 1, 293; *Lombroso & Hoepfli v. Crépieux-Jamin*, App. Rouen, Aug. 5, 1896, 24 Clunet, 523; *Agaccio and Comp. Gen. Transatlantique v. Taylor*, *supra* note 51.

As to personal claims arising out of a foreign succession, see *Martin v. Smet*, App. Douai, July 18, 1905, 33 Clunet, 185; *Letts, Kemps & Cohen v. Rossey*, App. Orléans, Nov. 18, 1896, 24 Clunet, 326; *Desmit v. Wretholm*, Trib. civ. Seine, Nov. 1919, 16 REV. DE DR. INT. PR. 421 and note.

Where the foreigner has neither domicile nor residence in France the suit must be brought before the court of the plaintiff's domicile. *Formann & Co. v. Pugh*, *supra* note 38.

⁵⁷ Corporations whose seat is in France and which are, therefore, regarded as French, are entitled to the benefits of art. 14. *Scott v. Bergamin*, Trib. civ. Seine, Jan. 9, 1894, 21 Clunet, 107; *Soc. anonyme L'Eclairage Electrique v. Soc. Guimaraès & Co.*, App. Paris, July 5, 1894, 22 Clunet, 90.

⁵⁸ *Goutron v. The New York*, App. Paris, July 17, 1890, 19 Clunet, 901; *Lahousse v. Lahousse*, App. Paris, May 27, 1895, 22 Clunet, 819.

⁵⁹ See *Misa v. Blandy & Co.*, *supra* note 39.

⁶⁰ *Mahmoud-ben-Ayad v. Franco*, Cass. (req.), Jan. 16, 1867, S. 1867, 1, 159; D. 1867, 1, 308; *Saint Yves v. von Derwicz*, Trib. civ. Seine, Apr. 10, 1878, 5 Clunet, 492; *Bordes v. Bordes*, App. Montpellier, Feb. 19, 1900, D. 1901, 2, 25 and note by Valéry; *Lowengard v. Caltaneo di Prob.*, Trib. civ. Seine, Nov. 15, 1907, 35 Clunet, 1123.

⁶¹ In the case of the assignment of an ordinary debt, it is generally held

exception to this rule exists in the case of negotiable paper⁶² and insurance policies.⁶³

Whether jurisdiction exists when neither the defendant nor the plaintiff has a domicile or a residence in France has not been determined.⁶⁴

Article 14 creates a privilege in favor of French citizens, which may be waived by them at the time of contracting or subsequently without need of compliance with any particular formality. Such waiver exists not only when the plaintiff has expressly agreed that a particular foreign court shall have jurisdiction, but also, by implication, if he has submitted to the jurisdiction of the courts of another country by instituting suit therein "voluntarily and without imperious necessity."⁶⁵

(b) Suits against French citizens. Article 15 of the French Code provides: "A Frenchman may be called before the French courts for obligations contracted by him in a foreign country, even toward an alien."

The above article contains the converse proposition to article 14. This article is given a like extensive interpretation and is held to include all causes of action of a personal or mixed nature. A French citizen may, therefore, be sued in France by a Frenchman or a foreigner, although he was domiciled abroad⁶⁶ and the cause of action has no connection with French territory.⁶⁷ The jurisdiction exists, although only one of the defendants is a French citizen.⁶⁸

The defendant need not have been a French citizen at the time the cause of action arose; it is sufficient that he became such

that there is no jurisdiction. *Comp. l'Industrie française v. Ryde & Co.*, *supra* note 56; *Gouret v. Simondet*, Trib. civ. Seine, Oct. 26, 1895, 23 Clunet, 595 and note; *Raimon v. Schmalzer*, Trib. com. Seine, Dec. 13, 1901, 29 Clunet, 562.

⁶² *Wieldon v. Hébert*, Cass. (req.), Aug. 13, 1856, S. 1857, 1, 586.

⁶³ *Comp. le Gresham v. Matias*, App. Paris, Nov. 23, 1883, 11 Clunet, 234.

Where the plaintiff, a Frenchman, succeeded to the rights of a foreigner by subrogation, it was held likewise that the French court had jurisdiction. *Loth v. Fiedler*, Trib. civ. Seine, May 8, 1911, 38 Clunet, 1198, 7 REV. DE DR. INT. PR. 637.

⁶⁴ In favor of such jurisdiction, see *Collett v. Bérenger*, Trib. civ. Belfort, May 28, 1924, 52 Clunet, 690; *PILLET & NIBOYET*, *op. cit. supra* note 6, at 657.

To the effect that there is no jurisdiction in the above case, see 1 *GLASSON*, *op. cit. supra* note 40, at 284, 285.

⁶⁵ *Dreyfus v. Comp. d'Assur. Arcangelo*, Cass. (req.), Feb. 13, 1882, D. 1882, 1, 129; *Lefèvre & Co. v. Betim*, Cass. (req.), July 1, 1896, S. 1900, 1, 355; *De Maia Lima v. Douat*, Cass. (req.), Mar. 28, 1922, D. 1922, 1, 164.

⁶⁶ *Barral v. Tarlier*, App. Bourges, Jan. 19, 1899, D. 1902, 2, 57 and note by *Bartin*.

⁶⁷ 1 *PILLET*, *op. cit. supra* note 2, at 389.

⁶⁸ *Misa v. Blandy & Co.*, *supra* note 39.

prior to the commencement of the suit.⁶⁹ The jurisdiction of the French courts, so far as it is based on article 15 of the Civil Code, applies equally to foreigners who have acquired an "authorized" domicile in France in accordance with article 13 of the Civil Code.⁷⁰

Whether suit may be brought by virtue of article 15 of the Civil Code when neither the defendant nor the plaintiff is domiciled in France or is a resident of France is undecided.⁷¹

A foreign court is regarded from the standpoint of the French law as having no jurisdiction in personal or mixed actions against a Frenchman, unless the latter has either expressly⁷² or by implication⁷³ waived his right to be sued in France. In the absence of such renunciation, a judgment against a French citizen rendered abroad is not entitled to execution in France.⁷⁴

(c) Suits between foreigners. The French courts are said to be incompetent *on principle* with respect to suits between foreigners. It has been the theory of the French courts that they were established to do justice in suits to which French citizens were parties, and not in others. Necessity and the dictates of justice have imposed, however, in the course of time, so many exceptions to the rule that little remains of it. Suit may be brought between foreigners in the following cases:

1. In "real" actions respecting immovables in France.⁷⁵
2. With respect to successions opening in France.⁷⁶
3. In matters falling within article 420 of the Code of Civil Procedure.⁷⁷
4. In the case of delicts or quasi-delicts committed in France.⁷⁸
5. In other cases affecting French public order.⁷⁹

⁶⁹ Mahmoud-ben-Ayad v. Franco, *supra* note 60.

