Dispute Settlement: Commercial Arbitration

The Inter-American Convention on International Commercial Arbitration

Preamble

The Government of the Members States of the Organization of American States, desirous of concluding a convention on international commercial arbitration, have agreed as follows:

Article 1

An agreement in which the parties undertake to submit to arbitral decision any differences that may arise or have arisen between them with respect to a commercial transaction is valid. The agreement shall be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications.

Article 2

Arbitrators shall be appointed in the manner agreed upon by the parties. Their appointment may be delegated to a third party, whether a natural or juridical person.Arbitrators may be nationals or foreigners.

Article 3

In the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the Rules of Procedure of the Inter-American Commercial Arbitration Commission.

Article 4

An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provision of international treaties.

Article 5

1. The recognition and execution of the decision may be refused, at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested.

a. That the parties to the agreement were subject to some incapacity under the applicable law or that the agreement is not valid under the law to which the parties have submitted

it, or if such law is not specified, under the law of the State in which the decision was made; or

b. That the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or

c. That the decision concerns a dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated from those not submitted to arbitration, the former may be recognized and executed; or

d. That the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement, that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or

e. That the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made.

2. The recognition and execution of an arbitral decision may also be refused if the competent authority of the State in which the recognition and execution is requested finds:

a. That the subject of the dispute cannot be settled by arbitration under the law of that State; or

b. That the recognition or execution of the decision would be contrary to the public policy ("order public") of that State.

Article 6

If the competent authority mentioned in article 5.1.e has been requested to annul or suspend the arbitral decision, the authority before which such decision is invoked may, if it deems it appropriate, postpone a decision on the execution of the arbitral decision and, at the request of the party requesting execution, may also instruct the other party to provide appropriate guaranties.

Article 7

This Convention shall be open for signature by the Members States of the Organization of American States.

Article 8

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 9

The Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 10

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

Article 11

If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession declare that this Convention shall extend to all its territorial units or only to one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 12

This Convention shall remain in force indefinitely, but any of the States' Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States' Parties.

Article 13

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States. The Secretariat shall notify the Member States of the Organization of American States and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation as well as of reservations, if any. It shall also transmit the declarations referred to in Article 11 of this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT PANAMA CITY, Republic of Panama, this thirtieth day or January one thousand nine hundred and seventy five.

B-35: INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

ADOPTED AT: PANAMA, PANAMA

DATE: 01/30/75

CONF/ASSEM/MEETING: INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW

ENTRY INTO FORCE: 06/16/76 IN ACCORDANCE WITH ARTICLE 10 OF THE CONVENTION.

DEPOSITORY: GENERAL SECRETARIAT, OAS (ORIGINAL INSTRUMENT AND RATIFICATIONS).

TEXT: OAS, TREATY SERIES, NO. 42.

UN REGISTRATION: 03/20/89 No. 24384 Vol.

OBSERVATIONS: This Convention shall remain open for signature by the Member States of the OAS and for accession by any other State.

GENERAL INFORMATION OF THE TREATY: B-35

SIGNATORY COUNTRIES	SIGNATURE	REF	RA/AC/AD	REF	DEPOSIT	INST	INFORMA	REF
Argentina	03/15/91		11/03/94		01/05/95	RA	/ /	
Bolivia	08/02/83		10/08/98		04/29/99	RA	/ /	
Brazil	01/30/75		08/31/95		11/27/95	RA	/ /	
Chile	01/30/75		04/08/76		05/17/76	RA	/ /	
Colombia	01/30/75		11/18/86		12/29/86	RA	/ /	
Costa Rica	01/30/75		01/02/78		01/20/78	RA	/ /	
Dominican Republic	04/18/77		/ /		/ /		/ /	
Ecuador	01/30/75		08/06/91		10/23/91	RA	/ /	
El Salvador	01/30/75		06/27/80		08/11/80	RA	/ /	
Guatemala	01/30/75		07/07/86		08/20/86	RA	/ /	
Honduras	01/30/75		01/08/76		03/22/79	RA	/ /	
Mexico	10/27/77	1	02/15/78		03/27/78	RA	/ /	
Nicaragua	01/30/75		/ /		/ /		/ /	
Panama	01/30/75		11/11/75		12/17/75	RA	/ /	
Paraguay	08/26/75	1	12/02/76		12/15/76	RA	/ /	
Peru	04/21/88		05/02/89		05/22/89	RA	/ /	
United States	06/09/78		11/10/86	a	09/27/90	RA	/ /	
Uruguay	01/30/75		03/29/77		04/25/77	RA	/ /	

Venezuela	01/30/75		03/22/85		05/16/85	RA	/ /

REF = REFERENCE

D = DECLARATION
R = RESERVATION
INFORMA = INFORMATION REQUIRED BY THE TREATY

INST = TYPE OF INSTRUMENT

RA = RATIFICATION
AC = ACCEPTANCE
AD = ACCESSION

B-35. INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

1. Mexico, Paraguay:

Signed ad referendum.

a. United States:

(Reservations made at the time of ratification)

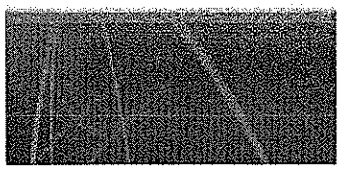
In accordance with Article 8 of the Convention, the instrument of ratification of the government of the United States of America was deposited with the Secretary General of the Organization of American States on September 27, 1990.

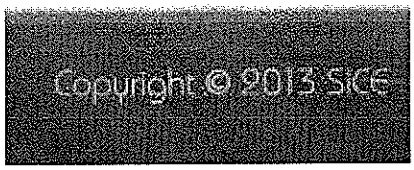
In ratifying the Convention, the government of the United States of America made the following reservations.

"1. Unless there is an express agreement among the parties to an arbitration agreement to the contrary, where the requirements for application of both the Inter-american Convention on International Commercial Arbitration and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards are met, if a majority of such parties are citizens of a state or states that have ratified or acceded to the Inter-american Convention and are member states of the Organization of American States, the Inter-american Convention shall apply. In all other cases, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall apply.

2. The United States of America will apply the rules of procedure of the Inter-American Commercial Arbitration Commission which are in effect on the date that the United States of America deposits its instrument of ratification, unless the United States of America makes a later official determination to adopt and apply subsequent amendments to such rules.

3. The United States of America will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of only those awards made in the territory of another Contracting State."

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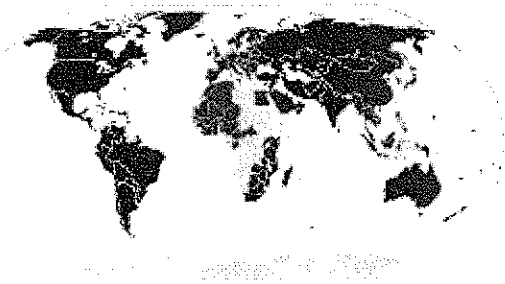
Convention on the Recognition and Enforcement of Foreign Arbitral Awards

From Wikipedia, the free encyclopedia

The **Convention on the Recognition and Enforcement of Foreign Arbitral Awards**, also known as the **New York Convention**, was adopted by a United Nations diplomatic conference on 10 June 1958 and entered into force on 7 June 1959. The Convention requires courts of contracting states to give effect to private agreements to arbitrate and to recognize and enforce arbitration awards made in other contracting states. Widely considered the foundational instrument for international arbitration, it applies to arbitrations which are not considered as domestic awards in the state where recognition and enforcement is sought. Though other international conventions apply to the cross-border enforcement of arbitration awards, the New York Convention is by far the most important.

New York Convention

Convention on the Recognition and Enforcement of Foreign Arbitral Awards



Parties to the convention

Signed	10 June 1958
Location	New York, US
Effective	7 June 1959
Condition	3 ratifications
Signatories	24
Parties	149
Depositaries	Secretary-General of the United Nations
Languages	Chinese, English, French, Russian and Spanish

Convention on the Recognition and Enforcement of Foreign Arbitral Awards at Wikisource

Contents

Background

In 1953, the International Chamber of Commerce (ICC) produced the first draft Convention on the Recognition and Enforcement of International Arbitral Awards to the United Nations Economic and Social Council. With slight modifications, the Council submitted the convention to the International Conference in the Spring of 1958. The Conference was chaired by Willem Schurmann, the Dutch Permanent Representative to the United Nations and Oscar Schachter, a leading figure in international law who later taught at Columbia Law School and the Columbia School of International and Public Affairs, and served as the President of the American Society of International Law.

International arbitration is an increasingly popular means of alternative dispute resolution for cross-border commercial transactions. The primary advantage of international arbitration over court litigation is enforceability: an international arbitration award is enforceable in most countries in the world. Other advantages of international arbitration include the ability to select a neutral forum to resolve disputes, that arbitration awards are final and not ordinarily subject to appeal, the ability to choose flexible procedures for the arbitration, and confidentiality.

Once a dispute between parties is settled, the winning party needs to collect the award or judgment. Unless the assets of the losing party are located in the country where the court judgment was rendered, the winning party needs to obtain a court judgment in the jurisdiction where the other party resides or where its assets are located. Unless there is a treaty on recognition of court judgments between the country where the judgment is rendered and the country where the winning party seeks to collect, the winning party will be unable to use the court judgment to collect.

Countries which have adopted the New York Convention have agreed to recognize and enforce international arbitration awards. As of 1 December 2012, there are 148 State parties which have adopted the New York Convention: 146 of the 193 United Nations Member States, the Cook Islands (a New Zealand dependent territory), and the Holy See have adopted the New York Convention.[1] 49 U.N. Member States have not yet adopted the New York Convention. A number of British dependent territories have not yet had the Convention extended to them by Order in Council.

Summary of provisions

Under the Convention, an arbitration award issued in any other state can generally be freely enforced in any other contracting state (save that some contracting states may elect to enforce only awards from other contracting states – the "reciprocity" reservation), only subject to certain, limited defenses. These defenses are:

1. a party to the arbitration agreement was, under the law applicable to him, under some incapacity;
2. the arbitration agreement was not valid under its governing law;
3. a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;
4. the award deals with an issue not contemplated by or not falling within the terms of the submission to arbitration, or contains matters beyond the scope of the arbitration (subject to the proviso that an award which contains decisions on such matters may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those matters not so submitted);
5. the composition of the arbitral tribunal was not in accordance with the agreement of the parties or, failing such agreement, with the law of the place where the hearing took place (the "lex loci arbitri");
6. the award has not yet become binding upon the parties, or has been set aside or suspended by a competent authority, either in the country where the arbitration took place, or pursuant to the law of the arbitration agreement;
7. the subject matter of the award was not capable of resolution by arbitration; or
8. enforcement would be contrary to "public policy".

Parties to the New York Convention

As of April 2013, 146 of the 193 United Nations Member States have adopted the New York Convention. Besides 144 Member states of the United Nations, the Convention has also been ratified by Holy See and the Cook Islands. About fifty of the U.N. Member States have not adopted the Convention. In addition, Taiwan has not adopted the Convention and a number of British Overseas Territories have not had the Convention extended to them by Order in Council. British Overseas Territories to which the New York Convention has not yet been extended by Order in Council are: Anguilla, British Virgin Islands, Falkland Islands, Turks and Caicos Islands, Montserrat, Saint Helena (including Ascension and Tristan da Cunha). The British Virgin Islands have implemented the New York Convention into domestic law (Arbitration Ordinance 1976), although Britain has never issued an Order in Council legally extending the New York Convention to the British Virgin Islands.

State	Date of Ratification	State	Date of Ratification
Afghanistan	30 November 2005	Albania	27 June 2001
Algeria	7 February 1989	Antigua and Barbuda	2 February 1989
Argentina	14 March 1989	Armenia	29 December 1997
Australia	26 March 1975	Austria	2 May 1961
Azerbaijan	29 February 2000	Bahamas	20 December 2006
Bahrain	6 April 1988	Bangladesh	6 May 1992
Barbados	16 March 1993	Belarus	15 November 1960
Belgium	18 August 1975	Belize	26 November 1980 (extension notice)
Benin	16 May 1974		
Bolivia	28 April 1995	Bosnia and Herzegovina	1 September 1993
Botswana	20 December 1971	Brazil	7 June 2002
Brunei Darussalam	25 July 1996	Bulgaria	10 October 1961
Burkina Faso	23 March 1987	Cambodia	5 January 1960
Cameroon	19 February 1988	Canada	12 May 1986
Central African Republic	15 October 1962	Chile	4 September 1975
China, People's Republic of	22 January 1987	Colombia	25 September 1979
Costa Rica	26 October 1987	Côte d'Ivoire	1 February 1991
Cook Islands	12 January 2009	Croatia	26 July 1993
Cuba	30 December 1974	Cyprus	29 December 1980
Czech Republic	30 September 1993	Denmark	22 December 1972
Djibouti	14 June 1983	Dominica	28 October 1988
Dominican Republic	11 April 2002	Ecuador	3 January 1962
Egypt	9 March 1959	El Salvador	26 February 1998
Estonia	30 August 1993	Fiji	26 December 2010

Finland	19 January 1962		
France	26 June 1959	Gabon	15 December 2006
Georgia	2 June 1994	Germany	30 June 1961
Ghana	9 April 1968	Greece	16 July 1962
Guatemala	21 March 1984	Guinea	23 January 1991
Haiti	5 December 1983	Holy See	14 May 1975
Honduras	3 October 2000	Hungary	5 March 1962
Iceland	24 January 2002	India	13 July 1960
Indonesia	7 October 1981	Iran, Islamic Republic of	15 October 2001
Ireland	12 May 1981	Israel	5 January 1959
Italy	31 January 1969	Jamaica	10 July 2002
Japan	20 June 1961	Jordan	15 November 1979
Kazakhstan	20 November 1995	Kenya	10 February 1989
Korea, Republic of	8 February 1973	Kuwait	28 April 1978
Kyrgyzstan	18 December 1996	Lao People's Democratic Republic	17 June 1998
Latvia	14 April 1992	Lebanon	11 August 1998
Lesotho	13 June 1989	Liberia	16 September 2005
Lithuania	14 March 1995	Liechtenstein	5 October 2011
Luxembourg	9 September 1983	Macedonia, The former Yugoslav Republic of	10 March 1994
Madagascar	16 July 1962	Malaysia	5 November 1985
Mali	8 September 1994	Malta	22 June 2000
Marshall Islands	21 December 2006	Mauritania	30 January 1997
Mauritius	19 June 1996	Mexico	14 April 1971
Moldova, Republic of	18 September 1998	Monaco	2 June 1982
Mongolia	24 October 1994	Montenegro	23 October 2006
Morocco	12 February 1959	Mozambique	11 June 1998

Myanmar	16 April 2013	Nepal	4 March 1998
Netherlands	24 April 1964	New Zealand	6 January 1983
Nicaragua	24 September 2003	Niger	14 October 1964
Nigeria	17 March 1970	Norway	14 March 1961
Oman	25 February 1999	Pakistan	14 July 2005
Panama	10 October 1984	Paraguay	8 October 1997
Peru	7 July 1988	Philippines	6 July 1967
Poland	3 October 1961	Portugal	18 October 1994
Qatar	30 December 2002	Romania	13 September 1961
Russian Federation	24 August 1960	Rwanda	31 October 2008
Saint Vincent and the Grenadines	12 September 2000	San Marino	17 May 1979
Sao Tome and Principe	20 November 2012		
Saudi Arabia	19 April 1994	Senegal	17 October 1994
Serbia	12 March 2001	Singapore	21 August 1986
Slovakia	28 May 1993	Slovenia	6 July 1992
South Africa	3 May 1976	Spain	12 May 1977
Sri Lanka	9 April 1962	Sweden	28 January 1972
Switzerland	1 June 1965	Syrian Arab Republic	9 March 1959
Tanzania, United Republic of	13 October 1964	Tajikistan	14 August 2012
Thailand	21 December 1959	Trinidad and Tobago	14 February 1966
Tunisia	17 July 1967	Turkey	2 July 1992
Uganda	12 February 1992	Ukraine	10 October 1960
United Arab Emirates	21 August 2006	United Kingdom of Great Britain and Northern Ireland	24 September 1975
United States of America	30 September 1970	Uruguay	30 March 1983
Uzbekistan	7 February 1996	Venezuela	8 February 1995
Viet Nam	12 September 1995	Zambia	14 March 2002

Zimbabwe	26 September 1994

States which are Not Party to the New York Convention

Andorra	Angola	Bhutan		
Burundi	Cape Verde	Chad	Comoros	
Congo, Republic of the	Democratic Republic of the Congo	Equatorial Guinea	Eritrea	
Ethiopia	Gambia	Grenada		
Guinea-Bissau	Guyana	Iraq	Kiribati	
North Korea	Libya	Malawi		
Maldives	Federated States of Micronesia	Myanmar	Namibia	Nauru
Niue	Palau	Papua New Guinea	Saint Kitts and Nevis	
Saint Lucia	Samoa	Seychelles		
Sierra Leone	Solomon Islands	Somalia	South Sudan	
Sudan	Suriname	Swaziland	Taiwan	
	Timor-Leste	Togo	Tonga	
Turkmenistan	Tuvalu	Vanuatu	Yemen	

United States Issues

Under American law, the recognition of foreign arbitral awards is governed by chapter 2 of the Federal Arbitration Act, which incorporates the New York Convention.[2]

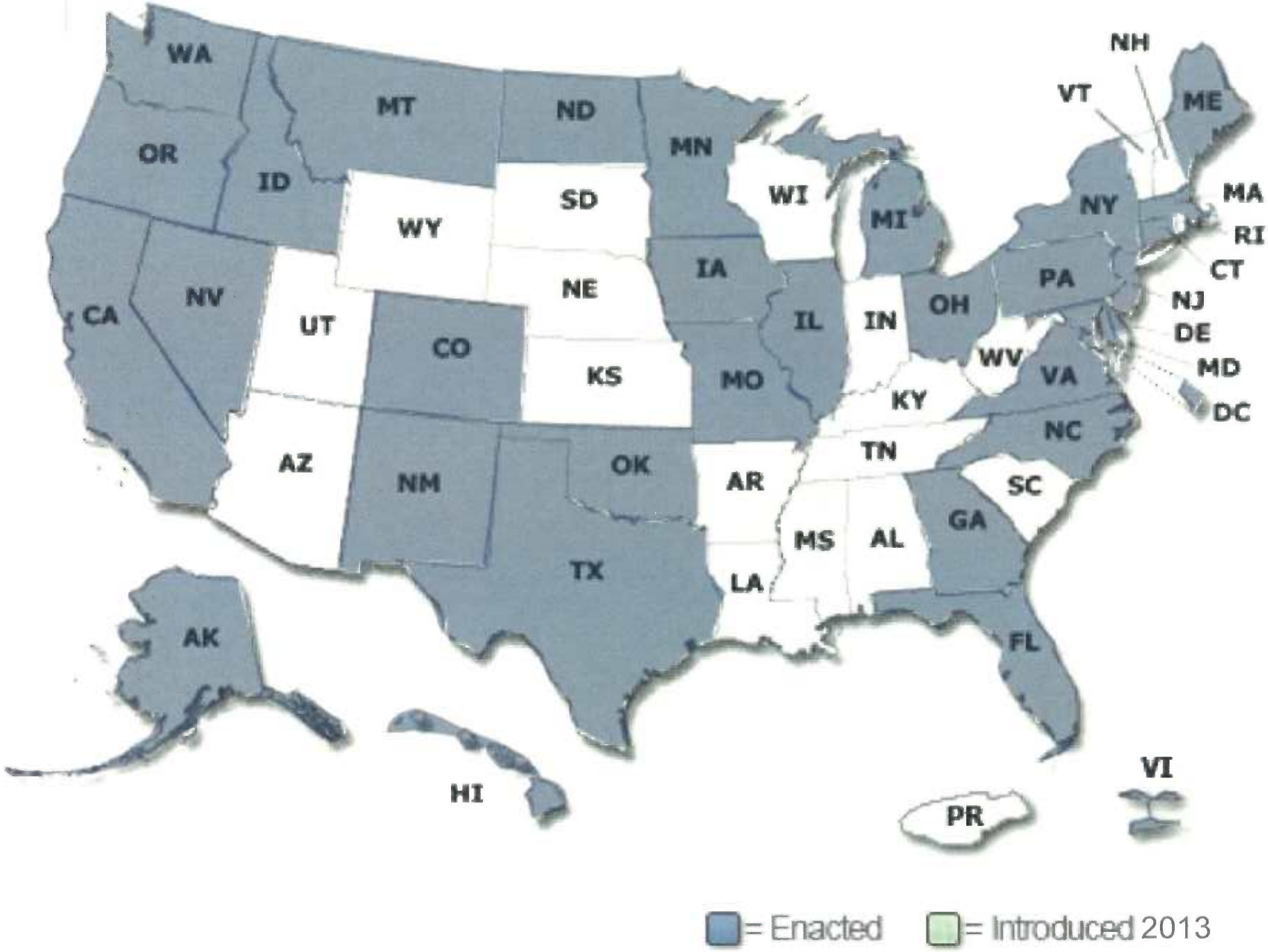
However, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention") does not preempt state law. In Foster v. Neilson, the Supreme Court held "Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the Legislature, whenever it operates of itself without the aid of any legislative provision." Foster v. Neilson, 27 U.S. 253, 314 (1829). See also Valentine v. U.S. ex rel. Neidecker, 57 S.Ct. 100, 103 (1936); Medellin v. Dretke, 125 S.Ct. 2088, 2103 (2005); Sanchez-Llamas v. Oregon, 126 S.Ct. 2669, 2695 (2006). Thus, over a course of 181 years, the United States Supreme Court has repeatedly held that a self-executing treaty is an act of the Legislature (i.e., act of Congress).

External links

- Uncitral (http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html/)

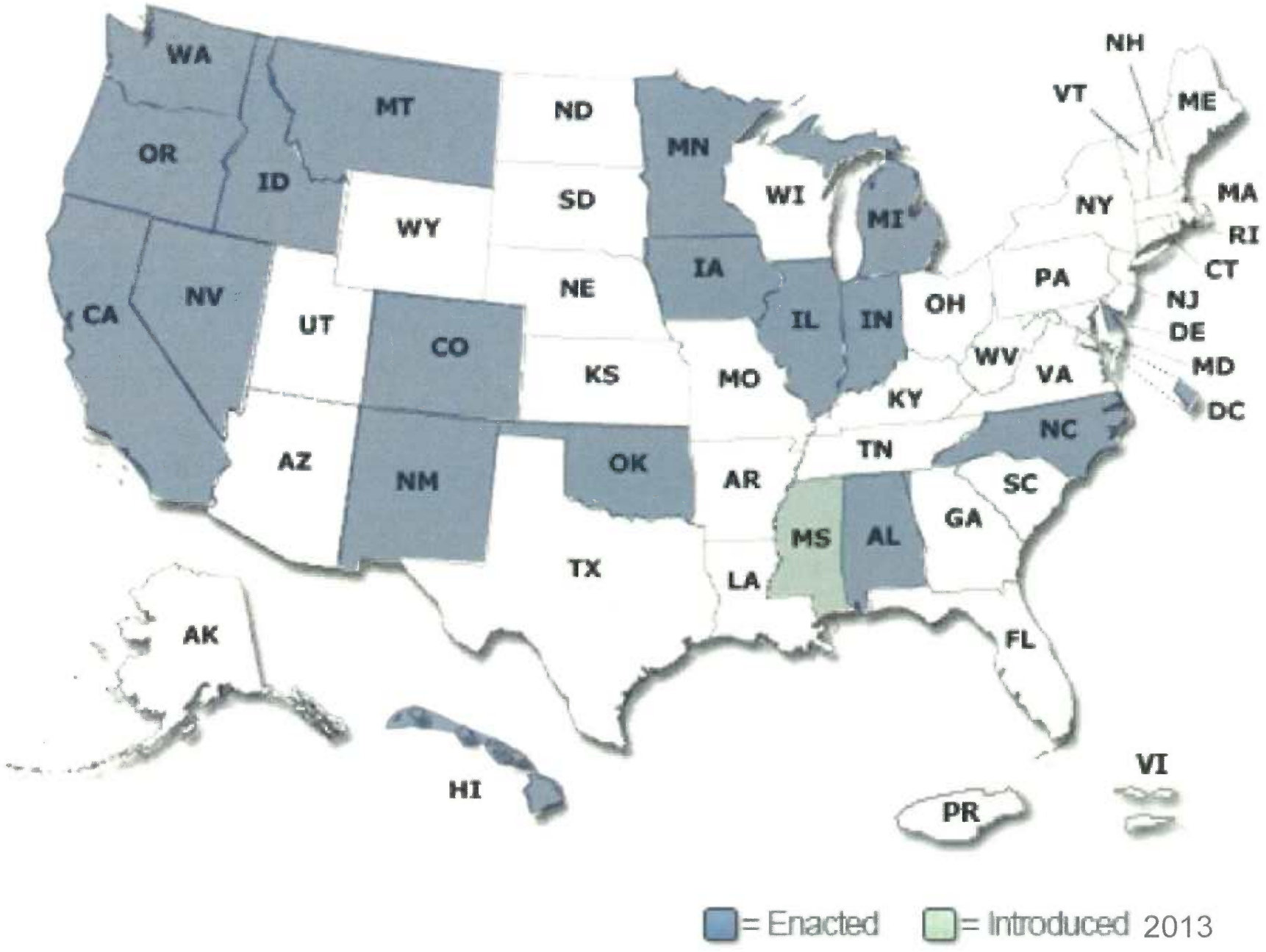
Legislative Enactment Status

Foreign Money Judgments Recognition Act (1962)



Legislative Enactment Status

Foreign-Country Money Judgments Recognition Act (2005)



usually mailed, entered the back room of the office, where letters were sorted, and put this letter into Goode's box. This was clearly sufficient to charge Goode with the duty of delivering, or attempting to deliver, the letter; and it makes no difference that, before it was put into this box, it did not go through the usual channel or reach it in the ordinary way. The term "branch post office," within the meaning of the act, includes every place within such office where letters are kept in the regular course of business, for reception, stamping, assorting, or delivery. Of course, a letter thrown upon the floor, or laid upon a desk appropriated to other and different purposes, could not be said to have been deposited in the post office; but, if it be put in any place where letters are usually kept or deposited for any purpose, we think it is within the act.