⁷⁰ Kratz-Boussac v. Soc. Eisenwecke-Gaggenau, App. Paris, Dec. 22, 1892, D. 1893, 2, 157; Appleyard v. Bachelor, App. Rennes, Apr. 27, 1847, D. 1847, 2, 170.

⁷¹ See Collett v. Bérenger, *supra* note 64.

⁷² For example, by an express agreement conferring jurisdiction upon a particular court. Chemin de fer de l'Ouest v. Coignet, *supra* note 55; Liquidateurs des forges v. Mandet, App. Rennes, Jan. 14, 1892, 19 Clunet, 431.

⁷³ Ward, Adams, Newling v. Reinert, Trib. civ. Seine, Feb. 1, 1910, 37 Clunet, 878; Moreau v. Montagu-Hawkins, App. Paris, July 27, 1886, 13 Clunet, 712.

It has been held that instituting a suit and obtaining judgment in a foreign court constituted such a waiver that no suit could be brought thereafter in France by virtue of Article 15 of the Civil Code. Shorter, Clements & Shorter v. Mathias, Trib. civ. Seine, June 24, 1893, 20 Clunet, 1149. But see *contra*, Stinnes v. Soulier, App. Paris, Mar. 24, 1911, S. 1912, 2, 51.

⁷⁴ Yung v. Dreyfus & Fould, App. Paris, Jan. 28, 1885, 12 Clunet, 539.

⁷⁵ Art. 3, par. 2, Civ. Code; art. 59, § 3, Code de Proc. Civ.; Les héritiers de Gérardy, Colmar, Aug. 12, 1817, S. 1818, 2, 316.

⁷⁶ Art. 59, § 6, Code de Proc. Civ.

⁷⁷ That is, where a commercial contract is made or is to be performed in

6. For the enforcement of foreign judgments.⁸⁰
7. With respect to provisional, urgent, or conservatory measures.⁸¹
8. On account of the personality of one of the parties.
 - a. Where either the plaintiff or the defendant has obtained an "authorized" domicile in France;⁸² or
 - b. Where one of the parties, plaintiff or defendant, is a French citizen, although the other parties are foreigners.⁸³
9. Where the defendant has agreed to submit to the jurisdiction of the French courts.⁸⁴

All that remains of the incompetency of the French courts, where both parties are foreigners, is practically the following: No jurisdiction exists (1) in suits relating to status;⁸⁵ (2) with respect to suits not falling within article 420 of the Code of Civil Procedure;⁸⁶ and (3) with respect to torts committed outside of France.⁸⁷ But even in these cases jurisdiction is taken if the refusal to do so would be tantamount to a denial of justice or if it appears that the French courts would be in a better position to do justice.⁸⁸

France. *Tideman v. Tideman*, App. Bordeaux, June 1, 1898, 25 Clunet, 1056; *Fritze & Co. v. Wilson Sons & Co.*, App. Rennes, May 30, 1899, 26 Clunet, 998; *Comp. Dempster v. Rokosu*, Court of Appeals of French Equatorial Africa, Feb. 22, 1921, S. 1923, 2, 41 and note by Niboyet; *Loth v. Fiedler*, *supra* note 63; *Gordon-Bennett v. Barnard*, App. Paris, Jan. 12, 1900, 27 Clunet, 569.

⁷⁸ *DeRohan-Fénis v. DeRohan-Rochefort*, *supra* note 50; *Chemin de fer Lyon-Méditerranée v. Routin, Rochon*, Cass. (req.), Mar. 31, 1875, 3 Clunet, 272; *Misa v. Blandy & Co.*, *supra* note 50.

⁷⁹ On this ground suits for maintenance and support have been entertained where the parties, though foreigners, resided in France. *Guerrier v. Guerrier*, Cass. (req.), July 22, 1903, 31 Clunet, 355.

⁸⁰ *Harding v. Muriel*, Cass. (civ.), Mar. 10, 1863, S. 1863, 1, 293.

⁸¹ *The Securities Ins. Co. v. Lancashire*, Trib. Civ. Bordeaux, Jan. 21, 1895, 24 Clunet, 360 (garnishment); *Arena v. Bailey*, App. Alger, Mar. 1, 1897, 25 Clunet, 143 (attachment of vessel).

⁸² In these cases articles 14 and 15 of the Code de Proc. Civ. are applicable. See *supra* pages 742-744.

⁸³ *Misa v. Blandy & Co.*, *supra* note 39.

⁸⁴ *Italian Pegamoid Synd. v. Soc. Dynamite Nobel*, App. Paris, May 18, 1901, 29 Clunet, 575.

⁸⁵ *Musa v. Musa*, App. Amiens, Nov. 16, 1897, 25 Clunet, 895 (divorce).

⁸⁶ *Rivet Sons v. Goldberger*, Trib. Com. Seine, Dec. 3, 1895, 24 Clunet, 1016 (bill of exchange).

⁸⁷ *De Munitiz v. Kufas*, Cass. (civ.), June 5, 1905, 32 Clunet, 964 (collision between foreign vessels outside of French territorial waters).

⁸⁸ Jurisdiction has been taken in many instances because the defendant was domiciled in France or possessed abroad neither a known domicile nor residence and it was assumed, therefore, that the plaintiff could not sue in any foreign tribunal. *Randall v. Thierney*, App. Montpellier, May 9, 1890, 17 Clunet, 862; *Keller v. Keller*, App. Paris, Jan. 21, 1897, 24 Clunet, 362; *Oberhauser v. Oberhauser*, App. Paris, Dec. 5, 1890, S. 1892, 2, 223, and

The incompetency of the French courts by reason of the fact that both parties are foreigners, so far as it still exists, is of a peculiar character. On the one hand, it is held that the defense of want of jurisdiction must be raised by the defendant at the very outset of the proceedings;⁸⁹ French courts, on the other hand, may declare themselves to be without jurisdiction in these cases *ex officio*, notwithstanding the defendant's expressed or implied consent to the exercise of jurisdiction.⁹⁰

3. *Jurisdiction with Respect to Foreign Corporations and Partnerships*⁹¹

As seen above, certain suits relating to partnerships and corporations must be brought before the courts of the state where they have their seat (*siège social*).⁹² As regards all other suits by or against partnerships or corporations the ordinary rules relating to jurisdiction apply. Foreign corporations and partnerships are deemed to have a domicile in France if they have a branch there.⁹³ Articles 14 and 15 of the Civil Code embrace French partnerships and corporations as well as citizens⁹⁴ and the limitations upon the jurisdiction of the French courts with

note by Pillet; *Klein v. Klein*, Cass. (req.), July 29, 1912, S. 1913, 1, 425; but see *Robertson, Cob & Co. v. Wadia*, App. Paris, Oct. 28, 1924, 52 *Clunet*, 692, where an exception to the jurisdiction was sustained because the defendant's "legal" domicile was in India, although he had either a *de facto* domicile or a residence in France.

⁸⁹ *Forcella v. Mina Gindel*, App. Aix, May 6, 1908, 39 *Clunet*, 830.

⁹⁰ *Strauss v. Workman, Clark & Co.*, App. Douai, Jan. 22, 1890, 19 *Clunet*, 903; *Gouvernement Grec v. Gouvernement Italien*, App. Bordeaux, Dec. 4, 1917, 46 *Clunet*, 736.

The fact that the court can take jurisdiction at its discretion where the defendant does not object to the jurisdiction accounts for the divorces granted to foreigners in France.

⁹¹ As to the meaning of foreign corporations or partnerships in connection with the jurisdiction of courts, see 2 *LYON-CAEN & RENAULT, TRAITÉ DE DROIT COMMERCIALE* (4th ed. 1908) part 2, 573 *et seq.*

⁹² Art. 59, Code de Proc. Civ.; *supra* page 739; *Chemin de fer Victor Emmanuel v. Brouillet*, App. Chambéry, Dec. 1, 1866, S. 1867, 2, 182. 2 *LYON-CAEN & RENAULT, op. cit. supra* note 91, part 2, 536, holds that art. 59 applies only to French partnerships and corporations.

By the seat of a corporation or partnership is meant the place where it has its administration and offices. 2 *LYON-CAEN & RENAULT, op. cit. supra* note 91, part 2, 578.

⁹³ *Banque Ottomane v. Racine*, Cass. (civ.), Mar. 4, 1885, 12 *Clunet*, 304, 445; S. 1885, 1, 169; *Dettweiler v. Soc. Gén. Alsacienne*, App. Paris, Feb. 10, 1899, 26 *Clunet*, 522.

⁹⁴ According to art. 14 of the Code de Proc. Civ., foreign corporations and partnerships may be sued, therefore, by French plaintiffs in France, although the cause of action arose abroad. This is true, even if such partnership or corporation has no branch in France. *Iguasi v. Comp. des chemins de fer Andalous*, Trib. civ. Seine, Mar. 12, 1898, 16 *REVUE DES SOCIÉTÉS*, 315; *Comp. des chemins de fer du Sud de l'Espagne*, Trib. civ. Seine, Feb. 17, 1905, 24 *REVUE DES SOCIÉTÉS*, 158.

respect to foreigners are equally applicable to suits between foreign partnerships or corporations.⁹⁵

Foreign corporations not authorized to do business in France cannot sue in the French courts but may be sued therein.⁹⁶

4. *Jurisdiction and Service of Process*

As stated above, the jurisdiction of the French courts, even in personal actions is never based upon personal service of the defendant in the Anglo-American sense. For the validity of a judgment it is necessary, however, that the defendant should have been properly cited. Personal service is sufficient, though not necessary.⁹⁷ If no personal service is made, the rules for citing the defendant into court vary in accordance with his residence. If the defendant is domiciled in France or is a resident of France, the sheriff may leave the writ with some one at the defendant's residence.⁹⁸ If no relative or servant can be found at the residence, he may leave it with a neighbor and if the neighbor is unwilling to accept it, with the mayor of the town.⁹⁹

If the foreign partnership or corporation has a branch in France, suit may be brought there. *Banque Ottomane v. Racine*, *supra* note 93; see note by Lyon-Caen, S. 1885, 1, 169. If it has no branch in France the plaintiff may bring the action before the court of his domicile. *Banque Impériale Ottomane v. Racine*, App. Aix, Jan. 16, 1883, D. 1884, 2, 83.

A French plaintiff may, of course, waive this privilege to sue the foreign corporation or partnership in France and a French stockholder in a foreign corporation will be deemed to have done so if the articles of incorporation confer jurisdiction in the matter upon the courts of the state where the partnership or corporation has its seat. *Comp. des chemins de fer Victor Emmanuel v. Cléray*, Cas. (civ.), Aug. 24, 1869, D. 1869, 1, 500.

A French stockholder sued by the French corporation and who, according to art. 15 of the Code de Proc. Civ., may be sued before a French court, may in like manner object to the jurisdiction of the French courts where the articles of incorporation contain a provision conferring jurisdiction upon the court of the state where the corporation has its seat or domicile. 2 LYON-CAEN & RENAULT, *op. cit. supra* note 91, part 2, page 538; App. Paris, Dec. 2, 1894, LE DROIT, Apr. 16-17, 1894, cited by 2 LYON-CAEN & RENAULT, *op. cit. supra* note 91, part 2, 538 n.