4. While there was no direct evidence that this branch post office was established by authority of the postmaster general, there was evidence that it was known as the "Roxbury Station" of the Boston post office, had been used as such for years, and that it was a post office de facto. For the purposes of this case, it was quite unnecessary to show that it had been *regularly established as such by law. Ingraham v. U. S., 155 U. S. 434, 15 Sup. Ct. 148; Wright v. U. S., 158 U. S. 232, 15 Sup. Ct. 819.

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The judgment of the court below is therefore affirmed.

(159 U. S. 113)

HILTON et al. v. GUYOT et al. (two cases).

(June 3, 1895.)

Nos. 130 and 34.

FOREIGN JUDGMENT—CONCLUSIVENESS.

1. Where there has been opportunity for a full and fair trial before a foreign court of competent jurisdiction, conducting the trial on regular proceedings, after due citation of voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of that country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of the United States should not allow it full effect, the merits of the case should not, in an action brought in this country on the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of a party that the judgment was erroneous in law or in fact.

2. Where the defendants in a judgment recovered in France, though citizens and residents of New York state, and having their principal place of business in the city of New York, had a storehouse and an agent in Paris, and were accustomed to purchase large quantities of goods there, evidence that their sole object in appearing and carrying on the litigation in the French court was to prevent property in their storehouse at Paris, belonging to them, and within the jurisdiction, but not in the custody, of the French court, from being taken in satisfaction of any judgment recovered against them, does not show that such court did not acquire jurisdiction of their persons.

3. A foreign judgment cannot be impeached because one of the plaintiffs was permitted to testify without being put under oath, and was not subjected to cross-examination, or because documents were admitted with which defendants had no connection, and which would not be admissible in the United States, if the practice followed and the method of examining witnesses were according to the law of the foreign country.

4. In an action on a foreign judgment rendered for the price of goods sold, a contention that part of the plaintiffs' claim is affected by one of the contracts between the parties having been made in violation of the United States revenue law, requiring goods to be invoiced at their actual value, cannot be sustained, in the absence of any distinct offer to prove that the invoice value of any of the goods sold by the plaintiffs to the defendants was agreed between them to be, or was in fact, lower than the actual market value of the goods.

5. When an action is brought in a court of this country by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that, by the principles of international law, and by the comity of our own country, it should not be given full credit and effect.

6. Judgments rendered in France, or in any other foreign country, by the laws of which judgments rendered in the United States are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in the United States, but are prima facie evidence only of the justice of the plaintiff's claim. Mr. Chief Justice Fuller, Mr. Justice Harlan, Mr. Justice Brewer, and Mr. Justice Jackson dissenting.

In Error to and Appeal from the Circuit Court of the United States for the Southern District of New York.

The first of these two cases was an action at law, brought December 18, 1885, in the circuit court of the United States for the Southern district of New York, by Gustave Bertin Guyot, as official liquidator of the firm of Charles Fortin & Co., and by the surviving members of that firm, all aliens and citizens of the republic of France, against Henry Hilton and William Libbey, citizens of the United States and of the state of New York, and trading as copartners, in the cities of New York and Paris, and elsewhere, under the firm name of A. T. Stewart & Co. The action was upon a judgment recovered in a French court at Paris, in the republic of France, by the firm of Charles Fortin & Co., all of whose members were French citizens, against Hilton & Libbey, trading as copartners, as aforesaid, and citizens of the United States and of the state of New York.

*114

The complaint alleged that in 1886, and since, during the time of all the transactions included in the judgment sued on, Hilton and Libbey,

as successors to Alexander T. Stewart and Libbey, under the firm name of A. T. Stewart & Co., carried on a general business as merchants in the cities of New York and Paris, and elsewhere, and maintained a regular store and place of business at Paris; that during the same time Charles Fortin & Co. carried on the manufacture and sale of gloves at Paris, and the two firms had there large dealings in that business, and controversies arose in the adjustment of accounts between them.

The complaint further alleged that between March 1, 1879, and December 1, 1882, five suits were brought by Fortin & Co. against Stewart & Co. for sums alleged to be due, and three suits by Stewart & Co. against Fortin & Co., in the tribunal of commerce of the department of the Seine, a judicial tribunal or court, organized and existing under the laws of France, sitting at Paris, and having jurisdiction of suits and controversies between merchants or traders growing out of commercial dealings between them; that Stewart & Co. appeared by their authorized attorneys in all those suits; and that, after full hearing before an arbitrator appointed by that court, and before the court itself, and after all the suits had been consolidated by the court, final judgment was rendered on January 20, 1883, that Fortin & Co. recover of Stewart & Co. various sums, arising out of the dealings between them, amounting to 660,847 francs, with interest, and dismissed part of Fortin & Co.'s claim.

The complaint further alleged that appeals were taken by both parties from that judgment to the court of appeals of Paris, Third section, an appellate court of record, organized and existing under the laws of the republic of France, and having jurisdiction of appeals from the final judgments of the tribunal of commerce of the department of the Seine, where the amount in dispute exceeded the sum of 1,500 francs; and that the said court of appeal, by a final judgment, rendered March 19, 1884, and remaining of record in the office of its clerk at Paris, after hearing the several parties by their counsel, and upon full consideration of the merits, dismissed the appeal of the defendants, confirmed the judgment of the lower court in favor of the plaintiffs, and ordered, upon the plaintiffs' appeal, that they recover the additional sum of 152,528 francs, with 182,849 francs for interest on all the claims allowed, and 12,559 francs for costs and expenses.

The complaint further alleged that Guyot had been duly appointed by the tribunal of commerce of the department of the Seine official liquidator of the firm of Fortin & Co., with full powers, according to law and commercial usage, for the verification and realization of its property, both real and personal, and to collect and cause to be executed the judgments aforesaid.

The complaint further alleged that the judgment of the court of appeals of Paris, and the judgment of the tribunal of commerce, as modified by the judgment of the appellate court, still remain in full force and effect; "that the said courts respectively had jurisdiction of the subject-matter of the controversies so submitted to them, and of the parties, the said defendants having intervened, by their attorneys and counsel, and applied for affirmative relief in both courts; that the plaintiffs have hitherto been unable to collect the said judgments or any part thereof, by reason of the absence of the said defendants, they having given up their business in Paris prior to the recovery of the said judgment on appeal, and having left no property within the jurisdiction of the republic of France out of which the said judgments might be made;" and that there are still justly due and owing from the defendants to the plaintiffs upon those said judgments certain sums, specified in the complaint, and amounting in all to 1,008,783 francs in the currency of the republic of France, equivalent to $195,122.47.

The defendants, in their answer, set forth in detail the original contracts and transactions in France between the parties, and the subsequent dealings between them, modifying those contracts, and alleged that the plaintiffs had no just claim against the defendants, but that, on the contrary, the defendants, upon a just settlement of the accounts, were entitled to recover large sums from the plaintiffs.

The answer admitted the proceedings and judgments in the French courts, and that the defendants gave up their business in France before the judgment on appeal, and had no property within the jurisdiction of France out of which that judgment could be collected.

The answer further alleged that the tribunal of commerce of the department of the Seine was a tribunal whose judges were merchants, ship captains, stockbrokers, and persons engaged in commercial pursuits, and of which Charles Fortin had been a member until shortly before the commencement of the litigation.

The answer further alleged that, in the original suits brought against the defendants by Fortin & Co., the citations were left at their storehouse in Paris; that they were then residents and citizens of the state of New York, and neither of them at that time, or within four years before, had been within, or resident or domiciled within, the jurisdiction of that tribunal, or owed any allegiance to France; but that they were the owners of property situated in that country, which would by the law of France have been liable to seizure if they did not appear in that tribunal; and that they unwillingly, and solely for the purpose of protecting that property, authorized and caused an agent to appear for them in those proceedings; and that the suits brought by them against Fortin & Co. were brought for the same purpose, and in order to make a proper defense, and to establish counterclaims arising out of the transactions between the parties, and to compel the production and inspection of For-

tin & Co.'s books, and that they sought no other affirmative relief in that tribunal.

The answer further alleged that pending that litigation the defendants discovered gross frauds in the accounts of Fortin & Co., that the arbitrator and the tribunal declined to compel Fortin & Co. to produce their books and papers for inspection, and that, if they had been produced, the judgment would not have been obtained against the defendants.

The answer further alleged that, without any fault or negligence on the part of the defendants, there was not a full and fair trial of the controversies before the arbitrator, in that no witness was sworn or affirmed; in that Charles Fortin was permitted to make, and did make, statements not under oath, containing many falsehoods; in that the privilege of cross-examination of Fortin and other persons, who made statements before the arbitrator, was denied to the defendants; and in that extracts from printed newspapers, the knowledge of which was not brought home to the defendants, and letters and other communications in writing between Fortin & Co. and third persons, to which the defendants were neither privy nor party, were received by the arbitrator; that without such improper evidence the judgment would not have been obtained; and that the arbitrator was deceived and misled by the false and fraudulent accounts introduced by Fortin & Co., and by the hearsay testimony given, without the solemnity of an oath, and without cross-examination, and by the fraudulent suppression of the books and papers.

*118 The answer further alleged that Fortin & Co. made up their statements and accounts falsely and fraudulently, and with intent to deceive the defendants and the arbitrator and the said courts of France, and those courts were deceived and misled thereby; that, owing to the fraudulent suppression of the books and papers of Fortin & Co. upon the trial, and the false statements of Fortin regarding matters involved in the controversy, the arbitrator and the courts of France "were deceived and misled in regard to the merits of the controversies pending before them, and wrongfully decided against said Stewart & Co., as hereinbefore stated; that said judgment, hereinbefore mentioned, is fraudulent, and based upon false and fraudulent accounts and statements, and is erroneous in fact and in law, and is void; that the trial hereinbefore mentioned was not conducted according to the usages and practice of the common law, and the allegations and proofs given by said Fortin & Co., upon which said judgment is founded, would not be competent or admissible in any court or tribunal of the United States, in any suit between the same parties, involving the same subject-matter, and it is contrary to natural justice and public policy that the said judgment should be enforced against a citizen of the United States; and that, if there had been a full and fair trial upon the merits of the controversies so pending before said tribunals, no judgment would have been obtained against said Stewart & Co.

"Defendants, further answering, allege that it is contrary to natural justice that the judgment hereinbefore mentioned should be enforced without an examination of the merits thereof; that by the laws of the republic of France, to wit, article 181 [121] of the royal ordinance of June 15, 1629, it is provided namely: 'Judgments rendered, contracts or obligations recognized, in foreign kingdoms and sovereignties, for any cause whatever, shall give rise to no lien or execution in our kingdom. Thus the contracts shall stand for simple promises, and, notwithstanding such judgments, our subjects against whom they have been rendered may contest their rights anew before our own judges.'

"And it is further provided by the laws of France, by article 546 of the Code de Procedure Civile, as follows: 'Judgments rendered by foreign tribunals shall be capable *119 of execution in France, only in the manner and in the cases set forth by articles 2123 and 2128 of the Civil Code.'

"And it is further provided by the laws of France, by article 2128 [2123] of the Code de Procedure Civile [Civil Code]: 'A lien cannot, in like manner, arise from judgments rendered in any foreign country, save only as they have been declared in force by a French tribunal, without prejudice, however, to provisions to the contrary, contained in public laws and treaties.' [And by article 2128 of that Code: 'Contracts entered into in a foreign country cannot give a lien upon property in France, if there are no provisions contrary to this principle in public laws or in treaties.']

"That the construction given to said statutes by the judicial tribunals of France is such that no comity is displayed towards the judgments of tribunals of foreign countries against the citizens of France, when sued upon in said courts of France, and the merits of the controversies upon which the said judgments are based are examined anew, unless a treaty to the contrary effect exists between the said republic of France and the country in which such judgment is obtained. That no treaty exists between the said republic of France and the United States, by the terms or effect of which the judgments of either country are prevented from being examined anew upon the merits, when sued upon in the courts of the country other than that in which it is obtained. That the tribunals of the republic of France give no force and effect, within the jurisdiction of the said country, to the duly rendered judgments of courts of competent jurisdiction of the United States against citizens of France, after proper personal service of the process of said courts is made thereon in this country."

The answer further set up, by way of counterclaim, and in detail, various matters arising out of the dealings between the parties, and alleged that none of the plaintiffs had since 1881 been residents of the state of New York, or within the jurisdiction of that state, but the defendants were, and always had been, residents of that state.

*120 The answer concluded by demanding that the plaintiffs' *complaint be dismissed, and that the defendants have judgment against them upon the counterclaims, amounting to $102,942.91.

The plaintiffs filed a replication to so much of the answer as made counterclaims, denying its allegations, and setting up in bar thereof the judgment sued on.

The defendants, on June 22, 1888, filed a bill in equity against the plaintiffs, setting forth the same matters as in their answer to the action at law, and praying for a discovery, and for an injunction against the prosecution of the action. To that bill a plea was filed, setting up the French judgments, and upon a hearing the bill was dismissed. 42 Fed. 249. From the decree dismissing the bill an appeal was taken, which is the second case now before this court.

The action at law afterwards came on for trial by a jury, and the plaintiffs put in the records of the proceedings and judgments in the French courts, and evidence that the jurisdiction of those courts was as alleged in the complaint, and that the practice followed, and the method of examining the witnesses, were according to the French law; and also proved the title of Guyot as liquidator.

It was admitted by both parties that for several years prior to 1876 the firm of Alexander T. Stewart & Co., composed of Stewart and Libbey, conducted their business as merchants in the city of New York, with branches in other cities of America and Europe; that both partners were citizens and residents of the city and state of New York during the entire period mentioned in the complaint; and that in April, 1876, Stewart died, and Hilton and Libbey formed a partnership to continue the business under the same firm name, and became the owners of all the property and rights of the old firm.

The defendants made numerous offers of evidence in support of all the specific allegations of fact in their answer, including the allegations as to the law and comity of France. The plaintiffs, in their brief filed in this court, admitted that most of these offers "were offers to prove matters in support of the defenses and counterclaims set up *121 by the defendants in the cases tried before the French courts, and which, or most of which, would have been relevant and competent if the plaintiffs in error are not concluded by the result of those litigations, and have now the right to try those issues, either on the ground that the French judgments are only prima facie evidence of the correctness of those judgments, or on the ground that the case is within the exception of a judgment obtained by fraud."

The defendants, in order to show that they should not be concluded by having appeared and litigated in the suits brought against them by the plaintiffs in the French courts, offered to prove that they were residents and citizens of the state of New York, and neither of them had been, within four years prior to the commencement of those suits, domiciled or resident within the jurisdiction of those courts; that they had a purchasing agent and a storehouse in Paris, but only as a means or facility to aid in the transaction of their principal business, which was in New York, and they were never otherwise engaged in business in France; that neither of them owed allegiance to France, but they were the owners of property there, which would, according to the laws of France, have been liable to seizure if they had not appeared to answer in those suits; that they unwillingly, and solely for the purpose of protecting their property within the jurisdiction of the French tribunal, authorized an agent to appear, and he did appear in the proceedings before it; and that their motion to compel an inspection of the plaintiffs' books, as well as the suits brought by the defendants in France, were necessary by way of defense or counterclaim to the suits there brought by the plaintiffs against them.

Among the matters which the defendants alleged and offered to prove in order to show that the French judgments were procured by fraud were that Fortin & Co., with intent to deceive and defraud the defendants, and the arbitrator and the courts of France, entered in their books, and presented to the defendants, and to the French courts, accounts bearing upon the transactions in controversy which were false and fraudulent, and contained excessive and fraudulent charges against the defendants in various particulars, specified; that the *defendants made due *122 application to the tribunal of commerce to compel Fortin & Co. to allow their account books and letter books to be inspected by the defendants, and the application was opposed by Fortin & Co., and denied by the tribunal; that the discovery and inspection of those books were necessary to determine the truth of the controversies between the parties; that before the tribunal of commerce Charles Fortin was permitted to and did give in evidence statements not under oath, relating to the merits of the controversies there pending, and falsely represented that a certain written contract, made in 1873, between Stewart & Co. and Fortin & Co., concerning their dealings, was not intended by the parties to be operative according to its terms; and in support of that false representation made statements as to admissions by Stewart in a private conversation with him; and that the defendants could not deny those statements, because Stewart was dead, and they were not protected from the effect of Fortin's

statements by the privilege of cross-examining him under oath; and that the French judgments were based upon false and fraudulent accounts presented and statements made by Fortin & Co. before the tribunal of commerce during the trial before it.

The records of the judgments of the French courts, put in evidence by the plaintiffs, showed that all the matters now relied on to show fraud were contested in and considered by those courts.

The plaintiffs objected to all the evidence offered by the defendants, on the grounds that the matters offered to be proved were irrelevant, immaterial, and incompetent; that in respect to them the defendants were concluded by the judgment sued on and given in evidence; and that none of those matters, if proved, would be a defense to this action upon that judgment.

The court declined to admit any of the evidence so offered by the defendants, and directed a verdict for the plaintiffs in the sum of $277,775.44, being the amount of the French judgment and interest. The defendants, having duly excepted to the rulings and direction of the court, sued out a writ of error.

*123 *The writ of error in the action at law and the appeal in the suit in equity were argued together in this court in January, 1894, and, by direction of the court, were reargued in April, 1894.

Elihu Root and James C. Carter, for plaintiffs. Wm. G. Choate, for defendants.

*162 *Mr. Justice GRAY, after stating the case, delivered the opinion of the court.

These two cases—the one at law and the other in equity—of Hilton v. Guyot, and the case of Ritchie v. McMullen, 16 Sup. Ct. 171, which has been under advisement at the same time, present important questions relating to
*163 the force and effect of foreign judgments, not hitherto adjudicated by this court, which have been argued *with great learning and ability, and which require for their satisfactory determination a full consideration of the authorities. To avoid confusion in indicating the parties, it will be convenient first to take the case at law of Hilton v. Guyot.

International law, in its widest and most comprehensive sense,—including not only questions of right between nations, governed by what has been appropriately called the "law of nations," but also questions arising under what is usually called "private international law," or the "conflict of laws," and concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominions of another nation,—is part of our law, and must be ascertained and administered by the courts of justice as often as such questions are presented in litigation between man and man, duly submitted to their determination.

The most certain guide, no doubt, for the decision of such questions is a treaty or a statute of this country. But when, as is the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is, whenever it becomes necessary to do so, in order to determine the rights of parties to suits regularly brought before them. In doing this, the courts must obtain such aid as they can from judicial decisions, from the works of jurists and commentators, and from the acts and usages of civilized nations. Fremont v. U. S., 17 How. 542, 557; The Scotia, 14 Wall. 170, 188; Respublica v. De Longchamps, 1 Dall. 111, 116; Moultrie v. Hunt, 23 N. Y. 394, 396.

No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call "the comity of nations." Although the phrase has been often criticised, no satisfactory substitute has been suggested.

"Comity," in the legal sense, is neither a matter of absolute *obligation, on the one *164 hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Mr. Justice Story, in his Commentaries on the Conflict of Laws, treating of the question in what department of the government of any state, in the absence of any clear declaration of the sovereign will, resides the authority to determine how far the laws of a foreign state shall have effect, and observing that this differs in different states, according to the organization of the departments of the government of each, says: "In England and America the courts of justice have hitherto exercised the same authority in the most ample manner, and the legislatures have in no instance (it is believed) in either country interfered to provide any positive regulations. The common law of both countries has been expanded to meet the exigencies of the times as they have arisen, and, so far as the practice of nations, or the 'jus gentium privatum,' has been supposed to furnish any general principle, it has been followed out." Story, Confl. Laws, §§ 23, 24.

Afterwards, speaking of the difficulty of applying the positive rules laid down by the Continental jurists, he says that "there is, indeed, great truth" in these remarks of Mr. Justice Porter, speaking for the supreme

court of Louisiana: "They have attempted to go too far, to define and fix that which cannot, in the nature of things, be defined and fixed. They seem to have forgotten that they wrote on a question which touched the comity of nations, and that that comity is, and ever must be, uncertain; that it must necessarily depend on a variety of circumstances which cannot be reduced to any certain rule; that no nation will suffer the laws of another to interfere with her own to the injury of her citizens; that whether they do or not must depend on the condition of the country in which the foreign law is sought to be enforced, the particular nature of her legislation, her policy, and the character of her institutions; that in the conflict of laws it must often be a matter of doubt which should prevail; and that, whenever a doubt does exist, the court which decides will prefer the laws of its own country to that of the stranger." Story, Confl. Laws, § 28; Saul v. His Creditors (1827) 5 Mart. (N. S.) 569, 596.

Again, Mr. Justice Story says: "It has been thought by some jurists that the term 'comity' is not sufficiently expressive of the obligation of nations to give effect to foreign laws when they are not prejudicial to their own rights and interests. And it has been suggested that the doctrine rests on a deeper foundation; that it is not so much a matter of comity or courtesy, as a matter of paramount moral duty. Now, assuming that such a moral duty does exist, it is clearly one of imperfect obligation, like that of beneficence, humanity, and charity. Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which its exercise may be justly demanded." And, after further discussion of the matter, he concludes: "There is, then, not only no impropriety in the use of the phrase 'comity of nations,' but it is the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another." Story, Confl. Laws, §§ 33-38.

Chief Justice Taney, likewise, speaking for this court, while Mr. Justice Story was a member of it, and largely adopting his words, said: "It is needless to enumerate here the instances in which, by the general practice of civilized countries, the laws of the one will, by the comity of nations, be recognized and executed in another, where the rights of individuals are concerned." "The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered, and is inadmissible when contrary to its policy, or prejudicial to its interests. But it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it as a part of the voluntary law of nations." "It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of municipal law are ascertained and guided." Bank v. Earle (1839) 13 Pet. 519, 589; Story, Confl. Laws, § 38.

Mr. Wheaton says: "All the effect which foreign laws can have in the territory of a state depends absolutely on the express or tacit consent of that state." "The express consent of a state to the application of foreign laws within its territory is given by acts passed by its legislative authority, or by treaties concluded with other states. Its tacit consent is manifested by the decisions of its judicial and administrative authorities, as well as by the writings of its publicists. There is no obligation recognized by legislators, public authorities, and publicists to regard foreign laws; but their application is admitted only from considerations of utility and the mutual convenience of states,—'ex comitate, ob reciprocam utilitatem.'" Wheat. Int. Law (8th Ed.) §§ 78, 79. "No sovereign is bound, unless by special compact, to execute within his dominions a judgment rendered by the tribunals of another state; and, if execution be sought by suit upon the judgment or otherwise, the tribunal in which the suit is brought, or from which execution is sought, is, on principle, at liberty to examine into the merits of such judgment, and to give effect to it or not, as may be found just and equitable. The general comity, utility, and convenience of nations have, however, established a usage among most civilized states, by which the final judgments of foreign courts of competent jurisdiction are reciprocally carried into execution, under certain regulations and restrictions, which differ in different countries." Id. § 147.

Chancellor Kent says: "The effect to be given to foreign judgments is altogether a matter of comity in cases where it is not regulated by treaty." 2 Kent, Comm. (6th Ed.) 120.

In order to appreciate the weight of the various authorities cited at the bar, it is important to distinguish different kinds of judgments. Every foreign judgment, of whatever nature, in order to be entitled to any effect, must have been rendered by a court having jurisdiction of the cause, and upon regular proceedings, and due notice. In alluding to different kinds of judgments, therefore, such jurisdiction, proceedings, and notice will be assumed. It will also be assumed that they are untainted by fraud, the effect of which will be considered later.

A judgment in rem, adjudicating the title to a ship or other movable property within the custody of the court, is treated as valid everywhere. As said by Chief Justice Marshall: "The sentence of a competent court, proceeding in rem, is conclusive with respect to the thing itself, and operates as an

absolute change of the property. By such sentence the right of the former owner is lost, and a complete title given to the person who claims under the decree. No court of co-ordinate jurisdiction can examine the sentence. The question, therefore, respecting its conformity to general or municipal law can never arise, for no co-ordinate tribunal is capable of making the inquiry." Williams v. Armroyd, 7 Cranch, 423, 432. The most common illustrations of this are decrees of courts of admiralty and prize, which proceed upon principles of international law. Croudson v. Leonard, 4 Cranch, 434; Williams v. Armroyd, above cited; Ludlow v. Dale, 1 Johns. Cas. 16. But the same rule applies to judgments in rem under municipal law. Hudson v. Guestier, 4 Cranch, 293; Ennis v. Smith, 14 How. 400, 430; Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 291, 8 Sup. Ct. 1370; Scott v. McNeal, 154 U. S. 34, 46, 14 Sup. Ct. 1108; Castrique v. Imrie, L. R. 4 H. L. 414; Monroe v. Douglas, 4 Sandf. Ch. 126.

A judgment affecting the status of persons, such as a decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own law. Cottington's Case, 2 Swanst. 326, note; Roach v. Garvan, 1 Ves. Sr. 157; Harvey v. Farnie, 8 App. Cas. 43; Cheely v. Clayton, 110 U. S. 701, 4 Sup. Ct. 328. It was of a foreign sentence of divorce that Lord Chancellor Nottingham, in the house of lords, in 1678, in Cottington's Case, above cited, said: "It is against the law of nations not to give credit to the judgments and sentences of foreign countries till they be reversed by the law, and according to the form, of those countries wherein they were given; for what right hath one kingdom to reverse the judgment of another? And how can we refuse to let a sentence take place till it be reversed? And what confusion would follow in Christendom, if they should serve us so abroad, and give no credit to our sentences!" *168

Other judgments, not strictly in rem, under which a person has been compelled to pay money, are so far conclusive that the justice of the payment cannot be impeached in another country, so as to compel him to pay it again. For instance, a judgment in foreign attachment is conclusive, as between the parties, of the right to the property or money attached. Story, Confl. Laws (2d Ed.) § 592a. And if, on the dissolution of a partnership, one partner promises to indemnify the other against the debts of the partnership, a judgment for such a debt, under which the latter has been compelled to pay it, is conclusive evidence of the debt in a suit by him to recover the amount upon the promise of indemnity. It was of such a judgment, and in such a suit, that Lord Nottingham said: "Let the plaintiff receive back so much of the money brought into court as may be adequate to the sum paid on the sentence for custom, the justice whereof is not examinable here." Gold v. Canham (1679) 2 Swanst. 325, 1 Ch. Cas. 311. See, also, Tarleton v. Tarleton, 4 Maule & S. 20; Konitzky v. Meyer, 49 N. Y. 571.

Other foreign judgments which have been held conclusive of the matter adjudged were judgments discharging obligations contracted in the foreign country between citizens or residents thereof. Story, Confl. Laws, §§ 330–341; May v. Breed, 7 Cush. 15. Such was the case cited at the bar of Burroughs (or Burrows) v. Jamineau (or Jemino), Moseley, 1, 2 Strange, 733, 2 Eq. Cas. Abr. p. 525, pl. 7, 12 Vin. Abr. p. 87, pl. 9, Sel. Cas. Ch. 69, and 1 Dickens, 48.

In that case bills of exchange drawn in London were negotiated, indorsed, and accepted at Leghorn, in Italy, by the law of which an acceptance became void if the drawer failed without leaving effects in the acceptor's hands. The acceptor, accordingly, having received advices that the drawer had failed before the acceptances, brought a suit at Leghorn against the last indorsees, to be discharged of his acceptances, paid the money into court, and obtained a sentence there, by which the acceptances were vacated as against those indorsees, and all the indorsers and negotiators of the bills, and the money deposited was returned to him. Being afterwards sued at law in England by subsequent holders of the bills, he applied to the court of chancery, and obtained a perpetual injunction. Lord Chancellor King, as reported by Strange, "was clearly of opinion that this cause was to be determined according to the local laws of the place where the bill was negotiated, and, the plaintiff's acceptance of the bill having been vacated and declared void by a court of competent jurisdiction, he thought that sentence was conclusive, and bound the court of chancery here"; as reported in Viner, that "the court at Leghorn had jurisdiction of the thing and of the persons"; and, as reported by Mosely, that, though "the last indorsees had the sole property of the bills, and were therefore made the only parties to the suit at Leghorn, yet the sentence made the acceptance void against the now defendants and all others." It is doubtful, at the least, whether such a sentence was entitled to the effect given to it by Lord Chancellor King. See Novelli v. Rossi, 2 Barn. & Adol. 757; Castrique v. Imrie, L. R. 4 H. L. 414, 435; 2 Smith, Lead. Cas. (2d Ed.) 450. *169

The remark of Lord Hardwicke, arguendo, as chief justice, in Boucher v. Lawson (1734) that "the reason gone upon by Lord Chancellor King, in the case of Burroughs v. Jamineau, was certainly right, that where any court, whether foreign or domestic, that has the proper jurisdiction of the cases, makes a determination, it is conclusive to all other courts," evidently had reference, as the context shows, to judgments of a

court having jurisdiction of the thing, and did not touch the effect of an executory judgment for a debt. Cas. t. Hardw. 85, 89, Cunn. 144, 148.

In former times, foreign decrees in admiralty in personam were executed, even by imprisonment of the defendant, by the court of admiralty in England, upon letters rogatory from the foreign sovereign, without a *170 new suit. Its right to do so was recognized by the court of king's bench in 1607 in a case of habeas corpus, cited by the plaintiffs, and reported as follows: "If a man of Frizeland sues an Englishman in Frizeland before the governor there, and there recovers against him a certain sum, upon which the Englishman, not having sufficient to satisfy it, comes into England, upon which the governor sends his letters missive into England, omnes magistratus infra regnum Angliæ rogans, to make execution of the said judgment, the judge of the admiralty may execute this judgment by imprisonment of the party, and he shall not be delivered by the common law; for this is by the law of nations that the justice of one nation should be aiding to the justice of another nation, and for one to execute the judgment of the other, and the law of England takes notice of this law, and the judge of the admiralty is the proper magistrate for this purpose, for he only hath the execution of the civil law within the realm. Weir's Case (Pasch. Term) 5 Jac. B. R. (resolved upon a habeas corpus, and remanded)." 1 Rolle, Abr. p. 530, pl. 12; 6 Vin. Abr. p. 512, pl. 12. But the only question there raised or decided was of the power of the English court of admiralty, and not of the conclusiveness of the foreign sentence, and in later times the mode of enforcing a foreign decree in admiralty is by a new libel. See The City of Mecca, 5 Prob. Div. 28, 6 Prob. Div. 106.

The extraterritorial effect of judgments in personam, at law, or in equity may differ, according to the parties to the cause. A judgment of that kind between two citizens or residents of the country, and thereby subject to the jurisdiction in which it is rendered, may be held conclusive as between them everywhere. So, if a foreigner invokes the jurisdiction by bringing an action against a citizen, both may be held bound by a judgment in favor of either; and if a citizen sues a foreigner, and judgment is rendered in favor of the latter, both may be held equally bound. Ricardo v. Garcias, 12 Clark & F. 368; The Griefswald, Swab. 430, 435; Barber v. Lamb, 8 C. B. (N. S.) 95; Lea v. Deakin, 11 Biss. 23, Fed. Cas. No. 8,154.

*171 The effect to which a judgment, purely executory, rendered in favor of a citizen or resident of the country, in a suit there brought by him against a foreigner, may be entitled in an action thereon against the latter in his own country, as is the case now before us, presents a more difficult question, upon which there has been some diversity of opinion.

Early in the last century it was settled in England that a foreign judgment on a debt was considered, not like a judgment of a domestic court of record, as a record or a specialty, a lawful consideration for which was conclusively presumed, but as a simple contract only.

This clearly appears in Dupleix v. De Roven (1705), where one of two merchants in France recovered a judgment there against the other for a sum of money, which, not being paid, he brought a suit in chancery in England for a discovery of assets and satisfaction of the debt, and the defendant pleaded the statute of limitations of six years, and prevailed; Lord Keeper Cowper saying: "Although the plaintiff obtained a judgment or sentence in France, yet here the debt must be considered as a debt by simple contract. The plaintiff can maintain no action here but an indebitatus assumpsit or an insimul computassent, so that the statute of limitations is pleadable in this case." 2 Vern. 540.

Several opinions of Lord Hardwicke define and illustrate the effect of foreign judgments, when sued on or pleaded in England.

In Otway v. Ramsay (1736), in the king's bench, Lord Hardwicke treated it as worthy of consideration "what credit is to be given by one court to the courts of another nation, proceeding both by the same rules of law," and said: "It is very desirable, in such case, that the judgment given in one kingdom should be considered as res judicata in another." But it was held that debt would not lie in Ireland upon an English judgment, because "Ireland must be considered as a provincial kingdom, part of the dominions of the crown of England, but no part of the realm," and an action of debt on a judgment was local. 4 Barn. & C. 414–416, note, 14 Vin. Abr. p. 569, pl. 5, 2 Strange, 1090.

A decision of Lord Hardwicke as chancellor *172 was mentioned in Walker v. Witter (1778) 1 Doug. 1, 6, by Lord Mansfield, who said: "He recollected a case of a decree on the chancery side in one of the courts of great sessions in Wales, from which there was an appeal to the house of lords, and the decree affirmed there. Afterwards, a bill was filed in the court of chancery, on the foundation of the decree so affirmed, and Lord Hardwicke thought himself entitled to examine into the justice of the decision of the house of lords, because the original decree was in the court of Wales, whose decisions were clearly liable to be examined." And in Galbraith v. Neville (1789) 1 Doug. 6, note, Mr. Justice Buller said: "I have often heard Lord Mansfield repeat what was said by Lord Hardwicke in the case alluded to from Wales, and the ground of his lordship's opinion was this: When you call for my assistance to carry into effect the decision of some other tribunal, you shall not have it, if it appears that you are in the wrong;

and it was on that account that he said he would examine into the propriety of the decree." The case before Lord Hardwicke mentioned by Lord Mansfield would appear (notwithstanding the doubt of its authenticity expressed by Lord Kenyon in Galbraith v. Neville) to have been a suit to recover a legacy, briefly reported, with references to Lord Hardwicke's note book, and to the original record, as Morgan v. Morgan (1737–38) West. Ch. 181, 597, 1 Atk. 53, 408.

In Gage v. Bulkeley (1744), briefly reported in 3 Atk. 215, cited by the plaintiffs, a plea of a foreign sentence in a commissary court in France was overruled by Lord Hardwicke, saying: "It is the most proper case to stand for an answer, with liberty to except, that I ever met with." His reasons are fully stated in two other reports of the case. According to one of them, at the opening of the argument he said: "Can a sentence or judgment pronounced by a foreign jurisdiction be pleaded in this kingdom to a demand for the same thing in any court of justice here? I always thought it could not, because every sentence, having its authority from the sovereign in whose dominions it is given, cannot bind the *178 jurisdiction of foreign courts, who own not the same authority, and have a different sovereign, and are only bound by judicial sentence given under the same sovereign power by which they themselves act." "But though a foreign sentence cannot be used by way of plea in the courts here, yet it may be taken advantage of in the way of evidence." "You cannot in this kingdom maintain debt upon judgment obtained for money in a foreign jurisdiction, but you may on assumpsit in nature of debt, upon a simple contract, and give the judgment in evidence, and have a verdict; so that the distinction seems to be, where such foreign sentence is used as a plea to bind the courts here as a judgment, and when it is made use of in evidence as binding the justice of the case only." And afterwards, in giving his decision, he said: "The first question is whether the subject-matter of the plea is good. The second is whether it is well pleaded. The first question depends upon this: Whether the sentence or judgment of a foreign court can be used by way of plea in a court of justice in England; and no authority, either at law or in equity, has been produced to show that it may be pleaded, and therefore I shall be very cautious how I establish such a precedent." "It is true such sentence is an evidence which may affect the right of this demand, when the cause comes to be heard; but, if it is no plea in a court of law to bind their jurisdiction, I do not see why it should be so here." Ridg. t. Hardw. 263, 264, 270, 273. A similar report of his judgment is in 2 Ves. Sr. (Belt's Supp.) 409, 410.

In Roach v. Garvan (1748), where an infant ward of the court of chancery had been married in France, by her guardian, to his son, before a French court, and the son "petitioned for a decree for cohabitation with his wife, and to have some money out of the bank," Lord Hardwicke said, as to the validity of the marriage: "It has been argued to be valid, from being established by the sentence of a court in France having proper jurisdiction; and it is true that, if so, it is conclusive, whether in a foreign court or not, from the law of nations in such cases; otherwise, the rights of mankind would be very precarious and uncertain. But the question is whether this is a proper sentence, in a proper cause, and between proper* parties, of which it is* impossible to judge without looking further into the proceedings; this being rather the execution of the sentence than the sentence itself." And, after observing upon the competency of the French tribunal, and pointing out that restitution of conjugal rights was within the jurisdiction of the ecclesiastical court, and not of the court of chancery, he added: "Much less will I order any money out of the bank to be given him." 1 Ves. Sr. 157, 159. He thus clearly recognized the difference between admitting the effect of a foreign judgment as adjudicating the status of persons, and executing a foreign judgment by enforcing a claim for money. *174

These decisions of Lord Hardwicke demonstrate that in his opinion, whenever the question was of giving effect to a foreign judgment for money, in a suit in England between the parties, it did not have the weight of a domestic judgment, and could not be considered as a bar, or as conclusive, but only as evidence of the same weight as a simple contract, and the propriety and justice of the judgment might be examined.

In Sinclair v. Fraser (1771) the appellant, having as attorney in Jamaica made large advances for his constituent in Scotland, and having been superseded in office, brought an action before the supreme court of Jamaica, and, after appearance, obtained judgment against him, and afterwards brought an action against him in Scotland upon that judgment. The court of sessions determined that the plaintiff was bound to prove before it the ground, nature, and extent of the demand on which the judgment in Jamaica was obtained, and therefore gave judgment against him. But the house of lords (in which, as remarked by one reporter, Lord Mansfield was then the presiding spirit, acting in concert with or for the lord chancellor in disposing of the Scotch appeals) "ordered and declared that the judgment of the supreme court of Jamaica ought to be received as evidence prima facie of the debt, and that it lies upon the defendant to impeach the justice thereof, or to show the same to have been irregularly obtained"; and therefore reversed the judgment of the court of sessions. 2 Paton, 253. 6 Mor. Dict. 4542, and 1 Doug. 5, note. *175

Accordingly, in Crawford v. Witten (1773)

a declaration in assumpsit, in an action in England upon a judgment recovered in the mayor's court of Calcutta, in Bengal, without showing the cause of action there, was held good on demurrer. Lord Mansfield considered the case perfectly clear. Mr. Justice Aston, according to one report, said: "The declaration is sufficient. We are not to suppose it an unlawful debt;" and, according to another report: "They admitted the assumpsit by their demurrer. When an action comes properly before any court, it must be determined by the laws which govern the country in which the action accrued." And Mr. Justice Ashurst said: "I have often known assumpsit brought on judgments in foreign courts. The judgment is a sufficient consideration to support the implied promise." Loft, 154; s. c., nom. Crawford v. Whittal, 1 Doug. 4, note.

In Walker v. Witter (1778) an action of debt was brought in England upon a judgment recovered in Jamacia. The defendant pleaded nil debet and nul tiel record. Judgment was given for the plaintiff, Lord Mansfield saying: "The plea of nul tiel record was improper. Though the plaintiffs had called the judgment a record, yet, by the additional words in the declaration, it was clear they did not mean that sort of record to which implicit faith is given by the courts of Westminster hall. They had not misled the court nor the defendant, for they spoke of it as a court of record in Jamaica. The question was brought to a narrow point, for it was admitted on the part of the defendant that indebitatus assumpsit would have lain, and on the part of the plaintiff that the judgment was only prima facie evidence of the debt. That being so, the judgment was not a specialty, but the debt only a simple contract debt, for assumpsit will not lie on a specialty. The difficulty in the case had arisen from not fixing accurately what a court of record is in the eye of the law. That description is confined properly to certain courts in England, and their judgments cannot be controverted. Foreign courts, and courts in England not of record, have not that privilege, nor the courts in Wales, etc. But the doctrine in the case of Sinclair v. Fraser was unquestionable. Foreign judg- *178 ments are a ground of action everywhere, but they are examinable." Justices Willes, Ashurst, and Buller concurred; the two latter saying that wherever indebitatus assumpsit will lie, debt will also lie. 1 Doug. 1, 5, 6.

In Herbert v. Cook (1782), again, in an action of debt upon a judgment of an inferior English court, not a court of record, Lord Mansfield said that it was "like a foreign judgment, and not conclusive evidence of the debt." Willes, 36, note.

In Galbraith v. Neville (1789), upon a motion for a new trial after verdict for the plaintiff, in an action of debt on a judgment of the supreme court of Jamaica, Lord Kenyon expressed "very serious doubts concerning the doctrine laid down in Walker v. Witter, that foreign judgments are not binding on the parties here." But Mr. Justice Buller said: "The doctrine which was laid down in Sinclair v. Fraser has always been considered as the true line ever since; namely, that the foreign judgment shall be prima facie evidence of the debt, and conclusive till it be impeached by the other party." "As to actions of this sort, see how far the court could go, if what was said in Walker v. Witter were departed from. It was there held that the foreign judgment was only to be taken to be right prima facie; that is, we will allow the same force to a foreign judgment that we do to those of our own courts not of record. But if the matter were carried further, we should give them more credit; we should give them equal force with those of courts of record here. Now a foreign judgment has never been considered as a record. It cannot be declared on as such and a plea of nul tiel record, in such a case, is a mere nullity. How, then, can it have the same obligatory force? In short, the result is this: that it is prima facie evidence of the justice of the demand in an action of assumpsit, having no more credit than is given to every species of written agreement, viz. that it shall be considered as good till it is impeached." 1 Doug. 6, note. And the court afterwards unanimously refused the new trial, because, "without entering into the question how far a foreign judgment was impeachable, it was at all events clear that it was prima facie evidence of the debt; and they were of opinion that no evidence had been adduced to impeach this." 5 East, 475, note. *179

In Messin v. Massareene (1791) the plaintiff, having obtained a judgment against the defendants in a French court, brought an action of assumpsit upon it in England, and, the defendants having suffered a default, moved for a reference to a master, and for a final judgment on his report, without executing a writ of inquiry. The motion was denied, Lord Kenyon saying: "This is an attempt to carry the rule further than has yet been done, and, as there is no instance of the kind, I am not disposed to make a precedent for it;" and Mr. Justice Buller saying: "Though debt will lie here on a foreign judgment, the defendant may go into the consideration of it." 4 Term R. 493.

In Bayley v. Edwards (1792) the judicial committee of the privy council, upon appeal from Jamaica, held that a suit in equity pending in England was not a good plea in bar to a subsequent bill in Jamaica for the same matter; and Lord Camden said: "In Gage v. Bulkeley [evidently referring to the full report in Ridgeway, above quoted, which had been cited by counsel] Lord Hardwicke's reasons go a great way to show the true effect of foreign sentences in this country, and

all the cases show that foreign sentences are not conclusive bars here, but only evidence of the demand." 3 Swanst. 703, 708, 710.

In Phillips v. Hunter (1795) the house of lords, in accordance with the opinion of the majority of the judges consulted, and against that of Chief Justice Eyre, decided that a creditor of an English bankrupt, who had obtained payment of his debt by foreign attachment in Pennsylvania, was liable to an action for the money by the assignees in bankruptcy in England. But it was agreed, on all hands, that the judgment in Pennsylvania and payment under it were conclusive as between the garnishee and the plaintiff in that suit, and the distinction between the effect of a foreign judgment which vests title, and of one which only declares that a certain sum of money is due, was clearly stated by Chief Justice Eyre, as follows:

*178 * "This judgment against the garnishee in the court of Pennsylvania was recovered properly or improperly. If, notwithstanding the bankruptcy, the debt remained liable to an attachment according to the laws of that country, the judgment was proper; if, according to the laws of that country, the property in the debt was divested out of the bankrupt debtor, and vested in his assignees, the judgment was improper. But this was a question to be decided, in the cause instituted in Pennsylvania, by the courts of that country, and not by us. We cannot examine their judgment, and, if we could, we have not the means of doing it in this case. It is not stated upon this record, nor can we take notice, what the law of Pennsylvania is upon this subject. If we had the means, we could not examine a judgment of a court in a foreign state, brought before us in this manner.

"It is in one way only that the sentence or judgment of a court of a foreign state is examinable in our courts, and that is when the party who claims the benefit of it applies to our courts to enforce it. When it is thus voluntarily submitted to our jurisdiction, we treat it, not as obligatory to the extent to which it would be obligatory, perhaps, in the country in which it was pronounced, nor as obligatory to the extent to which, by our law, sentences and judgments are obligatory, not as conclusive, but as matter in pais, as consideration prima facie sufficient to raise a promise. We examine it as we do all other considerations or promises, and for that purpose we receive evidence of what the law of the foreign state is, and whether the judgment is warranted by that law." 2 H. Bl. 402, 409, 410.

In Wright v. Simpson (1802) Lord Chancellor Eldon said: "Natural law requires the courts of this country to give credit to those of another for the inclination and power to do justice, but not if that presumption is proved to be ill founded in that transaction which is the subject of it; and if it appears in evidence that persons suing under similar circumstances neither had met, nor could meet, with justice, that fact cannot be immaterial as an answer to the presumption." 6 Ves. 714, 730.

*179 * Under Lord Ellenborough, the distinction between a suit on a foreign judgment in favor of the plaintiff against the defendant, and a suit to recover money which the plaintiff had been compelled to pay under a judgment abroad, was clearly maintained.

In Buchanan v. Rucker (1808), in assumpsit upon a judgment rendered in the Island of Tobago, the defendant pleaded non assumpsit, and prevailed, because it appeared that he was not a resident of the island, and was neither personally served with process nor came in to defend, and the only notice was, according to the practice of the court, by nailing up a copy of the declaration at the courthouse door. It was argued that "the presumption was in favor of a foreign judgment, as well as of a judgment obtained in one of the courts of this country"; to which Lord Ellenborough answered: "That may be so, if the judgment appears, on the face of it, consistent with reason and justice; but it is contrary to the first principles of reason and justice that, either in civil or criminal proceedings, a man should be condemned before he is heard." "There might be such glaring injustice on the face of a foreign judgment, or it might have a vice rendering it so ludicrous, that it could not raise an assumpsit, and, if submitted to the jurisdiction of the courts of this country, could not be enforced." 1 Camp. 63, 66, 67. A motion for a new trial was denied. 9 East, 192. And see Sadler v. Robins (1808) 1 Camp. 253, 256.

In Hall v. Odber (1809), in assumpsit upon a judgment obtained in Canada, with other counts on the original debt, Lord Ellenborough and Justices Grose, Le Blanc, and Bayley agreed that a foreign judgment was not to be considered as having the same force as a domestic judgment, but only that of a simple contract between the parties, and did not merge the original cause of action, but was only evidence of the debt; and therefore assumpsit would lie, either upon the judgment or upon the original cause of action. 11 East, 118.

In Tarleton v. Tarleton (1815), on the other hand, the action was brought upon a covenant of indemnity in an agreement for dissolution of a partnership to recover a sum which the plaintiff had been compelled *180 to pay under a decision in a suit between the parties in the Island of Grenada. Such was the case of which Lord Ellenborough, affirming his own ruling at the trial, said: "I thought that I did not sit at nisi prius to try a writ of error in this case upon the proceedings in the court abroad. The defendant had notice of the proceedings, and should have appeared, and made his de-

fense. The plaintiff, by this neglect, has been obliged to pay the money in order to avoid a sequestration." The distinction was clearly brought out by Mr. Justice Bayley, who said: "As between the parties to the suit, the justice of it might be again litigated; but as against a stranger it cannot." 4 Maule & S. 20, 22, 23.

In Harris v. Saunders (1825), Chief Justice Abbott (afterwards Lord Tenterden) and his associates, upon the authority of Otway v. Ramsay, above cited, held that, even since the Act of Union of 39 & 40 Geo. III. c. 67, assumpsit would lie in England upon a judgment recovered in Ireland, because such a judgment could not be considered a specialty debt in England. 4 Barn. & C. 411, 6 Dowl. & R. 471.

The English cases above referred to have been stated with the more particularity and detail, because they directly bear upon the question, what was the English law, being then our own law, before the Declaration of Independence? They demonstrate that by that law, as generally understood, and as declared by Hardwicke, Mansfield, Buller, Camden, Eyre, and Ellenborough, and doubted by Kenyon only, a judgment recovered in a foreign country for a sum of money, when sued upon in England, was only prima facie evidence of the demand, and subject to be examined and impeached. The law of England since it has become to us a foreign country will be considered afterwards.

The law upon this subject as understood in the United States at the time of their separation from the mother country was clearly set forth by Chief Justice Parsons, speaking for the supreme judicial court of Massachusetts, in 1813, and by Mr. Justice Story in his Commentaries on the Constitution of the United States, published in 1833. Both those * eminent jurists declared that by the law of England the general rule was that foreign judgments were only prima facie evidence of the matter which they purported to decide; and that by the common law, before the American Revolution, all the courts of the several colonies and states were deemed foreign to each other, and consequently judgments rendered by any one of them were considered as foreign judgments, and their merits re-examinable in another colony, not only as to the jurisdiction of the court which pronounced them, but also as to the merits of the controversy, to the extent to which they were understood to be re-examinable in England. And they noted that, in order to remove that inconvenience, statutes had been passed in Massachusetts, and in some of the other colonies, by which judgments rendered by a court of competent jurisdiction in a neighboring colony could not be impeached. Bissell v. Briggs, 9 Mass. 462, 464, 465; St. Mass. 1773–74, c. 16; 5 Prov. Laws, 323, 369; Story, Const. (1st Ed.) §§ 1301, 1302; Id. (4th Ed.) §§ 1306, 1307.

It was because of that condition of the law, as between the American colonies and states, that the United States, at the very beginning of their existence as a nation, ordained that full faith and credit should be given to the judgments of one of the states of the Union in the courts of another of those states.

By the articles of confederation of 1777 (article 4, § 3), "full faith and credit shall be given, in each of these states, to the records, acts and judicial proceedings of the courts and magistrates of every other state." 1 Stat. 4. By the constitution of the United States (article 4, § 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." And the first congress of the United States under the constitution, after prescribing the manner in which the records and judicial proceedings of the courts of any state should be authenticated and proved, enacted that "the said records and judicial proceedings authenticated as aforesaid, shall have * such faith * and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken." Act May 26, 1790, c. 11 (1 Stat. 122); Rev. St. § 905.

The effect of these provisions of the constitution and laws of the United States was at first a subject of diverse opinions, not only in the courts of the several states, but also in the circuit courts of the United States; Mr. Justice Cushing, Mr. Justice Wilson, and Mr. Justice Washington holding that judgments of the courts of a state had the same effect throughout the Union as within that state; but Chief Justice Marshall (if accurately reported) being of opinion that they were not entitled to conclusive effect, and that their consideration might be impeached. Armstrong v. Carson (1794) 2 Dall. 302, Fed. Cas. No. 543; Green v. Sarmiento (1811) 3 Wash. C. C. 17, 21, Pet. C. C. 74, 78, and Fed. Cas. No. 5,760; Peck v. Williamson (reported as in November, 1813, apparently a mistake for 1812), 1 Car. Law Repos. 53.

The decisions of this court have clearly recognized that judgments of a foreign state are prima facie evidence only, and that, but for these constitutional and legislative provisions, judgments of a state of the Union, when sued upon in another state, would have no greater effect.

In Croudson v. Leonard (1808), in which this court held that the sentence of a foreign court of admiralty in rem, condemning a vessel for breach of blockade, was conclusive evidence of that fact in an action on a policy of insurance, Mr. Justice Washington, after speaking of the conclusiveness of do-

mestic judgments generally, said: "The judgment of a foreign court is equally conclusive, except in the single instance where the party claiming the benefit of it applies to the courts in England to enforce it, in which case only the judgment is prima facie evidence. But it is to be remarked that in such a case the judgment is no more conclusive as to the right it establishes than as to the fact it decides." 4 Cranch, 434, 442.

In Mills v. Duryee (1813), in which it was established that by virtue of the constitution and laws of the United States the judgment of a court of one of the states was conclusive evidence, in every court within the United States, of the matter adjudged, and therefore nul tiel record, and not nil debet, was a proper plea to an action brought in a court of the United States in the District of Columbia upon a judgment recovered in a court of the state of New York, this court, speaking by Mr. Justice Story, said: "The pleadings in an action are governed by the dignity of the instrument on which it is founded. If it be a record conclusive between the parties, it cannot be denied but by the plea of nul tiel record; and when congress gave the effect of a record to the judgment it gave all the collateral consequences." "Were the construction contended for by the plaintiff in error to prevail, that judgments of the state courts ought to be considered prima facie evidence only, this clause in the constitution would be utterly unimportant and illusory. The common law would give such judgments precisely the same effect." 7 Cranch, 481, 484, 485.