⁹⁵ 2 LYON-CAEN & RENAULT, *op. cit. supra* note 91, part 2, 538; Trib. civ. Seine, Jan. 30, 1892, Le Droit, Feb. 25, 1892, cited by LYON-CAEN & RENAULT, *loc. cit. supra* note 94.

⁹⁶ *Trône v. Chemins de fer russes*, Cass. (civ.), Nov. 14, 1864, S. 1865, 1, 135.

⁹⁷ *Soc. Sternberg & Co. v. Metzger & Co.*, App. Paris, May 18, 1911, 8 REV. DE DR. INT. FR. 87 and note.

⁹⁸ A foreign corporation or partnership will be deemed domiciled in France for purposes of service if it has a branch establishment in France. *Banque Ottomane v. Racine*, *supra* note 93; *Dettweiler v. Soc. Gén. Alsacienne*, *supra* note 93.

⁹⁹ Art. 63, Code de Proc. Civ.; *Tornu v. Houscz*, Cass. (civ.), July 23, 1902, 30 Clunet, 325; *Martinez v. Martinez*, Cass. (req.), June 14, 1910, 39 Clunet, 209.

If the defendant has elected a domicile with somebody in France for the

If the defendant has no known domicil or residence in France but has a known foreign domicil, the writ must be served on the Procureur Général, who must visa it and have it forwarded to the defendant through the Foreign Office.¹⁰⁰ If the foreign domicil of the defendant is unknown, the writ may be nailed on the principal door of the court before which the suit is brought.¹⁰¹

The return day of the summons is fixed by law—with respect to residents in the United States it is two months¹⁰²—and unless the legal requirements in this regard are strictly complied with the judgment is void.¹⁰³

It is not necessary for the validity of the judgment, however, that the defendant shall have actually received notice of the pendency of the action before such return day.¹⁰⁴ With respect to defendants living abroad it is sufficient that the writ was served upon and visad by the Procureur Général, who is deemed the defendant's agent for the purpose of receiving the writ.¹⁰⁵

PROCEDURE

It is a universal rule, based upon the necessity of things, that matters relating to procedure must be controlled exclusively by the local law of the forum. Law can be administered effectively only by the legal machinery of the state in which the suit is brought. The mode of bringing the defendant into court, the pleadings in the case and the other steps in the trial and on appeal must, therefore, conform to such law.¹⁰⁶ Anglo-American

purpose of the suit, the summons and complaint may be left at such place. *Philippart v. Isaac*, App. Paris, Aug. 3, 1883, 11 Clunet, 57.

¹⁰⁰ Art. 69, § 10, Code of Proc. Civ.; *Larquié v. Larquié*, Cass. (civ.), Nov. 20, 1889, 17 Clunet, 278; *Dubief v. Comp. Com. de Madagascar*, App. Lyon, Dec. 28, 1906, 35 Clunet, 833.

These provisions have been simplified with respect to countries that have adhered to the Convention of the Hague of July 17, 1905.

¹⁰¹ Art. 69, § 8, Code de Proc. Civ.

¹⁰² Law of Mar. 13, 1922, 122 DUVERGIER, *op cit. supra* note 48 (1922) 111.

¹⁰³ *Jouet v. Murray Scott*, Cass. (Req.), Feb. 21, 1900, 27 Clunet, 779; *Brasserie royale hollandaise v. Micheau*, App. Paris, Jan. 23, 1895, 22 Clunet, 574.

¹⁰⁴ *Helstein v. Mignot*, Cass. (Req.), May 12, 1886, 14 Clunet, 179; *Oliva v. Marty*, Cass. (Req.), June 28, 1905, 33 Clunet, 174; S. 1909, 1, 237 and note.

If art. 60, § 9, Code de Proc. Civ. is not complied with, the judgment is void. *Joffre v. Joffre*, App. Montpellier, Jan. 27, 1902, 29 Clunet, 551. *Contra*: *Soc. The Val de Travers Asphalt Paving v. Soc. l'Asphalte*, Trib. com. Seine, Sept. 13, 1912, 40 Clunet, 553, where it was held that a judgment by default was void, notice of the suit having been given to the defendant by the French consul after the judgment had been pronounced.

¹⁰⁵ *Lervat v. Bladier*, App. Toulouse, Jan. 10, 1899, 27 Clunet, 328; *Azuolos & Soria v. Soc. des Mines*, App. Alger, Dec. 18, 1906, 34 Clunet, 701.

¹⁰⁶ So also what objects are subject to attachment. *Gye v. Faber*, App. Paris, Jan. 13, 1898, 25 Clunet, 1071.

law has gone much beyond this, however, and frequently has labeled a matter one of "procedure" and as being subject to the local law of the forum, when the matter in reality affected the substantive rights of the parties. French law, following the general continental point of view, has given to the term "procedure" a narrower meaning. For example, the statute of frauds is deemed to affect the legal relations of the parties and is controlled, therefore, by the law governing those relations. Under article 1341 of the French Civil Code no contract involving more than 150 francs can be proved unless there is a written memorandum. This provision is applicable, however, only to French contracts. Hence, if a contract is entered into in England and does not fall within the English statute of frauds it may be proved in France by parol, although the amount involved is more than 150 francs.¹⁰⁷ This conclusion follows from the general point of view which regards all *means of proof* as affecting the rights of the parties.¹⁰⁸ It is contended that in so far as the interests of a party are concerned no valid distinction can be made between the requirement of a writing as a substantive part of a transaction, or as a means of proof, for a right that cannot be proved is of little value. As no one can foresee the place where litigation arising from a particular transaction may be brought, it is felt that compliance with the law of the place where the transaction took place should be sufficient.

Once the kind of evidence admissible in a case is determined with reference to the above rule, the local law of the forum reasserts itself, for it is well recognized that the "administration" of parol proof is controlled by the local law of the forum as a part of its procedure. Thus, if a contract is made in England, the English law will determine whether it can be proved by parol in France. If the English law allows it to be so proved, the proof is admitted by the French courts in the manner that is customary in France.

As regards the statute of limitations, it became early established in Anglo-American law that it was a matter of procedure to be governed by the local law of the forum. In France the authorities are about equally divided. Some hold that the law of the forum controls.¹⁰⁹ Others say that the statute of limita-

¹⁰⁷ *Benton v. Horeau*, Cass. (civ.), Aug. 24, 1880, 7 *Clunet*, 480; D. 1880, 1, 447; see Lorenzen, *The Statute of Frauds and the Conflict of Laws* (1923) 32 *YALE LAW JOURNAL*, 311, 320 and note.

¹⁰⁸ *Princess Roukia v. Kramer*, Cass. (civ.), May 23, 1892, 19 *Clunet*, 1176; S. 1892, 1, 521; *Abdy v. Abdy*, Cass. (civ.), Feb. 6, 1905, 33 *Clunet*, 412.

¹⁰⁹ *Albrecht v. Schaeffer*, Cass. (civ.), Jan. 13, 1869, D. 1869, 1, 135; *Wehrle v. Letwinoff*, Trib. civ. Seine, Nov. 28, 1891, 19 *Clunet*, 712; *Holbron v. Duval*, Oct. 27, 1911, 39 *Clunet*, 1195; *Fritze & Co. v. Wilson Sons & Co.*, *supra* note 77; *Taillepieu de Bondy v. Lemarquis*, App. Paris,

tions is governed by the law of the defendant's domicile, but in these cases the *lex domicilii* of the defendant and the *lex fori* coincided.¹¹⁰ Other courts have applied the law of the place where the contract was made¹¹¹ or to be performed.¹¹² It has been held also that the law of the place of contracting governs if it is of shorter duration than that of the forum, but that effect will not be given to it, on grounds of public policy, if it is of longer duration.¹¹³ According to this view the statute of limitations is regarded as affecting the substantive rights of the parties, but to involve also a matter of policy, in the face of which a foreign statute of a longer period will not be enforced.

If the law of the forum regards a matter as relating to procedure and the foreign law regards it as a matter of substance, the "qualification" of the law of the forum controls¹¹⁴ in accordance with the general principles mentioned above.¹¹⁵

FOREIGN JUDGMENTS AND ARBITRAL AWARDS

The legislative provisions on this subject are contained in articles 546 of the Code of Civil Procedure and article 2123 of the Civil Code. The former provides that foreign judgments shall be subject to execution only in the manner provided in article 2123 of the Civil Code. The latter provision is to the effect that foreign judgments shall be a lien upon property in France only after being declared executory by a French tribunal, excepting treaty provisions to the contrary.

Contrary to Anglo-American law, foreign judgments are enforceable as such in France, but before execution will issue an *exequatur* must have been obtained from a court of first in-

Nov. 20, 1906, 34 *Clunet*, 417; *Rochaid Dahdah v. Elias Mussali*, *App. Alger*, Jan. 17, 1889, 16 *Clunet*, 659.

¹¹⁰ *Albrecht v. Schaeffer*, *supra* note 109; *Noto v. Pacini*, *Trib. civ. Seine*, Dec. 11, 1893, 21 *Clunet*, 145; *Taillepiéd de Bondy v. Lemarquis*, *supra* note 109.

¹¹¹ *Lemoine v. Lapenne*, *App. Chambéry*, Feb. 12, 1869, S. 1870, 2, 9; D. 1871, 2, 118; *Bourcier & Co. v. Boyer*, *Trib. com. Marseille*, Oct. 25, 1880, 8 *Clunet*, 258; *Simon v. Briet*, *App. Bordeaux*, Mar. 1, 1889, D. 1890, 2, 89; *Cauhapérou v. Comp. des chemins de fer*, *Trib. com. Bordeaux*, Apr. 27, 1891, 19 *Clunet*, 1004; *Lupi v. Le Prince de Bourbon*, *Trib. civ. Seine*, Nov. 14, 1890, 19 *Clunet*, 987; *Attal & Khayat v. Burgel & Nataf*, *Trib. civ. Tunis*, June 15, 1891, 18 *Clunet*, 1238; *Degiorgio & Muscat v. Saverio Zahra*, *Trib. civ. Tunis*, Dec. 26, 1889, 25 *Clunet*, 557; *Guidel v. Forcella*, *Trib. civ. Marseille*, Oct. 31, 1906, 34 *Clunet*, 416.

¹¹² *Aubrey v. Debaise*, *App. Paris*, Mar. 29, 1836, S. 1836, 2, 457; *Bajon de Pino v. Denis*, *App. Bordeaux*, Dec. 26, 1876, S. 1877, 2, 108; *Gillet v. Dumas*, *Trib. civ. Seine*, Feb. 19, 1889, 16 *Clunet*, 621.

¹¹³ *Widerkehr v. Oppenheimer*, *App. Colmar*, Mar. 11, 1925, 21 *REV. DE DR. INT. PR.* 112; see also *COMMENTS* (1919) 28 *YALE LAW JOURNAL*, 492.

¹¹⁴ *PILLET & NIBOYET*, *op. cit. supra* note 6, at 503.

¹¹⁵ *Supra* page 735.

stance.¹¹⁶ Such exequatur will be granted only if the foreign judgment satisfies the following requirements:

1. *The judgment must be valid and enforceable in the state where rendered.* If the judgment is subject to execution in the foreign country it may be declared executory in France notwithstanding the fact that it may be subject to an appeal or to other recourse.¹¹⁷ The judgment will not be enforced if it has been discharged under the law of the foreign state,¹¹⁸ or if its execution is barred in such state by the statute of limitations.¹¹⁹

2. *The judgment must have been rendered by a court which had jurisdiction.* According to the decisions of the French courts the judgment must have been rendered by a foreign court having jurisdiction from the standpoint of the French law. If, in the eyes of the French law, the French courts had jurisdiction in the matter, the foreign judgment will not be enforced. The rule is of particular importance in view of article 15 of the Civil Code, according to which suits against French citizens belong to the jurisdiction of the French courts unless they have waived their right to such jurisdiction.¹²⁰ The rule applies also to the other situations in which the French courts claim jurisdiction, for example, where the promise was made or the goods were to be delivered in France, or the place of payment was in France (article 420, Code of Civil Procedure) or where the succession opened in France (article 59, Code of Civil Procedure).