In Hampton v. McConnell (1818) the point decided in Mills v. Duryee was again adjudged, without further discussion, in an opinion delivered by Chief Justice Marshall. 3 Wheat. 234.

The obiter dictum of Mr. Justice Livingston in Hopkins v. Lee (1821) 6 Wheat. 109, 114, repeated by Mr. Justice Daniel in Pennington v. Gibson (1853) 16 How. 65, 78, as to the general effect of foreign judgments, has no important bearing upon the case before us.

In McElmoyle v. Cohen (1839), Mr. Justice Wayne, discussing the effect of the act of congress of 1790, said that "the adjudications of the English courts have now established the rule to be that foreign judgments are prima facie evidence of the right and matter they purport to decide." 13 Pet. 312, 325.

In D'Arcy v. Ketchum (1850), in which this court held that the provisions of the constitution and laws of the United States gave no effect in one state to judgments rendered in another state by a court having no jurisdiction of the cause or of the parties, Mr. Justice Catron said: "In construing the act of 1790, the law as it stood when the act was passed must enter into that construction; so that the existing defect in the old law may be seen, and its remedy by the act of congress comprehended. Now, it was most reasonable, on general principles of comity and justice, that among states and their citizens, united as ours are, judgments rendered in one should bind citizens of other states, where defendants had been served with process, or voluntarily made defense. As these judgments, however, were only prima facie evidence, and subject to be inquired into by plea, when sued on in another state, congress saw proper to remedy the evil, and to provide that such inquiry and double defense should not be allowed. To this extent, it is declared in the case of Mills v. Duryee, congress has gone in altering the old rule." 11 How. 165, 175, 176.

In Christmas v. Russell (1866), in which this court decided that, because of the constitution and laws of the United States, a judgment of a court of one state of the Union, when sued upon in a court of another, could not be shown to have been procured by fraud, Mr. Justice Clifford, in delivering the opinion, after stating that under the rules of the common law a domestic judgment, rendered in a court of competent jurisdiction, could not be collaterally impeached or called in question, said: "Common-law rules placed foreign judgments upon a different footing, and those rules remain, as a general remark, unchanged to the present time. Under these rules, a foreign judgment was prima facie evidence of the debt, and it was open to examination, not only to show that the court in which it was rendered had no jurisdiction of the subject-matter, but also to show that the judgment was fraudulently obtained." 5 Wall. 290, 304.

In Bischoff v. Wethered (1869), in an action on an English judgment, rendered without notice to the defendant, other than by service on him in this country, this court, speaking by Mr. Justice Bradley, held that the proceeding in England "was wholly without jurisdiction of the person, and whatever validity it may have in England, by virtue of statute law, against property of the defendant there situate, it can have no validity here, even of a prima facie character." 9 Wall. 812, 814.

In Hanley v. Donoghue (1885) 116 U. S. 1, 4, 6 Sup. Ct. 242, and in Wisconsin v. Pelican Ins. Co. (1888) 127 U. S. 265, 292, 8 Sup. Ct. 1370, it was said that judgments recovered in one state of the Union, when proved in the courts of another, differed from judgments recovered in a foreign country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties.

But neither in those cases nor in any other has this court hitherto been called upon to determine how far foreign judgments may be re-examined upon their merits, or be impeached for fraud in obtaining them.

In the courts of the several states it was long recognized and assumed as undoubted and indisputable that by our law, as by the law of England, foreign judgments for debts were not conclusive, but only prima facie evidence

of the matter adjudged. Some of the cases are collected in the margin.[1]

In the leading case of Bissell v. Briggs, above cited, Chief Justice Parsons said: "A foreign judgment may be produced here by a party to it, either to justify himself by the execution of that judgment in the country in which it was rendered, or to obtain the execution of it from our courts." "If the foreign court rendering the judgment had jurisdiction of the cause, yet the courts here will not execute the judgment, without first allowing an inquiry into its merits. The judgment of a foreign court, therefore, is by our laws considered only as presumptive evidence of a debt, or as prima facie evidence of a sufficient consideration of a promise, where such court had jurisdiction of the cause; and, if an action of debt be sued on any such judgment, nil debet is the general issue; or, if it be made the consideration of a promise, the general issue is non assumpsit. On these issues the defendant may impeach the justice of the judgment, by evidence relative to that point. On these issues the defendant may also, by proper evidence, prove that the judgment was rendered by a foreign court, which had no jurisdiction; and, if his evidence be sufficient for this purpose, he has no occasion to impeach the justice of the judgment." 9 Mass. 463, 464.

In a less known case, decided in 1815, but not published until 1879, the reasons for this view were forcibly stated by Chief Justice Jeremiah Smith, speaking for the supreme court of New Hampshire, as follows:

"The respect which is due to judgments, sentences, and decrees of courts in a foreign state, by the law of nations, seems to be the same which is due to those of our own courts. Hence the decree of an admiralty court abroad is equally conclusive with decrees of our admiralty courts. Indeed, both courts proceed by the same rule, are governed by the same law,—the maritime law of nations (Coll. Jurid. 100), which is the universal law of nations, except where treaties alter it.

"The same comity is not extended to judgments or decrees which may be founded on the municipal laws of the state in which they are pronounced. Independent states do not choose to adopt such decisions without examination. These laws and regulations may be unjust, partial to citizens, and against foreigners. They may operate injustice to our citizens, whom we are bound to protect. They may be, and the decisions of courts founded on them, just cause of complaint against the supreme power of the state where rendered. To adopt them is not merely saying that the courts have decided correctly on the law, but it is approbating the law itself. Wherever, then, the court may have proceeded on municipal law, the rule is that the judgments are not conclusive evidence of debt, but prima facie evidence only. The proceedings have not the conclusive quality which is annexed to the records or proceedings of our own courts, where we approve both of the rule and of the judges who interpret and apply it. A foreign judgment may be impeached. Defendant may show that it is unjust, or that it was irregularly or unduly obtained. Doug. 5, note." Bryant v. Ela, Smith (N. H.) 396, 404.

From this review of the authorities, it clearly appears that, at the time of the separation of this country from England, the general rule was fully established that foreign judgments in personam were prima facie evidence only, and not conclusive of the merits of the controversy between the parties. But the extent and limits of the application of that rule do not appear to have been much discussed, or defined with any approach to exactness, in England or America, until the matter was taken up by Chancellor Kent and by Mr. Justice Story.

In Taylor v. Bryden (1811), an action of assumpsit, brought in the supreme court of the state of New York, on a judgment obtained in the state of Maryland against the defendant, as indorser of a bill of exchange, and which was treated as a foreign judgment, so far as concerned its effect in New York (the decision of this court to the contrary in Mills v. Duryee, 7 Cranch, 481, not having yet been made), Chief Justice Kent said: "The judgment in Maryland is presumptive evidence of a just demand; and it was incumbent upon the defendant, if he would obstruct the execution of the judgment here, to show, by positive proof, that it was irregularly or unduly obtained." "To try over again, as of course, every matter of fact which had been duly decided by a competent tribunal, would be disregarding the comity which we justly owe to the courts of other states, and would be carrying the doctrine of re-examination to an oppressive extent. It would be the same as granting a new trial in every case, and upon every question of fact. Suppose a recovery in another state, or in any foreign court, in an action for a tort, as for an assault and battery, false imprisonment, slander, etc., and the defendant was duly summoned and appeared, and made his

[1] Bartlet v. Knight (1805) 1 Mass. 401, 405; Buttrick v. Allen (1811) 8 Mass. 273; Bissell v. Briggs (1813) 9 Mass. 462, 464; Hall v. Williams (1828) 6 Pick. 232, 238; Gleason v. Dodd (1842) 4 Metc. (Mass.) 333, 336; Wood v. Gamble (1853) 11 Cush. 8; McKim v. Odom (1835) 12 Me. 94, 96; Bank v. Butman (1848) 29 Me. 19, 21; Bryant v. Ela (1815) Smith (N. H.) 396, 404; Thurber v. Blackbourne (1818) 1 N. H. 242; Robinson v. Prescott (1828) 4 N. H. 450; Taylor v. Barron (1855) 10 Fost. (N. H.) 78, 95; King v. Van Gilder (1791) 1 D. Chip. 59; Rathbone v. Terry (1837) 1 R. I. 73, 76; Aldrich v. Kinney (1822) 4 Conn. 380, 382; Hitchcock v. Aicken (1803) 1 Caines, 460; Smith v. Lewis (1808) 3 Johns. 157, 159; Taylor v. Bryden (1811) 8 Johns. 173; Andrews v. Montgomery (1821) 19 Johns. 162, 165; Starbuck v. Murray (1830) 5 Wend. 148, 155; Benton v. Burgot (1823) 10 Serg. & R. 240–242; Barney v. Patterson (1824) 6 Har. & J. 182, 202, 203; Taylor v. Phelps (1827) 1 Har. & G. 492, 503; Rogers v. Coleman (1808) Hardin. 422, 423; Williams v. Preston (1830) 3 J. J. Marsh. 600, 601.

defense, and the trial was conducted orderly and properly, according to the rules of a civilized jurisprudence, is every such case to be tried again here on the merits? I much doubt whether the rule can ever go to this length. The general language of the books is that the defendant must impeach the judgment by showing affirmatively that it was unjust by being irregularly or unfairly procured." But the case was decided upon the ground that the defendant had done no more than raise a doubt of the correctness of the judgment sued on. 8 Johns. 173, 177, 178.

Chancellor Kent, afterwards, treating of the same subject in the first edition of his Commentaries (1827), put the right to impeach a foreign judgment somewhat more broadly, saying: "No sovereign is obliged to execute, within his dominion, a sentence rendered out of it; and, if execution be sought by a suit upon the judgment or otherwise, he is at liberty, in his courts of justice, to examine into the merits of such judgment [for the effect to be given to foreign judgments is altogether a matter of comity, in cases where it is not regulated by treaty]. In the former case [of a suit to enforce a foreign judgment] the rule is that the foreign judgment is to be received, in the first instance, as prima facie evidence of the debt; and it lies on the defendant to impeach the justice of it, or to show that it was irregularly and unduly obtained. This was the principle declared and settled by the house of lords in 1771, in the case of Sinclair v. Fraser, upon an appeal from the court of session in Scotland." In the second edition (1832) he inserted the passages above printed in brackets; and in a note to the fourth edition (1840), after citing recent conflicting opinions in Great Britain, and referring to Mr. Justice Story's reasoning in his Commentaries on the Conflict of Laws (section 607) in favor of the conclusiveness of foreign judgments, he added: "And that is certainly the more convenient and the safest rule, and the most consistent with sound principle, except in cases in which the court which pronounced *180 the judgment has not due jurisdiction of the case, or of the *defendant, or the proceeding was in fraud, or founded in palpable mistake or irregularity, or bad by the law of the rei judicatæ; and in all such cases the justice of the judgment ought to be impeached." 2 Kent, Comm. (1st Ed.) 102; Id. (later Eds.) 120.

Mr. Justice Story, in his Commentaries on the Conflict of Laws, first published in 1834, after reviewing many English authorities, said: "The present inclination of the English courts seems to be to sustain the conclusiveness of foreign judgments,"—to which, in the second edition, in 1841, he added: "Although, certainly, there yet remains no inconsiderable diversity of opinion among the learned judges of the different tribunals." Section 606.

He then proceeded to state his own view of the subject, on principle, saying: "It is, indeed, very difficult to perceive what could be done if a different doctrine were maintainable to the full extent of opening all the evidence and merits of the cause anew on a suit upon the foreign judgment. Some of the witnesses may be since dead; some of the vouchers may be lost or destroyed. The merits of the cause, as formerly before the court upon the whole evidence, may have been decidedly in favor of the judgment; upon a partial possession of the original evidence, they may now appear otherwise. Suppose a case purely sounding in damages, such as an action for an assault, for slander, for conversion of property, for a malicious prosecution, or for a criminal conversation; is the defendant to be at liberty to retry the whole merits, and to make out, if he can, a new case upon new evidence? Or is the court to review the former decision, like a court of appeal, upon the old evidence? In a case of covenant, or of debt, or of a breach of contract, are all the circumstances to be re-examined anew? If they are, by what laws and rules of evidence and principles of justice is the validity of the original judgment to be tried? Is the court to open the judgment, and to proceed ex æquo et bono? Or is it to administer strict law, and stand to the doctrines of the local administration of justice? Is it to act upon the rules of evidence acknowledged in its own jurisprudence, or upon those of the foreign jurisprudence? These and many more questions might be *190 put to *show the intrinsic difficulties of the subject. Indeed, the rule that the judgment is to be prima facie evidence for the plaintiff would be a mere delusion if the defendant might still question it by opening all or any of the original merits on his side; for, under such circumstances, it would be equivalent to granting a new trial. It is easy to understand that the defendant may be at liberty to impeach the original justice of the judgment by showing that the court had no jurisdiction, or that he never had any notice of the suit, or that it was procured by fraud, or that upon its face it is founded in mistake, or that it is irregular and bad by the local law, fori rei judicatæ. To such an extent the doctrine is intelligible and practicable. Beyond this, the right to impugn the judgment is in legal effect the right to retry the merits of the original cause at large, and to put the defendant upon proving those merits." Section 607.

He then observed: "The general doctrine maintained in the American courts in relation to foreign judgments certainly is that they are prima facie evidence, but that they are impeachable. But how far and to what extent this doctrine is to be carried does not seem to be definitely settled. It has been declared that the jurisdiction of the court, and its power over the parties and the things in controversy, may be inquired into; and that the judgment may be impeached for

fraud. Beyond this no definite lines have as yet been drawn." Section 608.

After stating the effect of the constitution of the United States, and referring to the opinions of some foreign jurists, and to the law of France, which allows the merits of foreign judgments to be examined, Mr. Justice Story concluded his treatment of the subject as follows: "It is difficult to ascertain what the prevailing rule is in regard to foreign judgments in some of the other nations of continental Europe,—whether they are deemed conclusive evidence, or only prima facie evidence. Holland seems at all times, upon the general principle of reciprocity, to have given great weight to foreign judgments, and in many cases, if not in all cases, to have given to them a weight equal to that given to domestic judgments, wherever the like rule of reciprocity with regard to Dutch judgments has been adopted by the foreign country whose judgment is brought under review. This is certainly a very reasonable rule, and may perhaps hereafter work itself firmly into the structure of international jurisprudence." Section 618.

In Bradstreet v. Insurance Co. (1839), in the circuit court of the United States for the district of Massachusetts, Mr. Justice Story said: "If a civilized nation seeks to have the sentences of its own courts held of any validity elsewhere, they ought to have a just regard to the rights and usages of other civilized nations, and the principles of public and national law in the administration of justice." 3 Sumn. 600, 608, 609, Fed. Cas. No. 1,793.

In Burnham v. Webster (1845), in an action of assumpsit upon a promissory note, brought in the circuit court of the United States for the district of Maine, the defendant pleaded a former judgment in the province of New Brunswick in his favor in an action there brought by the plaintiff. The plaintiff replied that the note was withdrawn from that suit, by consent of parties and leave of the court, before verdict and judgment; and the defendant demurred to the replication. Judge Ware, in overruling the demurrer, said: "Whatever difference of opinion there may be as to the binding force of foreign judgments, all agree that they are not entitled to the same authority as the judgments of domestic courts of general jurisdiction. They are but evidence of what they purport to decide, and liable to be controlled by counter evidence, and do not, like domestic judgments, import absolute verity, and remain incontrovertible and conclusive until reversed." And he added that, if the question stood entirely clear from authority, he should be of opinion that the plaintiff could not be allowed to deny the validity of the proceedings of a court whose authority he had invoked. 2 Ware, 236, 239, 241, Fed. Cas. No. 2,178.

At a subsequent trial of that case before a jury (1846; 1 Woodb. & M. 172, Fed. Cas. No. 2,179), the defendant proved the judgment in New Brunswick. The plaintiff then offered to prove the facts stated in his replication, and that any entry on the record of the judgment in New Brunswick concerning this note was therefore by mistake or inadventure. This evidence was excluded, and a verdict taken for the plaintiff, subject to the opinion of the court. Mr. Justice Woodbury, in granting a new trial, delivered a thoughtful and discriminating opinion upon the effect of foreign judgments, from which the following passages are taken:

"They do, like domestic ones, operate conclusively, ex proprio vigore, within the governments in which they are rendered, but not elsewhere. When offered and considered elsewhere, they are, ex comitate, treated with respect, according to the nature of the judgment, and the character of the tribunal which rendered it, and the reciprocal mode, if any, in which that government treats our judgments, and according to the party offering it, whether having sought or assented to it voluntarily or not, so as to give it in some degree the force of a contract, and hence to be respected elsewhere by analogy according to the lex loci contractus. With these views I would go to the whole extent of the cases decided by Lords Mansfield and Buller; and where the foreign judgment is not in rem, as it is in admiralty, having the subject-matter before the court, and acting on that rather than the parties, I would consider it only prima facie evidence as between the parties to it." 1 Woodb. & M. 175, Fed. Cas. No. 2,179.

"By returning to that rule, we are enabled to give parties, at times, most needed and most substantial relief, such as in judgments abroad against them without notice, or without a hearing on the merits, or by accident or mistake of facts, as here, or on rules of evidence and rules of law they never assented to, being foreigners and their contracts made elsewhere, but happening to be traveling through a foreign jurisdiction, and being compelled in invitum to litigate there." 1 Woodb. & M. 177, Fed. Cas. No. 2,179.

"Nor would I permit the prima facie force of the foreign judgment to go far if the court was one of a barbarous or semibarbarous government, and acting on no established principles of civilized jurisprudence, and not resorted to willingly by both parties, or both not inhabitants and citizens of the country. Nor can much comity be asked for the judgments of another nation, which, like France, pays no respect to those of other countries, except, as before remarked, on the principle of the parties belonging there or assenting to a trial there." 1 Woodb. & M. 179, Fed. Cas. No. 2,179.

* "On the other hand, by considering a judgment abroad as only prima facie valid, I would not allow the plaintiff abroad, who had sought it there, to avoid it, unless for

accident or mistake, as here, because, in other respects, having been sought there by him voluntarily, it does not lie in his mouth to complain of it. Nor would I in any case permit the whole merits of the judgment recovered abroad to be put in evidence as a matter of course; but, being prima facie correct, the party impugning it, and desiring a hearing of its merits, must show first, specifically, some objection to the judgment's reaching the merits, and tending to prove they had not been acted on; or [as?] by showing there was no jurisdiction in the court, or no notice, or some accident or mistake, or fraud, which prevented a full defense, and has entered into the judgment; or that the court either did not decide at all on the merits, or was a tribunal not acting in conformity to any set of legal principles, and was not willingly recognized by the party as suitable for adjudicating on the merits. After matters like these are proved, I can see no danger, but rather great safety, in the administration of justice, in permitting, to every party before us, at least one fair opportunity to have the merits of his case fully considered, and one fair adjudication upon them, before he is estopped forever." 1 Woodb. & M. 180, Fed. Cas. No. 2,179.

In De Brimont v. Penniman (1873), in the circuit court of the United States for the Southern district of New York, Judge Woodruff said: "The principle on which foreign judgments receive any recognition from our courts is one of comity. It does not require, but rather forbids, it where such a recognition works a direct violation of the policy of our laws, and does violence to what we deem the rights of our citizens." And he declined to maintain an action against a citizen of the United States, whose daughter had been married in France to a French citizen, upon a decree of a French court requiring the defendant, then resident in France, and duly served with process there, to pay an annuity to his son-in-law. 10 Blatchf. 436, 441, Fed. Cas. No. 3,715.

*194 Mr. Justice Story and Chancellor Kent, as appears by the passages above quoted from their Commentaries, concurred in the opinion that, in a suit upon a foreign judgment, the whole merits of the case could not, as matter of course, be re-examined anew, but that the defendant was at liberty to impeach the judgment, not only by showing that the court had no jurisdiction of the case or of the defendant, but also by showing that it was procured by fraud, or was founded on clear mistake or irregularity, or was bad by the law of the place where it was rendered. Story, Confl. Laws, § 607; 2 Kent, Comm. (6th Ed.) 120.

The word "mistake" was evidently used by Story and Kent, in this connection, not in its wider meaning of error in judgment, whether upon the law or upon the facts, but in the stricter sense of misapprehension or oversight, and as equivalent to what, in Burnham v. Webster, before cited, Mr. Justice Woodbury spoke of as "some objection to the judgment's reaching the merits, and tending to prove that they had not been acted on," "some accident or mistake," or "that the court did not decide at all on the merits." 1 Woodb. & M. 180, Fed. Cas. No. 2,179.

The suggestion that a foreign judgment might be impeached for error in law of the country in which it was rendered is hardly consistent with the statement of Chief Justice Marshall, when, speaking of the disposition of this court to adopt the construction given to the laws of a state by its own courts, he said: "This course is founded on the principle, supposed to be universally recognized, that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus, no court in the universe which professed to be governed by principle would, we presume, undertake to say that the courts of Great Britain or of France or of any other nation had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute." Elmendorf v. Taylor (1825) 10 Wheat. 152, 159, 160.

In recent times, foreign judgments rendered within the dominions of the English *195 crown, and under the law of England, after a trial on the merits, and no want of jurisdiction and no fraud or mistake being shown or offered to be shown, have been treated as conclusive by the highest courts of New York, Maine, and Illinois. Lazier v. Westcott (1862) 26 N. Y. 146, 150; Dunstan v. Higgins (1893) 138 N. Y. 70, 74, 33 N. E. 729; Rankin v. Goddard (1866) 54 Me. 28; Id. (1868) 55 Me. 389; Baker v. Palmer (1876) 83 Ill. 568. In two early cases in Ohio it was said that foreign judgments were conclusive, unless shown to have been obtained by fraud. Bank v. Harding (1832) 5 Ohio, 545, 547; Anderson v. Anderson (1837) 8 Ohio, 108, 110. But in a later case in that state it was said that they were only prima facie evidence of indebtedness. Pelton v. Platner (1844) 13 Ohio, 209, 217. In Jones v. Jamison (1860) 15 La. Ann. 35, the decision was only that, by virtue of the statutes of Louisiana, a foreign judgment merged the original cause of action as against the plaintiff.

The result of the modern decisions in England, after much diversity, not to say vacillation, of opinion, does not greatly differ (so far as concerns the aspects in which the English courts have been called upon to consider the subject) from the conclusions of Chancellor Kent and of Justices Story and Woodbury.

At one time it was held that, in an action brought in England upon a judgment obtained by the plaintiff in a foreign country, the judgment must be assumed to be according to the law of that country, unless the contrary was clearly proved; manifestly implying that proof on that point was competent. Becquet v. MacCarthy (1831) 2 Barn. & Adol. 951, 957; Alivon v. Furnival (1834) 1 Cromp., M. & R. 277, 293, 4 Tyrw. 751, 768.

Lord Brougham, in the house of lords, as well as Chief Justice Tindal and Chief Justice Wilde (afterwards Lord Chancellor Truro) and their associates, in the common bench, considered it to be well settled that an Irish or colonial judgment or a foreign judgment was not, like a judgment of a domestic court of record, conclusive evidence, *196 but only, like a *simple contract, prima facie evidence of a debt. Houlditch v. Donegal (1834) 8 Bligh, N. R. 301, 342, 346, 2 Clark & F. 470, 476–479; Don v. Lippmann (1837) 5 Clark & F. 1, 20–22; Smith v. Nicolls (1839) 7 Scott, 147, 166–170, 5 Bing. N. C. 208, 220–224, 7 Dowl. 282; Bank v. Harding (1850) 9 C. B. 661, 686, 687.

On the other hand, Vice Chancellor Shadwell, upon an imperfect review of the early cases, expressed the opinion that a foreign judgment was conclusive. Martin v. Nicolls (1830) 3 Sim. 458.

Like opinions were expressed by Lord Denman, speaking for the court of queen's bench, and by Vice Chancellor Wigram, in cases of Irish or colonial judgments, which were subject to direct appellate review in England. Ferguson v. Mahon (1839) 11 Adol. & E. 179, 183, 3 Perry & D. 143, 146; Henderson v. Henderson (1844) 6 Q. B. 288, 298, 299; Henderson v. Henderson (1843) 3 Hare, 100, 118.

In Bank v. Nias (1851), in an action upon an Australian judgment, pleas that the original promises were not made, and that those promises, if made, were obtained by fraud, were held bad on demurrer. Lord Campbell, in delivering judgment, referred to Story on the Conflict of Laws, and adopted substantially his course of reasoning in section 607, above quoted, with regard to foreign judgments. But he distinctly put the decision upon the ground that the defendant might have appealed to the judicial committee of the privy council, and thus have procured a review of the colonial judgment; and he took the precaution to say: "How far it would be permitted to a defendant to impeach the competency or the integrity of a foreign court from which there was no appeal, it is unnecessary here to inquire." 16 Q. B. 717, 734–737.

The English courts, however, have since treated that decision as establishing that a judgment of any competent foreign court could not, in an action upon it, be questioned, either because that court had mistaken its own law, or because it had come to an erroneous conclusion upon the facts. De Cosse Brissac v. Rathbone (1861) 6 Hurl. & N. 301; Scott v. *Pilkington (1862) 2 Best & S. 11, *197 41, 42; Vanquelin v. Bouard (1863) 15 C. B. (N. S.) 341, 368; Castrique v. Imrie (1870) L. R. 4 H. L. 414, 429, 430; Godard v. Gray (1870) L. R. 6 Q. B. 139, 150; Ochsenbein v. Papelier (1873) 8 Ch. App. 695, 701. In Meyer v. Ralli (1876) a judgment in rem, rendered by a French court of competent jurisdiction, was held to be re-examinable upon the merits, solely because it was admitted by the parties, in the special case upon which the cause was submitted to the English court, to be manifestly erroneous in regard to the law of France. 1 C. P. Div. 358.

In view of the recent decisions in England, it is somewhat remarkable that, by the Indian Code of Civil Procedure of 1877, "no foreign judgment [which is defined as a judgment of "a civil tribunal beyond the limits of British India, and not having authority in British India, nor established by the governor general in council"] shall operate as a bar to a suit in British India," "if it appears on the face of the proceeding to be founded on an incorrect view of international law," or "if it is, in the opinion of the court before which it is produced, contrary to natural justice." Pig. Judgm. (2d Ed.) 380, 381.