If, according to the general rules governing jurisdiction in France, the French courts are without jurisdiction in the matter, is the jurisdiction of the foreign court to be determined with reference to its own rules or with reference to the French rules? The French courts apply here their own rules governing jurisdiction as set forth above.¹²¹ Articles 14 and 15 of the French Civil Code are not deemed applicable, however, by way of anal-

¹¹⁶ Baum v. Colin, App. Nancy, Feb. 2, 1889, 16 Clunet, 463.

¹¹⁷ Depretis v. Lowengard, App. Lyon, Jan. 21, 1897, 24 Clunet, 797; Smith & Anderson v. Assureurs, App. Rouen, Apr. 20, 1880, 8 Clunet, 59; Sir Fitz-Gerald v. Sir Henry Evans, Cass. (Req.), June 5, 1872, 1 Clunet, 121; George Smith & Sons v. P'Atlantique, Cass. (Req.), June 28, 1881, D. 1881, 1, 337.

¹¹⁸ Scaramanga v. Bénard, Cass. (civ.), Dec. 9, 1903, 31 Clunet, 391; Save v. Passama, App. Toulouse, Feb. 4, 1886, 13 Clunet, 332.

¹¹⁹ Lemoine v. Lapenne, *supra* note 111.

¹²⁰ Bozzono & Co. v. Comte, App. Lyon, June 18, 1907, 35 Clunet, 158; Bertoncini v. Guimet, App. Grenoble, July 7, 1894, 22 Clunet, 1047; Baggetti & Co. v. Crepini, App. Aix, July 22, 1901, S. 1903, 2, 305 and note by Audinet; Guiral-Harmignies v. Cahen, App. Rouen, May 4, 1898, 26 Clunet, 836. *Contra*: Mario Olivari & Co. v. Rochette Bros., App. Chambéry, Aug. 13, 1900, S. 1903, 2, 305; Ferralasco Bros. & Russmann, App. Paris, Aug. 12, 1902, 30 Clunet, 169.

¹²¹ *Supra* page 747.

ogy to suits arising in foreign countries.¹²² A curious exception appears to exist in France with respect to the recognition of foreign divorces between persons of Jewish faith, pronounced by a rabbi in a country of which the particular parties are not subjects. These divorces have been recognized in France, though the foreign jurisdiction cannot be justified by the French principles governing jurisdiction.¹²³

If the courts of the foreign country where the judgment was rendered were competent in accordance with the rules governing jurisdiction adopted by the French courts, it is of no consequence that the judgment was not rendered by the proper local court. This is a matter of local law and will not be inquired into when the judgment is called into question in France.¹²⁴

Assuming that the foreign court had jurisdiction within the meaning of the French law, it is not necessary that process should have been served personally upon the defendant or that he should have appeared in the action.¹²⁵ The mode of citing the defendant into court, as has been shown above, is not a matter of jurisdiction, but of procedure, and it is sufficient if such citation satisfies the law of the state where the judgment was rendered.¹²⁶

3. *The judgment must have been rendered on the merits and deemed to be well rendered in the eyes of the French law.* Under the Ordinance of 1629 the French courts enforced foreign judgments obtained by Frenchmen without a review of the merits, but no effect was given to judgments against Frenchmen. A plaintiff having a foreign judgment against a Frenchman would have to sue, therefore, again in France on the original cause of action. Under the Code Napoléon, according to the statements made in some cases, a distinction is made between foreign judgments against foreigners, which are conclusive, and foreign judgments against Frenchmen, which will not be rendered executory in France without a re-examination of the merits.¹²⁷ More commonly, however, no distinction is made as regards the

¹²² PILLET & NIBOYET, *op. cit. supra* note 6, at 689.

¹²³ Cyon v. Antoine, App. Paris, Dec. 12, 1919, 47 Clunet, 629; Zenker v. Falkinflick, Trib. civ. Seine, Aug. 10, 1905, 2 REV. DE DR. INT. PR. 181.

¹²⁴ Mario Olivari & Co. v. Rochette Bros., *supra* note 120.

¹²⁵ *Supra* page 747.

¹²⁶ Depretis v. Lowengard, *supra* note 117; Hutchinson v. Minet, App. Paris, Mar. 19, 1902, 30 Clunet, 634.

¹²⁷ In the following cases it was held that a foreign judgment against a French citizen would be re-examined: Hess & Co. v. Lafon, Jan. 14, 1901, 28 Clunet, 149; Halphen v. Lowell & Jurgens, Cass. (civ.), Feb. 9, 1892, 20 Clunet, 541, S. 1892, 1, 201.

In the following cases it was held that a judgment between foreigners would not be re-examined as to its merits: Lazare Bloch v. Burghard, Trib. civ. Seine, Feb. 21, 1896, 23 Clunet, 621; Chemin de fer central Argentin v. Stanley, App. Paris, Aug. 8, 1866, S. 1867, 2, 101.

conclusiveness of foreign judgments by reason of the nationality of the defendant.¹²⁸ Some decisions regard all foreign judgments satisfying the general requirements laid down by the French courts for the enforcement of foreign judgments as conclusive;¹²⁹ but this doctrine is rejected in France by an overwhelming weight of authority which, in the absence of treaty provisions, allows a re-examination of the merits in all cases.¹³⁰ The courts favoring this view are divided with reference to the extent to which the revision of the foreign judgment may be carried. Some allow new issues to be raised, new proofs to be introduced, and a new judgment to be rendered (system of integral revision).¹³¹ Others limit the court to an examination of whether the foreign judgment was well rendered on the issues presented (system of limited revision).¹³² The courts adopting the system of limited revision have held that the amount of the foreign judgment cannot be increased.¹³³ Execution has been granted, however, for a part only of the foreign judgment,¹³⁴ and a set-off has been allowed to defeat the exequatur, although it arose subsequent to the time of the rendition of the foreign judgment.¹³⁵

Enforcement will be denied whenever the French court concludes that the foreign judgment was not well rendered, for example, where in the opinion of the French court the plaintiff had

¹²⁸ See note to *Halphen v. Lowell & Jurgens*, *supra* note 127, S. 1892, 1, at 203.

¹²⁹ *Harrison v. Hart, Bridges & Sons*, App. Douai, Mar. 17, 1900, 28 *Clunet*, 785; *Bary Cohn v. Furn* Trib. civ. Boulogne, Nov. 10, 1905, and Apr. 27, 1906, 3 *REV. DE DR. INT. PR.* 751.

¹³⁰ *Halphen v. Lowell & Jurgens*, *supra* note 127; *Hess & Co. v. Lafon*, *supra* note 127; *Scaramanga v. Bénard*, *supra* note 118; *Kallmes v. Antony*, App. Toulouse, Feb. 12, 1912, 39 *Clunet*, 1175.

¹³¹ *Werner v. Gordon & Betzold*, Cass. (Req.), Aug. 21, 1882, 10 *Clunet*, 289; *Meridew v. Luddy*, App. Douai, Dec. 22, 1863, S. 1865, 2, 60; *Rajecki v. Hartmann & Mallet*, App. Paris, Apr. 22, 1864, S. 1865, 2, 60; *Harding v. The Darlington Wagon Co.*, App. Caen, Mar. 21, 1892, 19 *Clunet*, 977.

¹³² *Mathieu v. Didion*, App. Nancy, July 6, 1877, D. 1878, 2, 220; *Compagnie Int. d'Electricité v. Soc. Jounod*, Trib. civ. Seine, Oct. 31, 1911, 39 *Clunet*, 533.

¹³³ *Chemin de fer Argentin v. Stanley*, *supra* note 127; *Evans v. Fitzgerald*, App. Angers, Apr. 23, 1869, D. 1869, 2, 218; *Sarazin v. Sotta*, App. Bordeaux, June 29, 1893, 21 *Clunet*, 323; *Lehmann v. Boissière*, Trib. civ. Nantes, Nov. 25, 1895, 23 *Clunet*, 625; *Wattermann v. Filleul Brohy*, App. Paris, Apr. 1, 1898, 26 *Clunet*, 562.

¹³⁴ *Sautter v. Perret*, App. Paris, Jan. 27, 1837, S. 1837, 2, 174; *Sarazin v. Sotta*, *supra* note 133; *Lehmann v. Boissière*, *supra* note 133; *Damenez v. Foreau*, App. Paris, Jan. 19, 1905, 32 *Clunet*, 362, where the damages were reduced to one-half.

¹³⁵ *Synd. Richer & Co. v. Détouche*, Cass. (civ.), June 26, 1905, S. 1905, 1, 433; *Baum v. Collin*, Trib. civ. Nancy, Mar. 25, 1890, 18 *Clunet*, 923.

not proved his claim,¹³⁶ or the foreign judge did not sufficiently appreciate the defense interposed by the defendant.¹³⁷

Certain decisions lend support to the view that if the foreign judgment sanctions principles of the Conflict of Laws not recognized by the French courts the exequatur will be refused, a view which is approved by writers of the greatest authority.¹³⁸

4. *The judgment will not be enforced in France if such enforcement would violate the French public policy.* On this ground an exequatur has been denied to a foreign judgment where it appeared that the defendant had not been regularly cited and had no chance to defend,¹³⁹ where the contract for the breach of which the judgment was rendered was to the detriment of French consumers,¹⁴⁰ or where the foreign judgment was in conflict with a prior French decision on the same cause of action.¹⁴¹ The French Court of Cassation has gone so far as to hold that the foreign judgment should not be enforced on grounds of policy where suit on the same cause of action was still pending in France.¹⁴²

Judgments by default may be declared executory in France on the same conditions as judgments in contested cases.¹⁴³

The exequatur gives to the foreign judgment the same effect as it would have in the foreign country, subject to the French rules of public order.¹⁴⁴

¹³⁶ Dupont v. Crépin, App. Douai, Jan. 3, 1845, S. 1845, 2, 513.

¹³⁷ Rajewski v. Hartmann & Mallet, *supra* note 131.

¹³⁸ PILLET & NIBOYET, *op. cit. supra* note 6, at 691; 12 AUBRY & RAU, DROIT CIVIL FRANÇAIS (5th ed. 1922) 497 n. and cases there cited.

¹³⁹ Le Goaster v. Diringer, Cass. (Req.), Nov. 11, 1908, 5 REV. DE DR. INT. PR. 227.

¹⁴⁰ Comp. Tharsis Sulphur & Copper, Ltd. v. Liquidateur de la Soc. des Métaux, Trib. civ. Seine, May 25, 1892, 19 Clunet, 970.

The Tribunal of the Seine held that a judgment by a German court granting a divorce to a German husband against a wife who was French by birth, basing its decision on the ground that she entertained anti-German sentiments, and making ironical and defamatory statements concerning French women, would not be enforced in France because contrary to French public policy. Cahn v. Dennery, Trib. civ. Seine, Nov. 23, 1922, 50 Clunet, 295.

¹⁴¹ Pavoncelli & Albertini v. Mallet Bros., Cass. (civ.), Nov. 18, 1891, 9 Clunet, 667; Huaux v. Huaux, App. Paris, Nov. 28, 1912, 9 REV. DE DR. INT. PR. 849; Franzl v. La Mutuelle de France, App. Lyon, Oct. 15, 1920, 17 REV. DE DR. INT. PR. 522.

An exequatur was granted during the pendency of an appeal from a court of first instance involving the same cause of action. Lévy v. Kuntz, App. Paris, June 24, 1909, 37 Clunet, 162.

¹⁴² Negrotto v. Herzog, Cass. (civ.), Mar. 10, 1914, 10 REV. DE DR. INT. PR. 449.

¹⁴³ Hutchinson v. Minet, *supra* note 126; Bapst v. The Crown Exploration Co., Ltd., App. Paris, Apr. 20, 1905, REV. DE DR. INT. PR. 344; Ward Oliver v. Blanc & Dambmann, App. Paris, Apr. 19, 1905, 1 REV. DE DR. INT. PR. 340.