It was formerly understood in England that a foreign judgment was not conclusive if it appeared upon its face to be founded on a mistake or disregard of English law. Arnott v. Redfern (1825–26) 2 Car. & P. 88, 3 Bing. 353, and 11 Moore, C. P. 209; Novelli v. Rossi (1831) 2 Barn. & Adol. 757; 3 Burge, Col. Laws, 1065; 2 Smith's Lead. Cas. (2d Ed.) 448; Reimers v. Druce (1856) 23 Beav. 145.

In Simpson v. Fogo (1860) 1 Johns. & H. 18, and Id. (1862) 1 Hem. & M. 195, Vice Chancellor Wood (afterwards Lord Hatherley) refused to give effect to a judgment in personam of a court in Louisiana, which had declined to recognize the title of a mortgagee of an English ship under the English law. In delivering judgment upon demurrer, he said: "The state of Louisiana may deal as it pleases with foreign law; but, if it asks courts of this country to respect its law, it must be on a footing of paying a like respect to ours. Any comity between the courts of two nations holding such *opposite doctrines as to the authority* 198 of the lex loci is impossible. While the courts of Louisiana refuse to recognize a title acquired here, which is valid according to our law, and hand over to their own citizens property so acquired, they cannot at the same time expect us to defer to a rule of their law which we are no more bound to respect than a law that any title of foreigners should be disregarded in favor of citizens of Louisiana. The answer to such a demand must be that a country which pays so little regard to our laws as to set aside a paramount title acquired here must not expect at our hands any greater regard for the title so acquired by the citizens of that country." 1 Johns. & H. 28, 29. And, upon motion for a decree, he elaborated the same view, beginning by saying: "Whether

this judgment does so err or not against the recognized principles of what has been commonly called the comity of nations, by refusing to regard the law of the country where the title to the ship was acquired, is one of the points which I have to consider;" and concluding that it was "so contrary to law, and to what is required by the comity of nations," that he must disregard it. 1 Hem. & M. 222–247. See, also, Credit Co. v. Hunter (1867) L. R. 4 Eq. 62, 68; Id. (1868) 3 Ch. App. 479, 484.

In Scott v. Pilkington (1862) Chief Justice Cockburn treated it as an open question whether a judgment recovered in New York for a debt could be impeached on the ground that the record showed that the foreign court ought to have decided the case according to English law, and had either disregarded the comity of nations by refusing to apply the English law, or erred in its view of English law. 2 Best & S. 11, 42. In Castrique v. Imrie (1870) the French judgment which was adjudged not to be impeachable for error in law, French or English, was, as the house of lords construed it, a judgment in rem, under which the ship to which the plaintiff in England claimed title had been sold. L. R. 4 H. L. 414. In Godard v. Gray (1870) shortly afterwards, in which the court of queen's bench held that a *180 judgment in personam of a French court could not be impeached because it had put a construction erroneous, according to English law, upon an English contract, the decision was put by Justices Blackburn and Mellor upon the ground that it did not appear that the foreign court had "knowingly and perversely disregarded the rights given by the English law," and by Justice Hannen solely upon the ground that the defendant did not appear to have brought the English law to the knowledge of the foreign court. L. R. 6 Q. B. 139, 149, 154. In Messina v. Petrococchino (1872), Sir Robert Phillimore, delivering judgment in the privy council, said: "A foreign judgment of a competent court may, indeed, be impeached if it carries on the face of it a manifest error." L. R. 4 P. C. 144, 157.

The result of the English decisions, therefore, would seem to be that a foreign judgment in personam may be impeached for a manifest and willful disregard of the law of England.

Lord Abinger, Baron Parke, and Baron Alderson were wont to say that the judgment of a foreign court of competent jurisdiction for a sum certain created a duty or legal obligation to pay that sum; or, in Baron Parke's words, that the principle on which the judgments of foreign and colonial courts are supported and enforced was "that, where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained." Russell v. Smyth (1842) 9 Mees. & W. 810, 818, 819; Williams v. Jones (1845) 13 Mees. & W. 628, 633, 634.

But this was said in explaining why, by the technical rules of pleading, an action of assumpsit or of debt would lie upon a foreign judgment, and had no reference to the question how far such a judgment was conclusive of the matter adjudged. At common law, an action of debt would lie on a debt appearing by a record or by any other specialty, such as a contract under seal, and would also lie for a definite sum of money due by simple contract. Assumpsit would not lie upon a record or other specialty; but would lie upon any other contract, whether expressed by the party or implied by law. In an action upon a record, or upon a contract under seal, a lawful consideration was conclusively presumed to exist, and could not be denied; but in an action, whether in debt *200 or in assumpsit, upon a simple contract, express or implied, the consideration was open to inquiry. A foreign judgment was not considered, like a judgment of a domestic court of record, as a record or specialty. The form of action, therefore, upon a foreign judgment, was not in debt, grounded upon a record or a specialty, but was either in debt, as for a definite sum of money due by simple contract, or in assumpsit upon such a contract. A foreign judgment, being a security of no higher nature than the original cause of action, did not merge that cause of action. The plaintiff might sue, either on the judgment or on the original cause of action; and in either form of suit the foreign judgment was only evidence of a liability equivalent to a simple contract, and was therefore liable to be controlled by such competent evidence as the nature of the case admitted. See cases already cited, especially Walker v. Witter, 1 Doug. 1; Phillips v. Hunter, 2 H. Bl. 402, 410; Bissell v. Briggs, 9 Mass. 463, 464; Mills v. Duryee, 7 Cranch, 481, 485; D'Arcy v. Ketchum, 11 How. 165, 176; Hall v. Odber, 11 East, 118; Smith v. Nicolls, 7 Scott, 147, 5 Bing. N. C. 208. See, also, Grant v. Easton, 13 Q. B. Div. 302, 303; Lyman v. Brown, 2 Curt. 559, Fed. Cas. No. 8,627.

Mr. Justice Blackburn, indeed, in determining how far a foreign judgment could be impeached, either for error in law, or for want of jurisdiction, expressed the opinion that the effect of such a judgment did not depend upon what he termed "that which is loosely called 'comity,'" but upon the saying of Baron Parke, above quoted; and consequently "that anything which negatives the existence of that legal obligation, or excuses the defendant from the performance of it, must form a good defense to the action." Godard v. Gray (1870) L. R. 6 Q. B. 139, 148, 149; Schibsby v. Westenholz, Id. 155, 159. And his example has been followed by some other English judges: Fry, J., in Rousillon v. Rousillon (1880) 14 Ch. Div. 351, 370; North, J., in Nouvion v. Freeman (1887) 35 Ch. Div. 704, 714, 715; Cotton and Lindley, L. JJ., in Nouvion v. Freeman (1887) 37 Ch. Div. 244, 250, 256.

*201 *But the theory that a foreign judgment imposes or creates a duty or obligation is a remnant of the ancient fiction, assumed by Blackstone, saying that "upon showing the judgment once obtained still in full force, and yet unsatisfied, the law immediately implies that by the original contract of society the defendant hath contracted a debt, and is bound to pay it." 3 Bl. Comm. 160. That fiction which embraced judgments upon default or for torts cannot convert a transaction wanting the assent of parties into one which necessarily implies it. Louisiana v. Mayor, etc., of City of New Orleans, 109 U. S. 285, 288, 3 Sup. Ct. 211. While the theory in question may help to explain rules of pleading which originated while the fiction was believed in, it is hardly a sufficient guide at the present day in dealing with questions of international law, public or private, and of the comity of our own country, and of foreign nations. It might be safer to adopt the maxim applied to foreign judgments by Chief Justice Weston, speaking for the supreme judicial court of Maine, "Judicium redditur in invitum," or, as given by Lord Coke, "In præsumptione legis judicium redditur in invitum." Jordan v. Robinson (1838) 15 Me. 167, 168; Co. Litt. 248b.

In Russell v. Smyth, above cited, Baron Parke took the precaution of adding: "Nor need we say how far the judgment of a court of competent jurisdiction, in the absence of fraud, is conclusive upon the parties." 9 Mees. & W. 819. He could hardly have contemplated erecting a rule of local procedure into a canon of private international law, and a substitute for "the comity of nations," on which, in an earlier case, he had himself relied as the ground for enforcing in England a right created by a law of a foreign country. Alivon v. Furnival, 1 Cromp., M. & R. 277, 296, 4 Tyrw. 751, 771.

In Abouloff v. Oppenheimer (1882) Lord Coleridge and Lord Justice Brett carefully avoided adopting the theory of a legal obligation to pay a foreign judgment as the test in determining how far such a judgment might be impeached. 10 Q. B. Div. 295, 300, 305. In Hawksford v. Giffard (1886), in the privy council, on appeal from the royal court of Jersey, Lord Herschell said: "This action is brought upon an English judgment, which, until a judgment was obtained in Jersey, was *202 in *that country no more than evidence of a debt." 12 App. Cas. 122, 126. In Nouvion v. Freeman (1889), in the house of lords, Lord Herschell, while he referred to the reliance placed by counsel on the saying of Baron Parke, did not treat a foreign judgment as creating or imposing a new obligation, but only as declaring and establishing that a debt or obligation existed. His words were: "The principle upon which I think our enforcement of foreign judgments must proceed is this: that in a court of competent jurisdiction, where according to its established procedure, the whole merits of the case were open, at all events, to the parties, however much they may have failed to take advantage of them, or may have waived any of their rights, a final adjudication has been given that a debt or obligation exists which cannot thereafter in that court be disputed, and can only be questioned in an appeal to a higher tribunal. In such a case, it may well be said that, giving credit to the courts of another country, we are prepared to take the fact that such adjudication has been made as establishing the existence of the debt or obligation." And Lord Bramwell said: "How can it be said that there is a legal obligation on the part of a man to pay a debt who has a right to say, 'I owe none, and no judgment has established against me that I do?' I cannot see." The foreign judgment in that case was allowed no force, for want of finally establishing the existence of a debt. 15 App. Cas. 1, 9, 10, 14.

In view of all the authorities upon the subject, and of the trend of judicial opinion in this country and in England, following the lead of Kent and Story, we are satisfied that where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, *203 *the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact. The defendants, therefore, cannot be permitted, upon that general ground, to contest the validity or the effect of the judgment sued on.

But they have sought to impeach that judgment upon several other grounds, which require separate consideration.

It is objected that the appearance and litigation of the defendants in the French tribunals were not voluntary, but by legal compulsion, and, therefore, that the French courts never acquired such jurisdiction over the defendants that they should be held bound by the judgment.

Upon the question what should be considered such a voluntary appearance, as to amount to a submission to the jurisdiction of a foreign court, there has been some difference of opinion in England.

In Navigation Co. v. Guillou (1843), in an action at law to recover damages to the plaintiffs' ship by a collision with the defendant's ship through the negligence of the master and crew of the latter, the defendant

pleaded a judgment by which a French court, in a suit brought by him, and after the plaintiffs had been cited, had appeared, and had asserted fault on this defendant's part, had adjudged that it was the ship of these plaintiffs, and not that of this defendant, which was in fault. It was not shown or suggested that the ship of these plaintiffs was in the custody or possession of the French court. Yet Baron Parke, delivering a considered judgment of the court of exchequer (Lord Abinger and Barons Alderson and Rolfe concurring), expressed a decided opinion that the pleas were bad in substance, for these reasons: "They do not state that the plaintiffs were French subjects, or resident or even present in France, when the suit began, so as to be bound, by reason of allegiance or domicile or temporary presence, by a decision of a French court, and they did not select the tribunal and sue as plaintiffs, in any of which cases the determination might have possibly bound them. They *204 were mere strangers, who put forward the negligence of the defendant as an answer, in an adverse suit in a foreign country, whose laws they were under no obligation to obey." 11 Mees. & W. 877, 894, 13 Law J. Exch. 168, 176.

But it is now settled in England that while an appearance by the defendant in a court of a foreign country, for the purpose of protecting his property already in the possession of that court, may not be deemed a voluntary appearance, yet an appearance solely for the purpose of protecting other property in that country from seizure is considered as a voluntary appearance. De Cosse Brissac v. Rathbone (1861) 6 Hurl. & N. 301, 30 Law J. Exch. 238; Schibsby v. Westenholz (1870) L. R. 6 Q. B. 155, 162; Voinet v. Barrett (1885) Cab. & El. 554, 54 Law J. Q. B. 521, and 55 Law J. Q. B. 39.

The present case is not one of a person traveling through or casually found in a foreign country. The defendants, although they were not citizens or residents of France, but were citizens and residents of the state of New York, and their principal place of business was in the city of New York, yet had a storehouse and an agent in Paris, and were accustomed to purchase large quantities of goods there, although they did not make sales in France. Under such circumstances, evidence that their sole object in appearing and carrying on the litigation in the French courts was to prevent property in their storehouse at Paris, belonging to them, and within the jurisdiction, but not in the custody, of those courts, from being taken in satisfaction of any judgment that might be recovered against them, would not, according to our law, show that those courts did not acquire jurisdiction of the persons of the defendants.

It is next objected that in those courts one of the plaintiffs was permitted to testify not under oath, and was not subjected to cross-examination by the opposite party, and that the defendants were therefore deprived of safeguards which are by our law considered essential to secure honesty and to detect fraud in a witness; and also that documents and papers were admitted in evidence, with *205 which the defendants had no connection, and which would not be admissible under our own system of jurisprudence. But it having been shown by the plaintiffs, and hardly denied by the defendants, that the practice followed and the method of examining witnesses were according to the laws of France, we are not prepared to hold that the fact that the procedure in these respects differed from that of our own courts is, of itself, a sufficient ground for impeaching the foreign judgment.

It is also contended that a part of the plaintiffs' claim is affected by one of the contracts between the parties having been made in violation of the revenue laws of the United States, requiring goods to be invoiced at their actual market value. Rev. St. § 2854. It may be assumed that, as the courts of a country will not enforce contracts made abroad in evasion or fraud of its own laws, so they will not enforce a foreign judgment upon such a contract. Armstrong v. Toler, 11 Wheat. 258; De Brimont v. Penniman, 10 Blatchf. 436, Fed. Cas. No. 3,715; Lang v. Holbrook, Crabbe, 179, Fed. Cas. No. 8,057; Story, Confl. Laws, §§ 244, 246; Whart. Confl. Laws, § 656. But as this point does not affect the whole claim in this case, it is sufficient, for present purposes, to say that there does not appear to have been any distinct offer to prove that the invoice value of any of the goods sold by the plaintiffs to the defendants was agreed between them to be, or was, in fact, lower than the actual market value of the goods.

It must, however, always be kept in mind that it is the paramount duty of the court before which any suit is brought to see to it that the parties have had a fair and impartial trial, before a final decision is rendered against either party.

When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and *206 formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that

by the principles of international law, and by the comity of our own country, it should not be given full credit and effect.

There is no doubt that both in this country, as appears by the authorities already cited, and in England, a foreign judgment may be impeached for fraud.

Shortly before the Declaration of Independence, the house of lords, upon the trial of the Duchess of Kingston for bigamy, put to the judges the question whether—assuming a sentence of the ecclesiastical court against a marriage, in a suit for jactitation of marriage, to be conclusive evidence so as to prevent the counsel for the crown from proving the marriage upon an indictment for polygamy—"the counsel for the crown may be admitted to avoid the effect of such sentence by proving the same to have been obtained by fraud or collusion." Chief Justice De Grey, delivering the opinion of the judges, which was adopted by the house of lords, answering this question in the affirmative, said: "But if it was a direct and decisive sentence upon the point, and, as it stands, to be admitted as conclusive evidence upon the court, and not to be impeached from within, yet, like all other acts of the highest judicial authority, it is impeachable from without. Although it is not permitted to show that the court was mistaken, it may be shown that they were misled. Fraud is an intrinsic collateral act, which vitiates the most solemn proceedings of courts of justice. Lord Coke says it avoids all judicial acts, ecclesiastical or temporal." 20 How. State Tr. 537, 543, note, 2 Smith, Lead. Cas. 573.

All the subsequent English authorities concur in holding that any foreign judgment, whether in rem or in personam may be impeached upon the ground that it was fraudulently obtained. White v. Hall (1806) 12 Ves. 321, 324; Bowles v. Orr (1835) 1 Younge & C. Exch. 464, 473; Price v. Dewhurst (1837) 8 Sim. 279, 302–305; Don v. Lippmann (1837) 5 Clark & F. *1, 20; Bank v. Nias (1851) 16 Q. B. 717, 735; Reimers v. Druce (1856) 23 Beav. 145, 150; Castrique v. Imrie (1870) L. R. 4 H. L. 414, 445, 446; Godard v. Gray (1870) L. R. 6 Q. B. 139, 149; Messina v. Petrococchino (1872) L. R. 4 P. C. 144, 157; Ochsenbein v. Papelier (1873) 8 Ch. App. 695.

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Under what circumstances this may be done does not appear to have ever been the subject of judicial investigation in this country.

It has often, indeed, been declared by this court that the fraud which entitles a party to impeach the judgment of one of our own tribunals must be fraud extrinsic to the matter tried in the cause, and not merely consist in false and fraudulent documents or testimony submitted to that tribunal, and the truth of which was contested before it and passed upon by it. U. S. v. Throckmorton, 98 U. S. 61, 65, 66; Vance v. Burbank, 101 U. S. 514, 519; Steel v. Refining Co., 106 U. S. 447, 453, 1 Sup. Ct. 389; Moffat v. U. S., 112 U. S. 24, 32, 5 Sup. Ct. 10; U. S. v. Minor, 114 U. S. 233, 242, 5 Sup. Ct. 836. And in one English case, where a ship had been sold under a foreign judgment, the like restriction upon impeaching that judgment for fraud was suggested; but the decision was finally put upon the ground that the judicial sale passed the title to the ship. Cammell v. Sewell (1858–60) 3 Hurl. & N. 617, 646, 5 Hurl. & N. 728, 729, 742.

But it is now established in England, by well-considered and strongly-reasoned decisions of the court of appeal, that foreign judgments may be impeached, if procured by false and fraudulent representations and testimony of the plaintiff, even if the same question of fraud was presented to and decided by the foreign court.

In Abouloff v. Oppenheimer (1882) the plaintiff had recovered a judgment at Tiflis, in Russia, ordering the defendants to return certain goods, or to pay their value. The defendants appealed to a higher Russian court, which confirmed the judgment, and ordered the defendants to pay, besides the sum awarded below, an additional sum for costs and expenses. In an action in the English high court of justice upon those judgments, the defendants pleaded that they were obtained by the gross fraud of the plaintiff, in fraudulently representing to the Russian courts that the goods in question were not in her possession when the suit was commenced, and when the judgment was given, and during the whole time the suit was pending; and by fraudulently concealing from those courts the fact that those goods, as the fact was, and as she well knew, were in her actual possession. A demurrer to this plea was overruled, and judgment entered for the defendants. And that judgment was affirmed in the court of appeal by Lord Chief Justice Coleridge, Lord Justice Baggallay, and Lord Justice Brett, all of whom delivered concurring opinions, the grounds of which sufficiently appear in the opinion delivered by Lord Justice Brett (since Lord Esher, M. R.), who said: "With regard to an action brought upon a foreign judgment, the whole doctrine as to fraud is English, and is to be applied in an action purely English. I am prepared to hold, according to the judgment of the house of lords adopting the proposition laid down by De Grey, C. J., that if the judgment upon which the action is brought was procured from the foreign court by the successful fraud of the party who is seeking to enforce it, the action in the English court will not lie. This proposition is absolute, and without any limitation, and, as the lord chief justice has pointed out, is founded on the doctrine that no party in an English court shall be able to take advantage of his own wrongful act, or, as it may be stated in other language, that no obligation can be enforced in an English court of justice which has been procured by the fraud of the person relying upon it as an obligation." "I will assume that in the suit in the Russian courts the plaintiff's fraud was al-

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leged by the defendants, and that they gave evidence in support of the charge. I will assume, even, that the defendants gave the very same evidence which they propose to adduce in this action. Nevertheless, the defendants will not be debarred at the trial of this action from making the same charge of fraud and from adducing the same evidence in support of it; and if the high court of justice is *209 satisfied that the allegations of the defendants are true, and *that the fraud was committed, the defendants will be entitled to succeed in the present action. It has been contended that the same issue ought not to be tried in an English court which was tried in the Russian courts, but I agree that the question whether the Russian courts were deceived never could be an issue in the action tried before them." "In the present case, we have had to consider the question fully; and, according to the best opinion which I can form, fraud committed by a party to a suit, for the purpose of deceiving a foreign court, is a defense to an action in this country, founded upon the judgment of that foreign court. It seems to me that, if we were to accede to the argument for the plaintiff, the result would be that a plausible deceiver would succeed, whereas a deceiver who is not plausible would fail. I cannot think that plausible fraud ought to be upheld in any court of justice in England. I accept the whole doctrine, without any limitation, that whenever a foreign judgment has been obtained by the fraud of the party relying upon it, it cannot be maintained in the courts of this country; and, further, that nothing ought to persuade an English court to enforce a judgment against one party, which has been obtained by the fraud of the other party to the suit in the foreign court." 10 Q. B. Div. 295, 305–308.

The same view was affirmed and acted on in the same court by Lords Justices Lindley and Bowen in Vadala v. Lawes (1890) 25 Q. B. Div. 310, 317–320, and by Lord Esher and Lord Justice Lopes in Crozat v. Brogden [1894] 2 Q. B. 30, 34, 35.

In the case at bar the defendants offered to prove, in much detail, that the plaintiffs presented to the French court of first instance and to the arbitrator appointed by that court, and upon whose report its judgment was largely based, false and fraudulent statements and accounts against the defendants, by which the arbitrator and the French courts were deceived and misled, and their judgments were based upon such false and fraudulent statements and accounts. This offer, if satisfactorily proved, would, according to the decisions of the English court of appeal in Abouloff v. *210 Oppenheimer, Vadala v. Lawes, and Crozat v. Brogden, above cited, *be a sufficient ground for impeaching the foreign judgment, and examining into the merits of the original claim.

But whether those decisions can be followed in regard to foreign judgments, consistently with our own decisions as to impeaching domestic judgments for fraud, it is unnecessary in this case to determine, because there is a distinct and independent ground upon which we are satisfied that the comity of our nation does not require us to give conclusive effect to the judgments of the courts of France; and that ground is the want of reciprocity, on the part of France, as to the effect to be given to the judgments of this and other foreign countries.

In France, the royal ordinance of June 15, 1629 (article 121), provided as follows: "Judgments rendered, contracts or obligations recognized, in foreign kingdoms and sovereignties, for any cause whatever, shall have no lien or execution in our kingdom. Thus the contracts shall stand for simple promises; and, notwithstanding the judgments, our subjects against whom they have been rendered may contest their rights anew before our judges." Touillier, Droit Civil, lib. 3, tit. 3, c. 6, § 3, No. 77.

By the French Code of Civil Procedure (article 546), "judgments rendered by foreign tribunals, and acts acknowledged before foreign officers, shall not be capable of execution in France, except in the manner and in the cases provided by articles 2123 and 2128 of the Civil Code," which are as follows: By article 2123, "a lien cannot arise from judgments rendered in a foreign country, except so far as they have been declared executory by a French tribunal; without prejudice to provisions to the contrary which may exist in public laws and treaties." By article 2128, "contracts entered into in a foreign country cannot give a lien upon property in France, if there are no provisions contrary to this principle in public laws or in treaties." Touillier, ubi supra, No. 84.

The defendants, in their answer, cited the above provisions of the statutes of France, and alleged, and at the trial offered to prove, that *211 by the construction given to *these statutes by the judicial tribunals of France, when the judgments of tribunals of foreign countries against the citizens of France are sued upon in the courts of France, the merits of the controversies upon which those judgments are based are examined anew, unless a treaty to the contrary effect exists between the republic of France and the country in which such judgment is obtained (which is not the case between the republic of France and the United States), and that the tribunals of the republic of France give no force and effect, within the jurisdiction of that country, to the judgments duly rendered by courts of competent jurisdiction of the United States against citizens of France after proper personal service of the process of those courts has been made thereon in this country. We are of opinion that this evidence should have been admitted.

In Odwin v. Forbes (1817) President Henry, in the court of Demerara, which was governed by the Dutch law, and was, as he remarked, "a tribunal foreign to and independent of that of England," sustained a plea of an English certificate in bankruptcy, upon these grounds: "It is

a principle of their law, and laid down particularly in the ordinances of Amsterdam," "that the same law shall be exercised towards foreigners in Amsterdam as is exercised with respect to citizens of that state in other countries; and upon this principle of reciprocity, which is not confined to the city of Amsterdam, but pervades the Dutch laws, they have always given effect to the laws of that country which has exercised the same comity and indulgence in admitting theirs;" "that the Dutch bankrupt laws proceed on the same principles as those of the English; that the English tribunals give effect to the Dutch bankrupt laws; and that, on the principle of reciprocity and mutual comity, the Dutch tribunals, according to their own ordinances, are bound to give effect to the English bankrupt laws when duly proved, unless there is any express law or ordinance prohibiting their admission." And his judgment was affirmed in the privy council on appeal. Case of Odwin v. Forbes, pp. 89, 159–161, 173–176; Id. (1817) Buck, 57, 64.

*212 *President Henry, at page 76 of his Treatise on Foreign Law, published as a preface to his report of that case, said: "This comity, in giving effect to the judgments of other tribunals, is generally exercised by states under the same sovereign, on the ground that he is the fountain of justice in each, though of independent jurisdiction; and it has also been exercised in different states of Europe with respect to foreign judgments, particularly in the Dutch states, who are accustomed by the principle of reciprocity to give effect in their territories to the judgments of foreign states, which show the same comity to theirs; but the tribunals of France and England have never exercised this comity to the degree that those of Holland have, but always required a fresh action to be brought, in which the foreign judgment may be given in evidence. As this is a matter of positive law and internal policy in each state, no opinion need be given. Besides, it is a mere question of comity, and perhaps it might be neither politic nor prudent, in two such great states, to give indiscriminate effect to the judgment of each other's tribunals, however the practice might be proper or convenient in federal states, or those under the same sovereign."

It was that statement which appears to have called forth the observations of Mr. Justice Story, already cited: "Holland seems at all times, upon the general principle of reciprocity, to have given great weight to foreign judgments; and in many cases, if not in all cases, to have given to them a weight equal to that given to domestic judgments, wherever the like rule of reciprocity with regard to Dutch judgments has been adopted by the foreign country whose judgment is brought under review. This is certainly a very reasonable rule, and may, perhaps, hereafter work itself firmly into the structure of international jurisprudence." Story, Confl. Laws, § 618.

This rule, though never either affirmed or denied by express adjudication in England or America, has been indicated, more or less distinctly, in several of the authorities already cited.

Lord Hardwicke threw out a suggestion that the credit to be given by one court to the judgment of a foreign court *213 might well be affected by "their proceeding both by the same rules of law." Otway v. Ramsay, 4 Barn. & C. 414–416, note.

Lord Eldon, after saying that "natural law" (evidently intending the law of nations) "requires the courts of this country to give credit to those of another for the inclination and power to do justice," added that, "if it appears in evidence that persons suing under similar circumstances neither had met nor could meet with justice, that fact cannot be immaterial as an answer to the presumption." Wright v. Simpson, 6 Ves. 714, 730.

Lord Brougham, presiding as lord chancellor in the house of lords, said: "The law, in the course of procedure abroad, sometimes differs so mainly from ours in the principles upon which it is bottomed that it would seem a strong thing to hold that our courts were bound conclusively to give execution to the sentence of foreign courts, when, for aught we know, there is not any one of those things which are reckoned the elements or the corner stones of the due administration of justice present to the procedure in these foreign courts." Houlditch v. Donegal, 8 Bligh, N. R. 301, 338.

Chief Justice Smith, of New Hampshire, in giving reasons why foreign judgments or decrees, founded on the municipal laws of the state in which they are pronounced, are not conclusive evidence of debt, but prima facie evidence only, said: "These laws and regulations may be unjust, partial to citizens, and against foreigners; they may operate injustice to our citizens, whom we are bound to protect; they may be, and the decisions of courts founded on them, just cause of complaint against the supreme power of the state where rendered. To adopt them is not merely saying that the courts have decided correctly on the law, but it is approbating the law itself." Bryant v. Ela, Smith (N. H.) 396, 404.

Mr. Justice Story said: "If a civilized nation seeks to have the sentences of its own courts of any validity elsewhere, they ought to have a just regard to the rights and usages of other civilized nations, and the principles of public and national law in the administration of justice." Bradstreet v. Insurance Co., 3 Sumn. 600, 608, Fed. Cas. No. 1,793.

*214 *Mr. Justice Woodbury said that judgments in personam, rendered under a foreign government, "are, ex comitate, treated with respect, according to the nature of the judgment and the character of the tribunal which rendered it, and the reciprocal mode, if any, in which that government treats our judgments"; and added, "nor can much comity be asked for the judgments of another nation which, like France, pays no respect to those

of other countries." Burnham v. Webster, 1 Woodb. & M. 172, 175, 179, Fed. Cas. No. 2,179.

Mr. Justice Cooley said: "True comity is equality. We should demand nothing more and concede nothing less." McEwan v. Zimmer, 38 Mich. 765, 769.

Mr. Wheaton said: "There is no obligation, recognized by legislators, public authorities, and publicists, to regard foreign laws; but their application is admitted only from considerations of utility and the mutual convenience of states (ex comitate, ob reciprocam utilitatem)." "The general comity, utility, and convenience of nations have, however, established a usage among most civilized states, by which the final judgments of foreign courts of competent jurisdiction are reciprocally carried into execution." Wheat. Int. Law (8th Ed.) §§ 79, 147.

Since Story, Kent, and Wheaton wrote their commentaries, many books and essays have been published upon the subject of the effect to be allowed by the courts of one country to the judgments of another, with references to the statutes and decisions in various countries. Among the principal ones are Foelix, Droit International Privé (4th Ed., by Demangeat, 1866) lib. 2, tits. 7, 8; Moreau, Effets Internationaux des Jugements (1884); Pig. Judgm. (2d Ed., 1884); Constant, De l'Execution des Jugements Etrangers (2d Ed., 1890), giving the text of the articles of most of the modern codes upon the subject, and of French treaties with Italian, German, and Swiss states; and numerous papers in Clunet's Journal de Droit International Privé, established in 1874, and continued to the present time. For the reasons stated at the outset of this opinion, we have not thought it
*215 important to state the conflicting theories of *continental commentators and essayists as to what each may think the law ought to be, but have referred to their works only for evidence of authoritative declarations, legislative or judicial, of what the law is.

By the law of France, settled by a series of uniform decisions of the court of cassation, the highest judicial tribunal, for more than half a century, no foreign judgment can be rendered executory in France without a review of the judgment au fond (to the bottom), including the whole merits of the cause of action on which the judgment rests. Pard. Droit Commer. § 1488; Bard, Précis de Droit International (1883) Nos. 234–239; Story, Confl. Laws, §§ 615–617; Pig. Judgm. 452; Westl. Priv. Int. Law (3d Ed., 1890) 350.

A leading case was decided by the court of cassation on April 19, 1819, and was as follows: A contract of partnership was made between Holker, a French merchant, and Parker, a citizen of the United States. Afterwards, and before the partnership accounts were settled, Parker came to France, and Holker sued him in the tribunal of commerce of Paris. Parker excepted on the ground that he was a foreigner, not domiciled in France, and obtained a judgment, affirmed on appeal, remitting the matter to the American courts (obtint son renvoi devant les tribunaux Americains). Holker then sued Parker in the circuit court of the United States for the district of Massachusetts, and in 1814 obtained a judgment there ordering Parker to pay him $529,949. One branch of the controversy had been brought before this court in 1813. Holker v. Parker, 7 Cranch, 436. Holker, not being able to obtain execution of that judgment in America, because Parker had no property there and continued to reside in Paris, obtained from a French judge an order declaring the judgment executory. Upon Parker's application to nullify the proceeding, the royal court of Paris, reversing the judgment of a lower court, set aside that order, assigning these reasons: "Considering that judgments rendered by foreign courts have
*216 neither effect nor authority in France; that *this rule is doubtless more particularly applicable in favor of Frenchmen, to whom the king and his officers owe a special protection, but that the principle is absolute, and may be invoked by all persons, without distinction, being founded on the independence of states; that the ordinance of 1629, in the beginning of its article 121, lays down the principle in its generality when it says that judgments rendered in foreign kingdoms and sovereignties, for any cause whatever, shall have no execution in the kingdom of France, and that the Civil Code, art. 2123, gives to this principle the same latitude when it declares that a lien cannot result from judgments rendered in a foreign country, except so far as they have been declared executory by a French tribunal, (which is not a matter of mere form, like the granting in past times of a pareatis from one department to another for judgments rendered within the kingdom, but which assumes, on the part of the French tribunals, a cognizance of the cause, and a full examination of the justice of the judgment presented for execution, as reason demands, and that this has always been practiced in France, according to the testimony of our ancient authorities); that there may result from this an inconvenience, where the debtor, as is asserted to have happened in the present case, removes his property and his person to France, while keeping his domicile in his native country; that it is for the creditor to be watchful, but that no consideration can impair a principle on which rests the sovereignty of governments, and which, whatever be the case, must preserve its whole force." The court therefore adjudged that, before the tribunal of first instance, Holker should state the grounds of his action, to be contested by Parker, and to be determined by the court upon cognizance of the whole cause. That judgment was confirmed, upon deliberate consideration, by the court of cassation, for the reasons that

the ordinance of 1629 enacted, in absolute terms and without exception, that foreign judgments should not have execution in France; that it was only by the Civil Code and the Code of Civil Procedure that the French tribunals had been authorized to declare them executory; that, therefore, the *217 ordinance of 1629 had no application; that the articles of the Codes referred to did not authorize the courts to declare judgments rendered in a foreign country executory in France without examination; that such an authorization would be as contrary to the institution of the courts as would be the award or the refusal of execution arbitrarily and at will, would impeach the right of sovereignty of the French government, and was not in the intention of the legislature; and that the Codes made no distinction between different judgments rendered in a foreign country, and permitted the judges to declare them all executory, and therefore those judgments, whether against a Frenchman or against a foreigner, were subject to examination on the merits. Holker v. Parker, Merlin, Questions de Droit, Jugement, § 14, No. 2.

The court of cassation has ever since constantly affirmed the same view. Moreau, No. 106, note, citing many decisions; Clunet, 1882, p. 166. In Clunet, 1894, p. 913, note, it is said to be "settled by judicial decisions (il est de jurisprudence) that the French courts are bound, in the absence of special diplomatic treaties, to proceed to the revision on the whole merits (au fond) of foreign judgments, execution of which is demanded of them"; citing, among other cases, a decision of the court of cassation on February 2, 1892, by which it was expressly held to result from the articles of the Codes above cited "that judgments rendered in favor of a foreigner against a Frenchman, by a foreign court, are subject, when execution of them is demanded in France, to the revision of the French tribunals which have the right and the duty to examine them, both as to the form and as to the merits." Sirey, 1892, 1, 201.

In Belgium the Code of Civil Procedure of 1876 provides that, if a treaty on the basis of reciprocity be in existence between Belgium and the country in which the foreign judgment has been given, the examination of the judgment in the Belgian courts shall bear only upon the questions whether it "contains nothing contrary to public order, to the principles of the Belgian public order"; whether, by the law of the country in which it was rendered, it has the force *218 of res judicata; whether the copy is duly authenticated; whether the defendant's rights have been duly respected; and whether the foreign court is not the only competent court, by reason of the nationality of the plaintiff. Where, as is the case between Belgium and France, there is no such treaty, the Belgian court of cassation holds that the foreign judgment may be re-examined upon the merits. Constant, 111, 116; Moreau, No. 189; Clunet, 1887, p. 217; Id. 1888, p. 837; Pig. Judgm. 439. And in a very recent case the civil tribunal of Brussels held that, "considering that the right of revision is an emanation of the right of sovereignty; that it proceeds from the imperium, and that as such it is within the domain of public law; that from that principle it manifestly follows that, if the legislature does not recognize executory force in foreign judgments where there exists no treaty upon the basis of reciprocity, it cannot belong to the parties to substitute their will for that of the legislature, by arrogating to themselves the power of delegating to the foreign judge a portion of sovereignty." Clunet, 1894, pp. 164, 165.

In Holland the effect given to foreign judgments has always depended upon reciprocity, but whether by reason of Dutch ordinances only, or of general principles of jurisprudence, does not clearly appear. Odwin v. Forbes, and Hen. For. Law, above cited; Story, Confl. Laws, § 618; Foelix, No. 397, note; Clunet, 1879, p. 369; 1 Ferg. Int. Law, 85; Constant, 171; Moreau, No. 213.

In Denmark the courts appear to require reciprocity to be shown before they will execute a foreign judgment. Foelix, Nos. 328, 345; Clunet, 1891, p. 987; Westl. Priv. Int. ubi supra. In Norway the courts re-examine the merits of all foreign judgments, even of those of Sweden. Foelix, No. 401; Pig. Judgm. 504, 505; Clunet, 1892, p. 296. In Sweden the principle of reciprocity has prevailed from very ancient times. The courts give no effect to foreign judgments, unless upon that principle; and it is doubtful whether they will even then, unless reciprocity is secured by treaty with the country in which the judgment was rendered. Foelix, No. 400; Olivecrona, in Clunet, 1880, p. 83; Constant, 191; Moreau, No. 222; Pig. Judgm. 503; Westl. Priv. Int. ubi supra. *210

In the empire of Germany, as formerly in the states which now form part of that empire, the judgments of those states are mutually executed, and the principle of reciprocity prevails as to the judgments of other countries. Foelix, Nos. 328, 331, 333–341; Moreau, Nos. 178, 179; Vierhaus, in Pig. Judgm. 460–474; Westl. Priv. Int. ubi supra. By the German Code of 1877, "compulsory execution of the judgment of a foreign court cannot take place, unless its admissibility has been declared by a judgment of exequatur"; "the judgment of exequatur is to be rendered without examining whether the decision is conformable to law"; but it is not to be granted "if reciprocity is not guaranteed." Constant, 79–81; Pig. Judgm. 466. The reichsgericht, or imperial court, in a case reported in full in Pig. Judgm., has held that an English judgment cannot be executed in Germany, because, the court said, the German courts, by the Code, when

they execute foreign judgments at all, are "bound to the unqualified recognition of the legal validity of the judgments of foreign courts," and "it is therefore an essential requirement of reciprocity that the law of the foreign state should recognize in an equal degree the legal validity of the judgments of German courts, which are to be enforced by its courts, and that an examination of their legality, both as regards the material justice of the decision as to matters of fact or law, and with respect to matters of procedure, should neither be required as a condition of their execution, by the court ex officio, nor be allowed by the admission of pleas which might lead to it." Pig. Judgm. 470, 471. See, also, Clunet, 1882, p. 35; Id. 1883, p. 246; Id. 1884, p. 600.

In Switzerland, by the federal constitution, civil judgments in one canton are executory throughout the republic. As to foreign judgments, there is no federal law, each canton having its own law upon the subject. But in the German cantons, and in some of the other cantons, foreign judgments are executed according to the rule of reciprocity only. Constant, 193–204; Pig. Judgm. 505–516; Clunet, 1887, p. 762; Westl. Priv. Int. ubi supra. The law upon this subject has been clearly stated by Brocher, president of the court of cassation of Geneva, and professor of law in the university there. In his Nouveau Traité de Droit International Privé (1876) § 174, treating of the question whether "it might not be convenient that states should execute, without reviewing their merits, judgments rendered on the territory of each of them respectively," he says: "It would certainly be advantageous for the parties interested to avoid the delays, the conflicts, the differences of opinion, and the expenses resulting from the necessity of obtaining a new judgment in each locality where they should seek execution. There might thence arise, for each sovereignty, a juridical or moral obligation to lend a strong hand to foreign judgments. But would not such an advantage be counterbalanced, and often surpassed, by the dangers that might arise from that mode of proceeding? There is here, we believe, a question of reciprocal appreciation and confidence. One must, at the outset, inquire whether the administration of the foreign judiciary, whose judgments it is sought to execute without verifying their merits, presents sufficient guaranties. If the propriety of such an execution be admitted, there is ground for making it the object of diplomatic treaties. That form alone can guaranty the realization of a proper reciprocity. It furnishes, moreover, to each state, the means of acting upon the judicial organization and procedure of other states." In an article in the Journal, after a review of the Swiss decisions, he recognizes and asserts that "it comes within the competency of each canton to do what seems to it proper in such matters." Clunet, 1879, pp. 88, 94. And in a later treatise he says: "We cannot admit that the recognition of a state as sovereign ought necessarily to have as a consequence the obligation of respecting and executing the judicial decisions rendered by its tribunals. In strict right, the authority of such acts does not extend beyond the frontier. Each sovereignty possesses in particular, and more or less in private, the territory subject to its power. No other can exercise there an act of its authority. This territorial independence finds itself, in principle, directly included in the very act by which one nation recognizes a foreign state as a sovereign; but there cannot result therefrom a promise to adopt, and to cause to be executed upon the national territory, judgments rendered by the officials of the foreign state, whoever they may be. That would be an abdication of its own sovereignty; and would bind it in such sort as to make it an accomplice in acts often injurious, and in some cases even criminal. Such obligations suppose a reciprocal confidence. They are not undertaken, moreover, except upon certain conditions, and by means of a system of regulations intended to prevent or to lessen the dangers which might result from them." 3 Cours de Droit International Privé (1885) 126, 127.

In Russia, by the Code of 1864, "the judgments of foreign tribunals shall be rendered executory according to the rules established by reciprocal treaties and conventions," and, where no rules have been established by such treaties, are to be "put in execution in the empire only after authorization granted by the courts of the empire"; and "in deciding upon demands of this kind the courts do not examine into the foundation of the dispute adjudged by the foreign tribunals, but decide only whether the judgment does not contain dispositions which are contrary to the public order, or which are not permitted by the laws of the empire." Constant, 183–185. Yet a chamber of the senate of St. Petersburg, sitting as a court of cassation, and the highest judicial tribunal of the empire in civil matters, has declined to execute a French judgment upon the grounds that, by the settled law of Russia, "it is a principle in the Russian empire that only the decisions of the authorities to whom jurisdiction has been delegated by the sovereign power have legal value by themselves and of full right," and that, "in all questions of international law, reciprocity must be observed and maintained as a fundamental principle." Adam v. Schipoff, Clunet, 1884, pp. 45, 46, 134. And Prof. Englemann, of the Russian University of Dorpat, in an able essay, explaining that and other Russian decisions, takes the following view of them: "The execution of a treaty is not the only proof of reciprocity." "It is necessary to commit the ascertainment of the existence of reciprocity to the judicial tribu-

nals, for the same reasons for which there is conferred upon them the right to settle all questions incident to the cause to be adjudged. The existence of reciprocity between two states ought to be proved in the same manner as all the positive facts of the case." "It is true that the principle of reciprocity is a principle not of right, but of policy, yet the basis of the principle of all regular and real policy is also the fundamental principle of right, and the point of departure of all legal order,—the suum cuique. This last principle comprehends right, reciprocity, utility, and reciprocity is the application of right to policy." "Let this principle be applied wherever there is the least guaranty or even a probability of reciprocity, and the cognizance of this question be committed to the judicial tribunals, and one will arrive at important results, which, on their side, will touch the desired end,—international accord. But for this it is indispensable that the application of this principle should be intrusted to judicial tribunals, accustomed to decide affairs according to right, and not to administrative authorities, which look above all to utility, and are accustomed to be moved by political reasons, intentions, and even passions." Clunet, 1884, pp. 120–122. But it would seem that no foreign judgment will be executed in Russia unless reciprocity is secured by treaty. Clunet, 1884, pp. 46, 113, 139, 140, 602.

In Poland the provisions of the Russian Code are in force; and the court of appeal of Warsaw has decided that where there is no treaty the judgments of a foreign country cannot be executed, because, "in admitting a contrary conclusion, there would be impugned one of the cardinal principles of international relations, namely, the principle of reciprocity, according to which each state recognizes juridical rights and relations, originating or established in another country, only in the measure in which the latter, in its turn, does not disregard the rights and relations existing in the former." Clunet, 1884, pp. 494, 495.

In Roumania it is provided by Code that "judicial decisions rendered in foreign countries cannot be executed in Roumania, except in the same manner in which Roumanian judgments are executed in the country in question, and provided they are declared executory by competent Roumanian judges"; and this article seems to be held to require legislative reciprocity. Moreau, No. 219; Clunet, 1879, p. 351; Id. 1885, p. 537; Id. 1891, p. 452; Pig. Judgm. 495.

In Bulgaria, by a resolution of the supreme court in 1881, "the Bulgarian judges should, as a general rule, abstain from entering upon the merits of the foreign judgment. They ought only to inquire whether the judgment submitted to them does not contain dispositions contrary to the public order and to the Bulgarian laws." Constant, 129, 130; Clunet, 1886, p. 570. This resolution closely follows the terms of the Russian Code, which, as has been seen, has not precluded applying the principle of reciprocity.

In Austria the rule of reciprocity does not rest upon any treaty or legislative enactment, but has been long established, by imperial decrees and judicial decisions, upon general principles of jurisprudence. Foelix, No. 331; Constant, 100–108; Moreau, No. 185; Weiss, Traité de Droit International (1886) 980; Clunet, 1891, p. 1003; Id. 1894, p. 908; Pig. Judgm. 434. In Hungary, the same principles were always followed as in Austria; and reciprocity has been made a condition by a law of 1880. Constant, 109; Moreau, No. 186, and note; Pig. Judgm. 436; Weiss, ubi supra.

In Italy, before it was united into one kingdom, each state had its own rules. In Tuscany and in Modena, in the absence of treaty, the whole merits were reviewed. In Parma, as by the French ordinance of 1629, the foreign judgment was subject to fundamental revision, if against a subject of Parma. In Naples the Code and the decisions followed those of France. In Sardinia the written laws required above all the condition of reciprocity, and if that condition was not fulfilled the foreign judgment was re-examinable in all respects. Fiore, Effetti Internazionali delle Sentenze (1875) 40–44; Moreau, No. 204. In the papal states, by a decree of the pope in 1820, "the exequatur shall not be granted, except so far as the judgments rendered in the states of his holiness shall enjoy the same favor in the foreign countries; this reciprocity is presumed, if there is no particular reason to doubt it." Toullier, Droit Civil, lib. 3, tit. 3, c. 6, § 3, No. 93. And see Foelix, No. 343; Westl. Priv. Int. ubi supra. In the kingdom of Italy, by the Code of Procedure of 1865, "executory force is given to the judgments of foreign judicial authorities by the court of appeal in whose jurisdiction they are to be executed, by obtaining a judgment on an exequatur in which the court examines (a) if the judgment has been pronounced by a competent judicial authority; (b) if it has been pronounced, the parties being regularly cited; (c) if the parties have been legally represented or legally defaulted; (d) if the judgment contains dispositions contrary to public order or to the internal public law of the realm." Constant, 157. In 1874 the court of cassation of Turin, "considering that in international relations is admitted the principle of reciprocity, as that which has its foundation in the natural reason of equality of treatment, and in default thereof opens the way to the exercise of the right of retaliation," and that the French courts examine the merits of Italian judgments before allowing their execution in France, decided that the Italian courts of appeal, when asked to execute a French judgment, ought

not only to inquire into the competency of the foreign court, but also to review the merits and the justice of the controversy. Levi v. Pitre, in Rossi, Esecuzione delle Sentenze Straniere (1st Ed. 1875) 70, 284; and in Clunet, 1879, p. 295. Some commentators, however, while admitting that decision to be most authoritative, have insisted that it is unsound, and opposed to other Italian decisions, to which we have not access. Rossi, ubi supra (2d Ed. 1890) 92; Fiore, 142, 143; Clunet, 1878, p. 237; Clunet, 1879, pp. 296, 305; Pig. Judgm. 483; Constant, 161.

In the principality of Monaco, foreign judgments are not executory, except by virtue of a special ordinance of the prince, upon a report of the advocate general. Constant, 169; Pig. Judgm. 488.

In Spain, formerly, foreign judgments do not appear to have been executed at all. Foelix, No. 398; Moreau, No. 197; Silvela, in Clunet, 1881, p. 20. But by the Code of 1855, revised in 1881, without change in this respect, "judgments pronounced in foreign countries shall have in Spain the force that the respective treaties given them; if there are no special treaties with the nation in
*225 which they have been rendered, they shall have the same force that is given by the laws of that nation to Spanish executory judgments; if the judgment to be executed proceeds from a nation by whose jurisprudence effect is not given to the judgments pronounced by Spanish tribunals, it shall have no force in Spain"; and "application for the execution of judgments pronounced in foreign countries shall be made to the supreme tribunal of justice, which, after examining an authorized translation of the foreign judgment, and after hearing the party against whom it is directed and the public minister, shall decide whether it ought or ought not to be executed." Constant, 141, 142; Pig. Judgm. 499, 500. A case in which the supreme court of Spain in 1880 ordered execution of a French judgment, after reviewing its merits, is reported in Clunet, 1881, p. 365. In another case, in 1888, the same court, after hearing the parties and the public minister, ordered execution of a Mexican judgment. The public minister, in his demand for its execution, said: "Our law of civil procedure, inspired, to a certain point, by the modern theories of international law, which, recognizing among civilized nations a true community of right, and considering mankind as a whole, in which nations occupy a position identical with that of individuals towards society, gives authority in Spain to executory judgments rendered by foreign tribunals, even in the absence of special treaty, provided that those countries do not proscribe the execution there of our judgments, and under certain conditions, which, if they limit the principle, are inspired by the wish of protecting our sovereignty and by the supreme exigencies of justice. When nothing appears, either for or against, as to the authority of the judgments of our courts in the foreign country, one should not put an obstacle to the fulfillment, in our country, of judgments emanating from other nations, especially when the question is of a country which, by its historic origin, its language, its literature, and by almost the identity of its customs, its usages, and its social institutions, has so great a connection with our own,—which obliges us to maintain with it the most intimate relations of friendship and courtesy." And he pointed out that Mexico, by its Code, had adopted reciprocity as a fundamental
*226 principle. Among the reasons assigned by the court for ordering the Mexican judgment to be executed was that "there exists in Mexico no precedent of jurisprudence which refuses execution to judgments rendered by the Spanish tribunals." Clunet, 1891, pp. 288–292.

In Portugal, foreign judgments, whether against a Portuguese or against a foreigner, are held to be reviewable upon the merits before granting execution thereof. Foelix, No. 399; Clunet, 1875, pp. 54, 448; Moreau, No. 217; Constant, 176–180; Westl. Priv. Int. ubi supra.

In Greece, by the provisions of the Code of 1834, foreign judgments, both parties to which are foreigners, are enforced without examination of their merits; but if one of the parties is a Greek they are not enforced, if found contradictory to the facts proved, or if they are contrary to the prohibitive laws of Greece. Foelix, No. 396; Constant, 151, 152; Moreau, No. 202; Saripolos, in Clunet, 1880, p. 173; Pig. Judgm. 475.

In Egypt, under the influence of European jurisprudence, the Code of Civil Procedure has made reciprocity a condition upon which foreign judgments are executed. Constant, 136; Clunet, 1887, pp. 98, 228; Id. 1889, p. 322.

In Cuba and in Porto Rico, the Codes of Civil Procedure are based upon the Spanish Code of 1855. Pig. Judgm. 435, 503. In Hayti the Code re-enacts the provisions of the French Code. Constant, 153; Moreau, No. 203; Pig. Judgm. 460.

In Mexico the system of reciprocity has been adopted by the Code of 1884 as the governing principle. Constant, 168; Clunet, 1891, p. 290.

The rule of reciprocity likewise appears to have generally prevailed in South America. In Peru foreign judgments do not appear to be executed without examining the merits, unless when reciprocity is secured by treaty. Clunet, 1879, pp. 266, 267; Pig. Judgm. 548. In Chili there appears to have been no legislation upon the subject; but, according to a decision of the supreme court of Santiago in 1886, "the Chilian tribunals should not award an exequatur, except upon decisions in correct form, and also reserving the general principle of reciprocity." Clunet, 1889, p. 135; Constant, 131, 132. In Brazil foreign

judgments are not executed, unless because of the country in which they were rendered admitting the principle of reciprocity, or because of a placet of the government of Brazil, which may be awarded according to the circumstances of the case. Constant, 124, and note; Moreau, No. 192; Pig. Judgm. 543-546; Westlake, ubi supra. In the Argentine Republic the principle of reciprocity was maintained by the courts, and was affirmed by the Code of 1878, as a condition sine qua non of the execution of foreign judgments, but has perhaps been modified by later legislation. Moreau, No. 218; Palomeque, in Clunet, 1887, pp. 539-558.