¹⁴⁴ If the judgment is against several defendants who are jointly and

The effect of foreign judgments in the absence of an exequatur. The statement is frequently made that foreign judgments relating to status and capacity are entitled to recognition in France without the need of a preliminary exequatur,¹⁴⁵ it being assumed (1) that the judgment was rendered by a court that has jurisdiction in the eyes of the French law; (2) that the proper law was applied; and (3) that the French public policy was not violated. But those supporting this view admit that an exequatur is required if acts of execution against property or coercive measures against the person are involved. The better view would seem to be that no distinction can properly be made between foreign judgments relating to status or capacity and other judgments.¹⁴⁶

It does not follow that a foreign judgment in the absence of an exequatur is without effect. According to Pillet and Niboyet¹⁴⁷ the more recent cases hold in effect that no exequatur is necessary if the recognition or enforcement of the foreign judgment is not opposed. Foreign guardians for infants or lunatics¹⁴⁸ and foreign administrators¹⁴⁹ have been recognized in the absence of exequatur proceedings. A foreign guardian authorized by an order of the court appointing him to sell property belonging to his ward has been held to have the same power with respect to property in France, although no exequatur has been granted.¹⁵⁰ Again, a person who has been regularly divorced abroad¹⁵¹ or whose marriage has been annulled abroad¹⁵² may be married by a French officer of the civil status without the need of a preliminary exequatur. There is, however, much confusion in the cases and no definite deductions can be drawn therefrom.

Foreign Arbitral Awards. Foreign compulsory arbitral awards are subject to the ordinary rules relating to the enforce-

severally liable according to the law of the country where the judgment was rendered the same effect will be granted to the judgment in France after an exequatur has been granted. *Abrahams v. Halphen*, Cass. (civ.), Feb. 9, 1892, S. 1892, 1, 201.

¹⁴⁵ Notes: (1909) 5 REV. DE DR. INT. PR. 231; S. 1906, 2, 256.

¹⁴⁶ PILLET & NIBOYET, *op. cit. supra* note 6, at 707 *et seq.*

¹⁴⁷ *Ibid.* 709.

¹⁴⁸ *Vacy v. Héritiers Lomde*, App. Orléans, Feb. 9, 1900, 27 Clunet, 592.

¹⁴⁹ *Marquis de Pidal v. Le Prince de Czartoryski*, Trib. civ. Seine, May 12, 1891, 19 Clunet, 487; *Marchois v. Vannier*, Trib. civ. Seine, Apr. 29, 1892, 19 Clunet, 684.

¹⁵⁰ *In re Retortillo*, App. Paris, July 9, 1907, 4 REV. DE DR. INT. PR. 954.

¹⁵¹ *Bulkley v. Le Maire du 10e Arrond. de Paris*, Cass. (civ.), Feb. 28, 1860, S. 1860, 1, 210.

¹⁵² *Prince de Wrède v. Maldaner*, Cass. (civ.), May 9, 1900, S. 1901, 1, 185.

ment of foreign judgments.¹⁵³ According to some decisions¹⁵⁴ this is true of all foreign arbitral awards, valid and enforceable where entered into. Most courts put voluntary arbitral awards upon the same footing as French awards,¹⁵⁵ which, according to article 102 of the Code of Civil Procedure, require for their enforcement an order of the President of the Civil Tribunal. In many instances the Civil Court as such has granted an exequatur to foreign arbitral awards.¹⁵⁶ Whatever the method of procedure, it is established that the merits of the foreign award cannot be inquired into.¹⁵⁷

(To be continued)

¹⁵³ Dupré v. Durand, Cass. (Req.), June 16, 1840, S. 1840, 1, 583.

¹⁵⁴ Marquis de Santa-Cristina v. Prince del Drago, App. Paris, Dec. 10, 1901, 29 Clunet, 314; D. 1905, 2, 128.

¹⁵⁵ Desfossez & Dervaux v. John Burstall & Co., App. Douai, May 27, 1911, 8 REV. DE DR. INT. PR. 717, and note; Briens v. Zuckerhandelsunion Actiengesellschaft, App. Lyon, Nov. 25, 1913, 41 Clunet, 1230.

According to art. 1006 of the Code de Proc. Civ. an agreement to arbitrate must name the object of the litigation and the names of the arbitrators, in the absence of which the agreement is void. Agreements to refer future disputes to arbitration are, therefore, invalid under the local French law. Agreements for arbitration entered into in a foreign country and valid there will be enforced, however, by the French courts. Bernard & Lowagie v. The General Mercantile Co., Cass. (Req.), June 21, 1904, 31 Clunet, 888; Legembre v. Burke-Delacroix, App. Alger, Dec. 27, 1907, 37 Clunet, 538.

Such agreements have been upheld even when they were entered into in France, provided the contract was deemed governed by foreign law and such agreement was valid under such law. Ospina v. Ribon, App. Paris, Mar. 29, 1897, 24 Clunet, 784; Cass. (Req.), July 17, 1899, D. 1904, 1, 225, and note by Pic; Stein & Co. v. Landauer & Co., App. Besançon, Jan. 5, 1910, 37 Clunet, 867.

¹⁵⁶ Morell v. Christol, App. Montpellier, July 21, 1882, 11 Clunet, 70; Hale & Co. v. Salles, Trib. civ. Marseille, Oct. 31, 1912, 40 Clunet, 880. It has been held that this applies also to foreign compulsory awards. Campbell & Co. v. Bloch, Trib. civ. Seine, Nov. 16, 1922, 50 Clunet, 78.

¹⁵⁷ Salles v. Hale & Co., Cass. (req.), Dec. 8, 1914, 43 Clunet, 1218; Lieux v. Héritiers de Louis Barbe, App. Toulouse, May 22, 1901, 28 Clunet, 965; Desfossez & Dervaux v. John Burstall & Co., App. Douai, May 27, 1911, 8 REV. DE DR. INT. PR. 717; Hashimoto v. Gallusser & Co., Trib. Civ. Seine, Feb. 10, 1922, 49 Clunet, 150; Campbell & Co. v. Bloch, *supra* note 156.