It appears, therefore, that there is hardly a civilized nation on either continent which, by its general law, allows conclusive effect to an executory foreign judgment for the recovery of money. In France and in a few smaller states—Norway, Portugal, Greece, Monaco, and Hayti—the merits of the controversy are reviewed, as of course, allowing to the foreign judgment, at the most, no more effect than of being prima facie evidence of the justice of the claim. In the great majority of the countries on the continent of Europe,—in Belgium, Holland, Denmark, Sweden, Germany, in many cantons of Switzerland, in Russia and Poland, in Roumania, in Austria and Hungary (perhaps in Italy), and in Spain,—as well as in Egypt, in Mexico, and in a great part of South America, the judgment rendered in a foreign country is allowed the same effect only as the courts of that country allow to the judgments of the country in which the judgment in question is sought to be executed.

The prediction of Mr. Justice Story in section 618 of his Commentaries on the Conflict of Laws, already cited, has thus been fulfilled, and the rule of reciprocity has worked itself firmly into the structure of international jurisprudence.

The reasonable, if not the necessary, conclusion appears to us to be that judgments rendered in France, or in any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are prima facie evidence only of the justice of the plaintiffs' claim.

*228 *In holding such a judgment, for want of reciprocity, not to be conclusive evidence of the merits of the claim, we do not proceed upon any theory of retaliation upon one person by reason of injustice done to another, but upon the broad ground that international law is founded upon mutuality and reciprocity, and that by the principles of international law recognized in most civilized nations, and by the comity of our own country, which it is our judicial duty to know and to declare, the judgment is not entitled to be considered conclusive.

By our law, at the time of the adoption of the constitution, a foreign judgment was considered as prima facie evidence, and not conclusive. There is no statute of the United States, and no treaty of the United States with France, or with any other nation, which has changed that law, or has made any provision upon the subject. It is not to be supposed that, if any statute or treaty had been or should be made, it would recognize as conclusive the judgments of any country, which did not give like effect to our own judgments. In the absence of statute or treaty, it appears to us equally unwarrantable to assume that the comity of the United States requires anything more.

If we should hold this judgment to be conclusive, we should allow it an effect to which, supposing the defendants' offers to be sustained by actual proof, it would, in the absence of a special treaty, be entitled in hardly any other country in Christendom, except the country in which it was rendered. If the judgment had been rendered in this country, or in any other outside of the jurisdiction of France, the French courts would not have executed or enforced it, except after examining into its merits. The very judgment now sued on would be held inconclusive in almost any other country than France. In England, and in the colonies subject to the law of England, the fraud alleged in its procurement would be a sufficient ground for disregarding it. In the courts of nearly every other nation, it would be subject to re-examination, either merely because it was a foreign judgment, or because judgments of that nation would be re-examinable in the courts of France.

*229 *For these reasons, in the action at law, the

Judgment is reversed, and the cause remanded to the circuit court, with directions to set aside the verdict and to order a new trial.

For the same reasons, in the suit in equity between these parties, the foreign judgment is not a bar, and therefore the

Decree dismissing the bill is reversed, the plea adjudged bad, and the cause remanded to the circuit court for further proceedings not inconsistent with this opinion.

Mr. Chief Justice FULLER, dissenting.

Plaintiffs brought their action on a judgment recovered by them against the defendants in the courts of France, which courts had jurisdiction over person and subject-matter, and in respect of which judgment no fraud was alleged, except in particulars contested in and considered by the French courts. The question is whether under these circumstances, and in the absence of a treaty or act of congress, the judgment is re-examinable upon the merits. This question I regard as one to be determined by the ordinary and settled rule in respect of allowing a party who has had an opportunity to prove his case in a competent court to retry it on the merits; and it seems to me that the doctrine

of res judicata applicable to domestic judgments should be applied to foreign judgments as well, and rests on the same general ground of public policy, that there should be an end of litigation.

This application of the doctrine is in accordance with our own jurisprudence, and it is not necessary that we should hold it to be required by some rule of international law. The fundamental principle concerning judgments is that disputes are finally determined by them, and I am unable to perceive why a judgment in personam, which is not open to question on the ground of want of jurisdiction, either intrinsically or over the parties, or of fraud, or on any other recognized ground of impeachment, should not be held, inter partes, though recovered abroad, conclusive on the merits.

*Judgments are executory while unpaid, but in this country execution is not given upon a foreign judgment as such, it being enforced through a new judgment obtained in an action brought for that purpose.

The principle that requires litigation to be treated as terminated by final judgment, properly rendered, is as applicable to a judgment proceeded on in such an action as to any other, and forbids the allowance to the judgment debtor of a retrial of the original cause of action, as of right, in disregard of the obligation to pay arising on the judgment, and of the rights acquired by the judgment creditor thereby.

That any other conclusion is inadmissible is forcibly illustrated by the case in hand. Plaintiffs in error were trading copartners in Paris as well as in New York, and had a place of business in Paris at the time of these transactions and of the commencement of the suit against them in France. The subjects of the suit were commercial transactions, having their origin, and partly performed, in France, under a contract there made, and alleged to be modified by the dealings of the parties there, and one of the claims against them was for goods sold to them there. They appeared generally in the case, without protest, and by counterclaims relating to the same general course of business, a part of them only connected with the claims against them, became actors in the suit, and submitted to the courts their own claims for affirmative relief, as well as the claims against them. The courts were competent, and they took the chances of a decision in their favor. As traders in France they were under the protection of its laws, and were bound by its laws, its commercial usages, and its rules of procedure. The fact that they were Americans and the opposite parties were citizens of France is immaterial, and there is no suggestion on the record that those courts proceeded on any other ground than that all litigants, whatever their nationality, were entitled to equal justice therein. If plaintiffs in error had succeeded in their cross suit and recovered judgment against defendants in error, and had sued them here on that judgment, defendants in error would not have been permitted to say that the judgment in France was *not conclusive against* them. As it was, defendants in error recovered, and I think plaintiffs in error are not entitled to try their fortune anew before the courts of this country on the same matters voluntarily submitted by them to the decision of the foreign tribunal. We are dealing with the judgment of a court of a civilized country, whose laws and system of justice recognize the general rules in respect to property and rights between man and man prevailing among all civilized peoples. Obviously, the last persons who should be heard to complain are those who identified themselves with the business of that country, knowing that all their transactions there would be subject to the local laws and modes of doing business. The French courts appear to have acted "judicially, honestly, and with the intention to arrive at the right conclusion," and a result thus reached ought not to be disturbed.

The following view of the rule in England was expressed by Lord Herschell in Nouvion v. Freeman, 15 App. Cas. 1, 9, quoted in the principal opinion: "The principle upon which I think our enforcement of foreign judgments must proceed is this: That in a court of competent jurisdiction, where, according to its established procedure, the whole merits of the case were open, at all events, to the parties, however much they may have failed to take advantage of them or may have waived any of their rights, a final adjudication has been given that a debt or obligation exists, which cannot thereafter in that court be disputed, and can only be questioned in an appeal to a higher tribunal. In such a case it may well be said that, giving credit to the court of another country, we are prepared to take the fact that such adjudication has been made as establishing the existence of the debt or obligation." But in that connection the observations made by Mr. Justice Blackburn in Godard v. Gray, L. R. 6 Q. B. 139, 148, and often referred to with approval, may usefully again be quoted:

"It is not an admitted principle of the law of nations that a state is bound to enforce within its territories the judgments of a foreign tribunal. Several of the continental nations (including France) do not enforce the judgments of other *countries, unless where* there are reciprocal treaties to that effect. But in England, and in those states which are governed by the common law, such judgments are enforced, not by virtue of any treaty nor by virtue of any statute, but upon a principle very well stated by Parke, B., in Williams v. Jones, 13 Mees. & W. 633: 'Where a court of competent jurisdiction had adjudicated a certain sum to be due from one person to another, a legal obligation

arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts are supported and enforced.' And taking this as the principle, it seems to follow that anything which negatives the existence of that legal obligation, or excuses the defendant from the performance of it, must form a good defense to the action. It must be open, therefore, to the defendant to show that the court which pronounced the judgment had not jurisdiction to pronounce it, either because they exceeded the jurisdiction given to them by the foreign law, or because he, the defendant, was not subject to that jurisdiction; and so far the foreign judgment must be examinable. Probably the defendant may show that the judgment was obtained by the fraud of the plaintiff, for that would show that the defendant was excused from the performance of an obligation thus obtained; and it may be that where the foreign court has knowingly and perversely disregarded the rights given to an English subject by English law, that forms a valid excuse for disregarding the obligation thus imposed on him; but we prefer to imitate the caution of the present lord chancellor in Castrique v. Imrie, L. R. 4 H. L. 445, and to leave those questions to be decided when they arise, only observing in the present case, as in that: 'The whole of the facts appear to have been inquired into by the French courts judicially, honestly, and with the intention to arrive at the right conclusion; and, having heard the facts as stated before them, they came to a conclusion which justified them in France in deciding as they did decide.' * * * Indeed, it is difficult to understand how the common course of pleading is consistent with
*233 any notion that the judgment was only evidence. If that were so, every count on a foreign judgment must be demurrable on that ground. The mode of pleading shows that the judgment was considered, not as merely prima facie evidence of that cause of action for which the judgment was given, but as in itself giving rise, at least prima facie, to a legal obligation to obey that judgment, and pay the sum adjudged. This may seem a technical mode of dealing with the question; but in truth it goes to the root of the matter; for, if the judgment were merely considered as evidence of the original cause of action, it must be open to meet it by any counter evidence negativing the existence of that original cause of action. If, on the other hand, there is a prima facie obligation to obey the judgment of a tribunal having jurisdiction over the party and the cause, and to pay the sum decreed, the question would be whether it was open to the unsuccessful party to try the cause over again in a court not sitting as a court of appeal from that which gave the judgment. It is quite clear that this could not be done where the action is brought on the judgment of an English tribunal; and, on principle, it seems the same rule should apply where it is brought on that of a foreign tribunal."

In any aspect, it is difficult to see why rights acquired under foreign judgments do not belong to the category of private rights acquired under foreign laws. Now, the rule is universal in this country that private rights acquired under the laws of foreign states will be respected and enforced in our courts unless contrary to the policy or prejudicial to the interests of the state where this is sought to be done; and, although the source of this rule may have been the comity characterizing the intercourse between nations, it prevails to-day by its own strength, and the right to the application of the law to which the particular transaction is subject is a juridical right.

And, without going into the refinements of the publicists on the subject, it appears to me that that law finds authoritative expression in the judgments of courts of competent jurisdiction over parties and subject-matter.

It is held by the majority of the court that defendants cannot be permitted to contest the validity and effect of this judgment on the general ground that it was erroneous in
*234 law or in fact, and the special grounds relied on are seriatim rejected. In respect of the last of these—that of fraud—it is said that it is unnecessary in this case to decide whether certain decisions cited in regard to impeaching foreign judgments for fraud could be followed consistently with our own decisions as to impeaching domestic judgments for that reason, "because there is a distinct and independent ground upon which we are satisfied that the comity of our nation does not require us to give conclusive effect to the judgments of the courts of France, and that ground is the want of reciprocity on the part of France as to the effect to be given to the judgments of this and other foreign countries." And the conclusion is announced to be "that judgments rendered in France, or in any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are prima facie evidence only of the justice of the plaintiff's claim." In other words, that, although no special ground exists for impeaching the original justice of a judgment, such as want of jurisdiction or fraud, the right to retry the merits of the original cause at large, defendant being put upon proving those merits, should be accorded in every suit on judgments recovered in countries where our own judgments are not given full effect, on that ground merely.

I cannot yield my assent to the proposition that, because by legislation and judicial decision in France that effect is not there given to judgments recovered in this country

which, according to our jurisprudence, we think should be given to judgments wherever recovered (subject, of course, to the recognized exceptions), therefore we should pursue the same line of conduct as respects the judgments of French tribunals. The application of the doctrine of res judicata does not rest in discretion; and it is for the government, and not for its courts, to adopt the principle of retorsion, if deemed under any circumstances desirable or necessary.

As the court expressly abstains from deciding whether the judgment is impeachable on the ground of fraud, I refrain from any observations on that branch of the case.

*235 *Mr. Justice HARLAN, Mr. Justice BREWER, and Mr. Justice JACKSON concur in this dissent.

(159 U. S. 235)

RITCHIE v. McMULLEN et al.

(June 3, 1895.)

No. 15.

ACTION ON FOREIGN JUDGMENT—SUFFICIENCY OF ANSWER—AVERMENT OF CONCLUSIONS.

1. In an action upon a foreign judgment, where the petition alleges that plaintiff brought, in the queen's bench division of the high court of justice of the province of Ontario, described as "a duly and lawfully constituted court of record having jurisdiction over all civil matters" in and for that province, an action upon a certain contract in writing between the parties, and the defendant, in his answer, expressly admits that an action was commenced against him in the province of Ontario, Canada, for the general purpose stated in the petition, the competency of the Canadian court must be deemed to be admitted.

2. If the answer expressly admits that "certain attorneys entered or undertook to enter the appearance of this defendant in said action," without alleging that such attorneys were not authorized to enter defendant's appearance, they will be taken to have been authorized by him to do so.

3. An averment in the answer, describing a certain defense on the merits as the one "stated in defendant's answer in said original action in the province of Ontario," without any allegation that defendant appeared or answered in that court under compulsion, or for any purpose except to contest his personal liability, shows a voluntary submission by him to the jurisdiction of the Canadian court.

4. Defendant having admitted his submission to the jurisdiction of the foreign court, allegations in his answer that the judgment was entered "without his knowledge, and in his absence, and without any hearing," and that he was not present at the time of the rendition of the judgment, and that it was irregular and without evidence, and was rendered without any hearing, being consistent with the hypothesis that defendant made default in such action, constitute no defense.

5. The general averments that the judgment sued on was "an irregular and void judgment," and that there was no "jurisdiction or authority on the part of the court to enter such a judgment upon the facts and the pleadings," are but averments of legal conclusions, and so insufficient to impeach the judgment.

In Error to the Circuit Court of the United States for the Northern District of Ohio.

This was an action brought September 21, 1888, in the circuit court of the United States for the Northern district of Ohio, by James B. McMullen, a citizen of the state of Illinois, and George W. McMullen, a citizen of the province of Ontario, in the dominion of Canada, against Samuel J. Ritchie, a citizen of the *236 state of Ohio, upon a judgment for the sum of $238,000, recovered by the plaintiffs against the defendant on February 26, 1888, in the queen's bench division of the high court of justice for the province of Ontario.

The petition alleged that by a contract in writing, dated January 13, 1886, the plaintiffs, being the owners of 210 first-mortgage bonds of the Central Ontario Railway, a corporation of the province of Ontario, for $1,000 each, and of certain coupons thereof, amounting to the sum of $71,250, agreed to sell, and the defendant agreed to purchase, those bonds and coupons for the price of $210,000 of the fully paid-up stock of the Canadian Copper Company, a corporation of the state of Ohio; that on the same day, in part performance of the contract, the defendant accepted five bills of exchange for $5,000 each, drawn by one of the plaintiffs, payable to the other plaintiff's order, at the Bank of Montreal, at Picton, in the province of Ontario, on July 1, 1886, with an indorsement thereon that the five bonds of the Central Ontario Railway attached to the bills were to be delivered to the defendant upon his paying the acceptances; and it was agreed that the payment by the defendant of those bills should be considered as payment of a like sum upon the contract, and the delivery by the plaintiff of the bonds attached to the bills should be considered as a delivery of so many bonds under the contract.

The petition further alleged that before October 8, 1887, all things necessary to entitle the plaintiffs to the performance of the contract had happened, and the plaintiffs were ready to perform it on their part, and the defendant neglected and refused to perform it on his part; and that on that day the plaintiffs commenced an action in the queen's bench division of the high court of justice for Ontario, "a duly and lawfully constituted court of record, having jurisdiction over all civil and criminal matters in and for that part of the dominion of Canada called the 'Province of Ontario,'" and caused a writ of summons to be personally served upon the defendant on November 8, 1887, and that on November 28, 1887, the defendant "duly entered his appearance in said action in said court"; that that action was brought upon the contract aforesaid; and that the plaintiffs, in their statement *237 of claim, "duly delivered to said defendant or his duly-constituted solicitors and attorneys, in accordance with the laws of said province of Ontario," prayed for specific performance of the contract, or for damages for the breach thereof.

The petition further alleged that in that action, on November 28, 1887, the defendant, in accordance with those laws, delivered to the

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SEVENTY-FIRST YEAR
MONTEREY, CALIFORNIA
JULY 30 – AUGUST 4, 1962

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
February 4, 1963

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Foreign Money-Judgments Recognition Act was as follows:

JAMES C. DEZENDORF, Pacific Bldg., Portland, Ore., *Chairman*.
JOE C. BARRETT, McAdams Trust Bldg., Jonesboro, Ark.
STANLEY E. DADISMAN, College of Law, West Virginia University, Morgantown, W. Va.
HARRY GUTTERMAN, Legislative Council, 324 Capitol Bldg., Phoenix, Arix.
LEONARD C. HARDWICK, 12 South Main St., Rochester, N. H.
ALFRED HARSCH, University of Washington Law School, Seattle, Wash.
LAWRENCE C. JONES, Rutland, Vt.
WALTER D. MALCOLM, 1 Federal St., Boston, Mass.
WILLIAM A. McKENZIE, Fifth Third Bank Bldg., Cincinnati, Ohio.
JAMES K. NORTHAM, 500 Ista Bldg., Indianapolis, Ind.
WILLIAM J. PIERCE, University of Michigan Law School, Ann Arbor, Mich.
MILTON S. SELIGMAN, First National Bank Bldg., Albuquerque, N. Mex.
J. COLVIN WRIGHT, Superior Court, Bedford, Pa.

KURT H. NADELMANN, Harvard Law School, Cambridge, Mass., *Draftsman*

Assisted by

WILLIS L. M. REESE, Columbia University School of Law, New York, N. Y.

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
1155 East Sixtieth Street
Chicago 37, Illinois

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

PREFATORY NOTE

In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused recognition abroad either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved or because no certification of existence of reciprocity could be obtained from the foreign government in countries where existence of reciprocity must be certified to the courts by the government. Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad.

The Act states rules that have long been applied by the majority of courts in this country. In some respects the Act may not go as far as the decisions. The Act makes clear that a court is privileged to give the judgment of the court of a foreign country greater effect than it is required to do by the provisions of the Act. In codifying what bases for assumption of personal jurisdiction will be recognized, which is an area of the law still in evolution, the Act adopts the policy of listing bases accepted generally today and preserving for the courts the right to recognize still other bases. Because the Act is not selective and applies to judgments from any foreign court, the Act states that judgments rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law shall neither be recognized nor enforced.

The Act does not prescribe a uniform enforcement procedure. Instead, the Act provides that a judgment entitled to recognition will be enforceable in the same manner as the judgment of a court of a sister state which is entitled to full faith and credit.

In the preparation of the Act codification efforts made elsewhere have been taken into consideration, in particular, the [British] Foreign Judgments (Reciprocal Enforcement) Act of 1933 and a Model Act produced in 1960 by the International Law Association. The Canadian Commissioners on Uniformity of Legislation, engaged in a similar endeavor, have been kept informed of the progress of the work. Enactment by the states of the Union of modern uniform rules on recognition of foreign money-judgments will support efforts toward improvement of the law on recognition everywhere.

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

[Be it enacted . . . .]

SECTION 1. [*Definitions.*] As used in this Act:

(1) "foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;

(2) "foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

SECTION 2. [*Applicability.*] This Act applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

Comment

Where an appeal is pending or the defendant intends to appeal, the court of the enacting state has power to stay proceedings in accordance with section 6 of the Act.

SECTION 3. [*Recognition and Enforcement.*] Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

Comment

The method of enforcement will be that of the Uniform Enforcement of Foreign Judgments Act of 1948 in a state having enacted that Act.

SECTION 4. [*Grounds for Non-Recognition*.]

(a) A foreign judgment is not conclusive if

(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if

(1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) the judgment was obtained by fraud;

(3) the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

Comment

The first ground for non-recognition under subsection (a) has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S. 113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for non-recognition. A case of serious injustice must be involved.

The last ground for non-recognition under subsection (b) authorizes a court to refuse recognition and enforcement of a judgment rendered in a foreign country on the basis only of personal service when it believes the original action should

have been dismissed by the court in the foreign country on grounds of *forum non conveniens*.

SECTION 5. [*Personal Jurisdiction*.]

(a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if

(1) the defendant was served personally in the foreign state;

(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;

(5) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign state; or

(6) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a [cause of action] [claim for relief] arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

Comment

New bases of jurisdiction have been recognized by courts in recent years. The Act does not codify all these new bases. Subsection (b) makes clear that the Act does not prevent the courts in the enacting state from recognizing foreign judgments rendered on the bases of jurisdiction not mentioned in the Act.

SECTION 6. [*Stay in Case of Appeal.*] If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

SECTION 7. [*Saving Clause.*] This Act does not prevent the recognition of a foreign judgment in situations not covered by this Act.

SECTION 8. [*Uniformity of Interpretation.*] This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 9. [*Short Title.*] This Act may be cited as the Uniform Foreign Money-Judgments Recognition Act.

SECTION 10. [*Repeal.*] [The following Acts are repealed:

(1)

(2)

(3) .]

SECTION 11. [*Time of Taking Effect.*] This Act shall take effect . . . .

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

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PITTSBURGH, PENNSYLVANIA

July 21-28, 2005

WITH PREFATORY NOTE AND COMMENTS

February 10, 2006

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UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Uniform Foreign-Country Money Judgments Recognition Act consists of the following individuals:

ROBERT H. CORNELL, 573 Arkansas, San Francisco, CA 94107, *Chair*
K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910
JOHN P. BURTON, P.O. Box 1357, 315 Paseo de Peralta, Santa Fe, NM 87501
JOHN A. CHANIN, 5901 Mount Eagle Dr., Apt. 1115, Alexandria, VA 22303, *Enactment Plan Coordinator*
FRANK W. DAYKIN, 2180 Thomas Jefferson Dr., Reno, NV 89509
W. MICHAEL DUNN, P.O. Box 3701, 1000 Elm St., Manchester, NH 03105
HENRY DEEB GABRIEL, JR., Loyola University School of Law, 526 Pine St., New Orleans, LA 70118
CURTIS R. REITZ, University of Pennsylvania School of Law, 3400 Chestnut St., Philadelphia, PA 19104
H. KATHLEEN PATCHEL, Indiana University, School of Law, 530 W. New York St., Indianapolis, IN 46202-3225, *National Conference Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056, Norman, OK 73019, *President*
REX BLACKBURN, 1673 W. Shoreline Dr., Suite 200, P.O. Box 7808, Boise, ID 83707, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

ELIZABETH M. BOHN, 777 Brickell Ave., Ste. 500, Miami, FL 33131-2803, *American Bar Association Advisor*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

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UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

PREFATORY NOTE

This Act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962. That Act codified the most prevalent common law rules with regard to the recognition of money judgments rendered in other countries. The hope was that codification by a state of its rules on the recognition of foreign-country money judgments, by satisfying reciprocity concerns of foreign courts, would make it more likely that money judgments rendered in that state would be recognized in other countries. Towards this end, the Act sets out the circumstances in which the courts in states that have adopted the Act must recognize foreign-country money judgments. It delineates a minimum of foreign-country judgments that must be recognized by the courts of adopting states, leaving those courts free to recognize other foreign-country judgments not covered by the Act under principles of comity or otherwise. Since its promulgation over forty years ago, the 1962 Act has been adopted in a majority of the states and has been in large part successful in carrying out it purpose of establishing uniform and clear standards under which state courts will enforce the foreign-country money judgments that come within its scope.

This Act continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation. Among the more significant issues that have arisen under the 1962 Act which are addressed in this Revised Act are (1) the need to update and clarify the definitions section; (2) the need to reorganize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing application of the Act; (3) the need to set out the procedure by which recognition of a foreign-country money judgment under the Act must be sought; (4) the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law; (5) the need to expressly allocate the burden of proof with regard to the grounds for denying recognition; and (6) the need to establish a statute of limitations for recognition actions.

In the course of drafting this Act, the drafters revisited the decision made in the 1962 Act not to require reciprocity as a condition to recognition of the foreign-country money judgments covered by the Act. After much discussion, the drafters decided that the approach of the 1962 Act continues to be the wisest course with regard to this issue. While recognition of U.S. judgments continues to be problematic in a number of foreign countries, there was insufficient evidence to establish that a reciprocity requirement would have a greater effect on encouraging foreign recognition of U.S. judgments than does the approach taken by the Act. At the same time, the certainty and uniformity provided by the approach of the 1962 Act, and continued in this Act, creates a stability in this area that facilitates international commercial transactions.

UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the [Uniform Foreign-Country Money Judgments Recognition Act].

Comment

Source: This section is an updated version of Section 9 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Foreign country" means a government other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States; or

(C) any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) "Foreign-country judgment" means a judgment of a court of a foreign country.

Comment

Source: This section is derived from Section 1 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

1. The defined terms "foreign state" and "foreign judgment" in the 1962 Act have been changed to "foreign country" and "foreign-country judgment" in order to make it clear that the Act does not apply to recognition of sister-state judgments. Some courts have noted that the "foreign state" and "foreign judgment" definitions of the 1962 Act have caused confusion as to whether the Act should apply to sister-state judgments because "foreign state" and "foreign judgment" are terms of art generally used in connection with recognition and enforcement of

sister-state judgments. *See, e.g.,* Eagle Leasing v. Amandus, 476 N.W.2d 35 (S.Ct. Iowa 1991) (reversing lower court's application of UFMJRA to a sister-state judgment, but noting lower court's confusion was understandable as "foreign judgment" is term of art normally applied to sister-state judgments). *See also,* Uniform Enforcement of Foreign Judgments Act §1 (defining "foreign judgment" as the judgment of a sister state or federal court).

The 1962 Act defines a "foreign state" as "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands." Rather than simply updating the list in the 1962 Act's definition of "foreign state," the new definition of "foreign country" in this Act combines the "listing" approach of the 1962 Act's "foreign state" definition with a provision that defines "foreign country" in terms of whether the judgments of the particular government's courts are initially subject to the Full Faith and Credit Clause standards for determining whether those judgments will be recognized. Under this new definition, a governmental unit is a "foreign country" if it is (1) not the United States or a state, district, commonwealth, territory or insular possession of the United States; and (2) its judgments are not initially subject to Full Faith and Credit Clause standards.

The Full Faith and Credit Clause, Art. IV, section 1, provides that "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." Whether the judgments of a governmental unit are subject to the Full Faith and Credit Clause may be determined by judicial interpretation of the Full Faith and Credit Clause or by statute, or by a combination of these two sources. For example, pursuant to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress has passed 28 U.S.C.A. §1738, which provides *inter alia* that court records from "any State, Territory, or Possession of the United States" are entitled to full faith and credit under the Full Faith and Credit Clause. In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938), the United States Supreme Court held that this statute also requires that full faith and credit be given to judgments of federal courts. States also have made determinations as to whether certain types of judgments are subject to the Full Faith and Credit Clause. *E.g.* Day v. Montana Dept. Of Social & Rehab. Servs., 900 P.2d 296 (Mont. 1995) (tribal court judgment not subject to Full Faith and Credit, and should be treated with same deference shown foreign-country judgments). Under the definition of "foreign country" in this Act, the determination as to whether a governmental unit's judgments are subject to full faith and credit standards should be made by reference to any relevant law, whether statutory or decisional, that is applicable "in this state."

The definition of "foreign country" in terms of those judgments not subject to Full Faith and Credit standards also has the advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign Judgments Act. That Act, which establishes a registration procedure for the enforcement of sister state and equivalent judgments, defines a "foreign judgment" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Uniform Enforcement of Foreign

Judgments Act, §1 (1964). By defining "foreign country" in the Recognition Act in terms of those judgments not subject to full faith and credit standards, this Act makes it clear that the Enforcement Act and the Recognition Act are mutually exclusive – if a foreign money judgment is subject to full faith and credit standards, then the Enforcement Act's registration procedure is available with regard to its enforcement; if the foreign money judgment is not subject to full faith and credit standards, then the foreign money judgment may not be enforced until recognition of it has been obtained in accordance with the provisions of the Recognition Act.

2. The definition of "foreign-country judgment" in this Act differs significantly from the 1962 Act's definition of "foreign judgment." The 1962 Act's definition served in large part as a scope provision for the Act. The part of the definition defining the scope of the Act has been moved to section 3, which is the scope section.

3. The definition of "foreign-country judgment" in this Act refers to "a judgment" of "a court" of the foreign country. The foreign-country judgment need not take a particular form – any order or decree that meets the requirements of this section and comes within the scope of the Act under Section 3 is subject to the Act. Similarly, any competent government tribunal that issues such a "judgment" comes within the term "court" for purposes of this Act. The judgment, however, must be a judgment of an adjudicative body of the foreign country, and not the result of an alternative dispute mechanism chosen by the parties. Thus, foreign arbitral awards and agreements to arbitrate are not covered by this Act. They are governed instead by federal law, Chapter 2 of the U.S. Arbitration Act, 9 U.S.C. §§ 201-208, implementing the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Chapter 3 of the U.S. Arbitration Act, 9 U.S.C. §§301-307, implementing the Inter-American Convention on International Commercial Arbitration. A judgment of a foreign court confirming or setting aside an arbitral award, however, would be covered by this Act.

4. The definition of "foreign-country judgment" does not limit foreign-country judgments to those rendered in litigation between private parties. Judgments in which a governmental entity is a party also are included, and are subject to this Act if they meet the requirements of this section and are within the scope of the Act under Section 3.

SECTION 3. APPLICABILITY.

(a) Except as otherwise provided in subsection (b), this [act] applies to a foreign-country judgment to the extent that the judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final,

conclusive, and enforceable.

(b) This [act] does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this [act] applies to the foreign-country judgment.

Comment

Source: This section is based on Section 2 of the 1962 Act. Subsection (b) contains material that was included as part of the definition of "foreign judgment" in Section 1(2) of the 1962 Act. Subsection (c) is new.

1. Like the 1962 Act, this Act sets out in subsection 3(a) two basic requirements that a foreign-country judgment must meet before it comes within the scope of this Act – the foreign-country judgment must (1) grant or deny recovery of a sum of money and (2) be final, conclusive and enforceable under the law of the foreign country where it was rendered. Subsection 3(b) then sets out three types of foreign-country judgments that are excluded from the coverage of this Act, even though they meet the criteria of subsection 3(a) – judgments for taxes, judgments constituting fines and other penalties, and judgments in domestic relations matters. These exclusions are comparable to those contained in Section 1(2) of the 1962 Act.

2. This Act applies to a foreign-country judgment only to the extent the foreign-country judgment grants or denies recovery of a sum of money. If a foreign-country judgment both grants or denies recovery of a sum money and provides for some other form of relief, this Act would apply to the portion of the judgment that grants or denies monetary relief, but not to the portion that provides for some other form of relief. The U.S. court, however, would be left free to decide to recognize and enforce the non-monetary portion of the judgment under principles of comity or other applicable law. See Section 11.

3. In order to come within the scope of this Act, a foreign-country judgment must be final, conclusive, and enforceable under the law of the foreign country in which it was rendered.

This requirement contains three distinct, although inter-related concepts. A judgment is final when it is not subject to additional proceedings in the rendering court other than execution. A judgment is conclusive when it is given effect between the parties as a determination of their legal rights and obligations. A judgment is enforceable when the legal procedures of the state to ensure that the judgment debtor complies with the judgment are available to the judgment creditor to assist in collection of the judgment.

While the first two of these requirements – finality and conclusiveness – will apply with regard to every foreign-country money judgment, the requirement of enforceability is only relevant when the judgment is one granting recovery of a sum of money. A judgment denying a sum of money obviously is not subject to enforcement procedures, as there is no monetary award to enforce. This Act, however, covers both judgments granting and those denying recovery of a sum of money. Thus, the fact that a foreign-country judgment denying recovery of a sum of money is not enforceable does not mean that such judgments are not within the scope of the Act. Instead, the requirement that the judgment be enforceable should be read to mean that, if the foreign-country judgment grants recovery of a sum of money, it must be enforceable in the foreign country in order to be within the scope of the Act.

Like the 1962 Act, subsection 3(b) requires that the determinations as to finality, conclusiveness and enforceability be made using the law of the foreign country in which the judgment was rendered. Unless the foreign-country judgment is final, conclusive, and (to the extent it grants recovery of a sum of money) enforceable in the foreign country where it was rendered, it will not be within the scope of this Act.

4. Subsection 3(b) follows the 1962 Act by excluding three categories of foreign-country money judgments from the scope of the Act – judgments for taxes, judgments that constitute fines and penalties, and judgments in domestic relations matters. The domestic relations exclusion has been redrafted to make it clear that all judgments in domestic relations matters are excluded from the Act, not just judgments "for support" as provided in the 1962 Act. This is consistent with interpretation of the 1962 Act by the courts, which extended the "support" exclusion in the 1962 Act beyond its literal wording to exclude other money judgments in connection with domestic matters. *E.g.*, Wolff v. Wolff, 389 A.2d 413 (My. App. 1978) ("support" includes alimony).

Recognition and enforcement of domestic relations judgments traditionally has been treated differently from recognition and enforcement of other judgments. The considerations with regard to those judgments, particularly with regard to jurisdiction and finality, differ from those with regard to other money judgments. Further, national laws with regard to domestic relations vary widely, and recognition and enforcement of such judgments thus is more appropriately handled through comity than through use of this uniform Act. Finally, other statutes, such as the Uniform Interstate Family Support Act and the federal International Child Support Enforcement Act, 42 U.S.C. §659a (1996), address various aspects of the recognition and enforcement of domestic relations awards. Under Section 11 of this Act, courts are free to

recognize money judgments in domestic relations matters under principles of comity or otherwise, and U.S. courts routinely enforce money judgments in domestic relations matters under comity principles.

Foreign-country judgments for taxes and judgments that constitute fines or penalties traditionally have not been recognized and enforced in U.S. courts. *See, e.g.*, Restatement Third of the Foreign Relations Law of the United States §483 (1986). Both the "revenue rule," under which the courts of one country will not enforce the revenue laws of another country, and the prohibition on enforcement of penal judgments seem to be grounded in the idea that one country does not enforce the public laws of another. *See id.* Reporters' Note 2. The exclusion of tax judgments and judgments constituting fines or penalties from the scope of the Act reflects this tradition. Under Section 11, however, courts remain free to consider whether such judgments should be recognized and enforced under comity or other principles.

A judgment for taxes is a judgment in favor of a foreign country or one of its subdivisions based on a claim for an assessment of a tax. Thus, a judgment awarding a plaintiff restitution of the purchase price paid for an item would not be considered in any part a judgment for taxes, even though one element of the recovery was the sales tax paid by the plaintiff at the time of purchase. Such a judgment would not be one designed to enforce the revenue laws of the foreign country, but rather one designed to compensate the plaintiff. Courts generally hold that the test for whether a judgment is a fine or penalty is determined by whether its purpose is remedial in nature, with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice. *E.g.*, Chase Manhattan Bank, N.A. v. Hoffman, 665 F.Supp 73 (D. Mass. 1987) (finding that Belgium judgment was not penal even though the proceeding forming the basis of the suit was primarily criminal where Belgium court considered damage petition a civil remedy, the judgment did not constitute punishment for an offense against public justice of Belgium, and benefit of the judgment accrued to private judgment creditor, not Belgium). Thus, a judgment that awards compensation or restitution for the benefit of private individuals should not automatically be considered penal in nature and therefore outside the scope of the Act simply because the action is brought on behalf of the private individuals by a government entity. *Cf.* U.S.-Australia Free Trade Agreement, art.14.7.2, U.S.-Austl., May 18, 2004 (providing that when government agency obtains a civil monetary judgment for purpose of providing restitution to consumers, investors, or customers who suffered economic harm due to fraud, judgment generally should not be denied recognition and enforcement on ground that it is penal or revenue in nature, or based on other foreign public law).

5. Under subsection 3(b), a foreign-country money judgment is not within the scope of this Act "to the extent" that it comes within one of the excluded categories. Therefore, if a foreign-country money judgment is only partially within one of the excluded categories, the non-excluded portion will be subject to this Act.

6. Subsection 3(c) is new. The 1962 Act does not expressly allocate the burden of proof with regard to establishing whether a foreign-country judgment is within the scope of the Act.

Courts applying the 1962 Act generally have held that the burden of proof is on the person seeking recognition to establish that the judgment is final, conclusive and enforceable where rendered. *E.g.*, Mayekawa Mfg. Co. Ltd. v. Sasaki, 888 P.2d 183, 189 (Wash. App. 1995) (burden of proof on creditor to establish judgment is final, conclusive, and enforceable where rendered); Bridgeway Corp. v. Citibank, 45 F.Supp.2d 276, 285 (S.D.N.Y. 1999) (party seeking recognition must establish that there is a final judgment, conclusive and enforceable where rendered); S.C.Chimexim S.A. v. Velco Enterprises, Ltd., 36 F. Supp.2d 206, 212 (S.D.N.Y. 1999) (Plaintiff has the burden of establishing conclusive effect). Subsection (3)(c) places the burden of proof to establish whether a foreign-country judgment is within the scope of the Act on the party seeking recognition of the foreign-country judgment with regard to both subsection (a) and subsection (b).

SECTION 4. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) Except as otherwise provided in subsections (b) and (c), a court of this state shall recognize a foreign-country judgment to which this [act] applies.

(b) A court of this state may not recognize a foreign-country judgment if:

(1) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(c) A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the judgment was obtained by fraud that deprived the losing party of

an adequate opportunity to present its case;

(3) the judgment or the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state or of the United States;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) exists.

Comment

Source: This section is based on Section 4 of the 1962 Act.

1. This Section provides the standards for recognition of a foreign-country money judgment. Section 7 sets out the effect of recognition of a foreign-country money judgment under this Act.

2. Recognition of a judgment means that the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country. *See, e.g.* Restatement (Second) of Conflicts of Laws, Ch. 5, Topic 3, Introductory Note (recognition of foreign judgment occurs to the extent the forum court gives the judgment "the same effect with respect to the parties, the subject matter of the action and the issues involved that it has in the

state where it was rendered.") Recognition of a foreign-country judgment must be distinguished from enforcement of that judgment. Enforcement of the foreign-country judgment involves the application of the legal procedures of the state to ensure that the judgment debtor obeys the foreign-country judgment. Recognition of a foreign-country money judgment often is associated with enforcement of the judgment, as the judgment creditor usually seeks recognition of the foreign-country judgment primarily for the purpose of invoking the enforcement procedures of the forum state to assist the judgment creditor's collection of the judgment from the judgment debtor. Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given effect, recognition is a prerequisite to enforcement of the foreign-country judgment. Recognition, however, also has significance outside the enforcement context because a foreign-country judgment also must be recognized before it can be given preclusive effect under res judicata and collateral estoppel principles. The issue of whether a foreign-country judgment will be recognized is distinct from both the issue of whether the judgment will be enforced, and the issue of the extent to which it will be given preclusive effect.

3. Subsection 4(a) places an affirmative duty on the forum court to recognize a foreign-country money judgment unless one of the grounds for nonrecognition stated in subsection (b) or (c) applies. Subsection (b) states three mandatory grounds for denying recognition to a foreign-country money judgment. If the forum court finds that one of the grounds listed in subsection (b) exists, then it must deny recognition to the foreign-country money judgment. Subsection (c) states eight nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. Subsection (d) places the burden of proof on the party resisting recognition of the foreign-country judgment to establish that one of the grounds for nonrecognition exists.

4. The mandatory grounds for nonrecognition stated in subsection (b) are identical to the mandatory grounds stated in Section 4 of the 1962 Act. The discretionary grounds stated in subsection 4(c)(1) through (6) are based on subsection 4(b)(1) through (6) of the 1962 Act. The discretionary grounds stated in subsection 4(c)(7) and (8) are new.

5. Under subsection (b)(1), the forum court must deny recognition to the foreign-country money judgment if that judgment was "rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law." The standard for this ground for nonrecognition "has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S.113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved." Cmt §4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. Kam-Tech Systems, Ltd. V. Yardeni, 74 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord*, Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000) (procedures need not meet all the intricacies of the complex concept

of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under subsection (b)(1), so long as the essential elements of impartial administration and basic procedural fairness have been provided in the foreign proceeding. As the U.S. Supreme Court stated in *Hilton*:

> Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect then a foreign-country judgment should be recognized. *Hilton*, 159 U.S. at 202.

6. Under section 4(b)(2), the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) makes clear that other grounds for personal jurisdiction may be found sufficient.

7. Subsection 4(c)(2) limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud — conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case — is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an adequate opportunity to present its case, then it provides grounds for denying recognition of the foreign-country judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the foreign proceeding. Intrinsic fraud does not provide a basis for denying recognition under subsection 4(c)(2), as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court.

8. The public policy exception in subsection 4(c)(3) is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether "the [cause of action] [claim for relief] on which the judgment is based" is repugnant to public policy. Based on this "cause

of action" language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the foreign cause of action comes within this exception. *E.g.*, Southwest Livestock & Trucking Co., Inc. v. Ramon, 169 F.3d 317 (5th Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48% because cause of action to collect on promissory note does not violate public policy); Guinness PLC v. Ward, 955 F.2d 875 (4th Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); The Society of Lloyd's v. Turner, 303 F.3d 325 (5th Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); *cf.* Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). Subsection 4(c)(3) rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(d) (1986) (containing a similarly-worded public policy exception to recognition).

Although subsection 4(c)(3) of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign-country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in subsection 4(c)(3), which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g.,* Bachchan v. India Abroad Publications, Inc., 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. Subsection 4(c)(5) allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate, providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment. Under this provision, the forum court must find both the existence of a valid agreement and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

10. Subsection 4(c)(6) authorizes the forum court to refuse recognition of a foreign-country judgment that was rendered in the foreign country solely on the basis of personal service

when the forum court believes the original action should have been dismissed by the court in the foreign country on grounds of *forum non conveniens.*

11. Subsection 4(c)(7) is new. Under this subsection, the forum court may deny recognition to a foreign-country judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with subsection 4(b)(1) , which requires that the forum court refuse recognition to the foreign-country judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, subsection 4(b)(1) focuses on the judicial system of the foreign country as a whole, rather than on whether the particular judicial proceeding leading to the foreign-country judgment was impartial and fair. *See, e.g.*, The Society of Lloyd's v. Turner, 303 F.3d 325, 330 (5th Cir. 2002) (interpreting the 1962 Act); CIBC Mellon Trust Co. v. Mora Hotel Corp,. N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); Society of Lloyd's v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000) (interpreting the 1962 Act). On the other hand, subsection 4(c)(7) allows the court to deny recognition to the foreign-country judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the foreign-country judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. Subsection 4(c)(8) also is new. It allows the forum court to deny recognition to the foreign-country judgment if the court finds that the specific proceeding in the foreign court was not compatible with the requirements of fundamental fairness. Like subsection 4(c)(7), it can be contrasted with subsection 4(b)(1), which requires the forum court to deny recognition to the foreign-country judgment if the forum court finds that the entire judicial system in the foreign country where the foreign-country judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of subsection 4(b)(1) is on the foreign country's judicial system as a whole, the focus of subsection 4(c)(8) is on the particular proceeding that resulted in the specific foreign-country judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular foreign country that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the foreign-country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign-country judgment.

Subsections 4(c)(7) and (8) both are discretionary grounds for denying recognition, while subsection 4(b)(1) is mandatory. Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in

that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the foreign-country judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the foreign-country judgment. For example, a forum court might decide not to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. Under subsection 4(d), the party opposing recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition set out in subsection 4(b) or (c) applies. The 1962 Act was silent as to who had the burden of proof to establish a ground for nonrecognition and courts applying the 1962 Act took different positions on the issue. *Compare* Bridgeway Corp. v. Citibank, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (plaintiff has burden to show no mandatory basis under 4(a) for nonrecognition exists; defendant has burden regarding discretionary bases) *with* The Courage Co. LLC v. The ChemShare Corp., 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking to avoid recognition has burden to prove ground for nonrecognition). Because the grounds for nonrecognition in Section 4 are in the nature of defenses to recognition, the burden of proof is most appropriately allocated to the party opposing recognition of the foreign-country judgment.

SECTION 5. PERSONAL JURISDICTION.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter

involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a [cause of action] [claim for relief] arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection(a) as sufficient to support a foreign-country judgment.

Comment

Source: This provision is based on Section 5 of the 1962 Act. Its substance is the same as that of Section 5 of the 1962 Act, except as noted in Comment 2 below with regard to subsection 5(a)(4).

1. Under section 4(b)(2), the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) makes it clear that these bases of personal jurisdiction are not exclusive. The forum court may find that the foreign court had personal jurisdiction over the defendant on some other basis.

2. Subsection 5(a)(4) of the 1962 Act provides that the foreign court had personal jurisdiction over the defendant if the defendant was "a body corporate" that "had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state." Subsection 5(a)(4) of this Act extends that concept to forms of business organization other

than corporations.

3. Subsection 5(a)(3) provides that the foreign court has personal jurisdiction over the defendant if the defendant agreed before commencement of the proceeding leading to the foreign-country judgment to submit to the jurisdiction of the foreign court with regard to the subject matter involved. Under this provision, the forum court must find both the existence of a valid agreement to submit to the foreign court's jurisdiction and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

SECTION 6. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

Comment

Source: This section is new.

1. Unlike the 1962 Act, which was silent as to the proper procedure for seeking recognition of a foreign-country judgment, Section 6 of this Act expressly sets out the ways in which the issue of recognition may be raised. Under section 6, the issue of recognition always must be raised in a court proceeding. Thus, section 6 rejects decisions under the 1962 Act holding that the registration procedure found in the Uniform Enforcement of Foreign Judgments Act could be utilized with regard to recognition of a foreign-country judgment. *E.g.* Society of Lloyd's v. Ashenden, 233 F.3d 473 (7th Cir. 2000). The Enforcement Act deals solely with the *enforcement* of sister-state judgments and other judgments entitled to full faith and credit, not with the *recognition* of foreign-country judgments.

More broadly, section 6 rejects the use of any registration procedure in the context of the foreign-country judgments covered by this Act. A registration procedure represents a balance between the interest of the judgment creditor in obtaining quick and efficient recognition and enforcement of a judgment when the judgment debtor has already been provided with an opportunity to litigate the underlying issues, and the interest of the judgment debtor in being

provided an adequate opportunity to raise and litigate issues regarding whether the foreign-country judgment should be recognized. In the context of sister-state judgments, this balance favors use of a truncated procedure such as that found in the Enforcement Act. Recognition of sister-state judgments normally is mandated by the Full Faith and Credit Clause. Courts recognize only a very limited number of grounds for denying full faith and credit to a sister-state judgment – that the rendering court lacked jurisdiction, that the judgment was procured by fraud, that the judgment has been satisfied, or that the limitations period has expired. Thus, the judgment debtor with regard to a sister-state judgment normally does not have any grounds for opposing recognition and enforcement of the judgment. The extremely limited grounds for denying full faith and credit to a sister-state judgment reflect the fact such judgments will have been rendered by a court that is subject to the same due process limitations and the same overlap of federal statutory and constitutional law as the forum state's courts, and, to a large extent, the same body of court precedent and socio-economic ideas as those shaping the law of the forum state. Therefore, there is a strong presumption of fairness and competence attached to a sister-state judgment that justifies use of a registration procedure.

The balance between the benefits and costs of a registration procedure is significantly different, however, in the context of recognition and enforcement of foreign-country judgments. Unlike the limited grounds for denying full faith and credit to a sister-state judgment, this Act provides a number of grounds upon which recognition of a foreign-country judgment may be denied. Determination of whether these grounds apply requires the forum court to look behind the foreign-country judgment to evaluate the law and the judicial system under which the foreign- country judgment was rendered. The existence of these grounds for nonrecognition reflects the fact there is less expectation that foreign-country courts will follow procedures comporting with U.S. notions of fundamental fairness and jurisdiction or that those courts will apply laws viewed as substantively tolerable by U.S. standards than there is with regard to sister-state courts. In some situations, there also may be suspicions of corruption or fraud in the foreign-country proceedings. These differences between sister-state judgments and foreign-country judgments provide a justification for requiring judicial involvement in the decision whether to recognize a foreign- country judgment in all cases in which that issue is raised. Although the threshold for establishing that a foreign-country judgment is not entitled to recognition under Section 4 is high, there is a sufficiently greater likelihood that significant recognition issues will be raised so as to require a judicial proceeding.

2. This Section contemplates that the issue of recognition may be raised either as an original matter or in the context of a pending proceeding. Subsection 6(a) provides that in order to raise the issue of recognition of a foreign-country judgment as an initial matter, the party seeking recognition must file an action for recognition of the foreign-country judgment. Subsection 6(b) provides that when the recognition issue is raised in a pending proceeding, it may be raised by counterclaim, cross-claim or affirmative defense, depending on the context in which it is raised. These rules are consistent with the way the issue of recognition most often was raised in most states under the 1962 Act.

3. An action seeking recognition of a foreign-country judgment under this Section is an action on the foreign-country judgment itself, not an action on the underlying cause of action that gave rise to that judgment. The parties to an action under Section 6 may not relitigate the merits of the underlying dispute that gave rise to the foreign-country judgment.

4. While this Section sets out the ways in which the issue of recognition of a foreign-country judgment may be raised, it is not intended to create any new procedure not currently existing in the state or to otherwise effect existing state procedural requirements. The parties to an action in which recognition of a foreign-country judgment is sought under Section 6 must comply with all state procedural rules with regard to that type of action. Nor does this Act address the question of what constitutes a sufficient basis for jurisdiction to adjudicate with regard to an action under Section 6. Courts have split over the issue of whether the presence of assets of the debtor in a state is a sufficient basis for jurisdiction in light of footnote 36 of the U.S. Supreme Court decision in Shaffer v. Heitner, 433 U.S. 186, 210 n.36 (1977). This Act takes no position on that issue.

5. In states that have adopted the Uniform Foreign-Money Claims Act, that Act will apply to the determination of the amount of a money judgment recognized under this Act.

SECTION 7. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.

If the court in a proceeding under Section 6 finds that the foreign-country judgment is entitled to recognition under this [act] then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) enforceable in the same manner and to the same extent as a judgment rendered in this state.

Comment

Source: The substance of subsection 7(1) is based on Section 3 of the 1962 Act. Subsection 7(2) is new.

1. Section 5 of this Act sets out the standards for the recognition of foreign-country judgments within the scope of this Act, and places an affirmative duty on the forum court to

recognize any foreign-country judgment that meets those standards. Section 6 of this Act sets out the procedures by which the issue of recognition may be raised. This Section sets out the consequences of the decision by the forum court that the foreign-country judgment is entitled to recognition.

2. Under subsection 7(1), the first consequence of recognition of a foreign-country judgment is that it is treated as conclusive between the parties in the forum state. Section 7(1) does not attempt to establish directly the extent of that conclusiveness. Instead, it provides that the foreign-country judgment is treated as conclusive to the same extent that a judgment of a sister state that had been determined to be entitled to full faith and credit would be conclusive. This means that the foreign-country judgment generally will be given the same effect in the forum state that it has in the foreign country where it was rendered. Subsection 7(1), however, sets out the minimum effect that must be given to the foreign-country judgment once recognized. The forum court remains free to give the foreign-country judgment a greater preclusive effect in the forum state than the judgment would have in the foreign country where it was rendered. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 481 cmt *c* (1986).

3. Under subsection 7(2), the second consequence of recognition of a foreign-country judgment is that, to the extent it grants a sum of money, it is enforceable in the forum state in accordance with the procedures for enforcement in the forum state and to the same extent that a judgment of the forum state would be enforceable. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States §481 (1986) (judgment entitled to recognition is enforceable in accordance with the procedure for enforcement of judgments applicable where enforcement is sought). Thus, under subsection 7(2), once recognized, the foreign-country judgment has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying a judgment of a comparable court in the forum state, and can be enforced or satisfied in the same manner as such a judgment of the forum state.

SECTION 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

Comment

Source: This section is the same substantively as section 6 of the 1962 Act, except that it adds as an additional measure for the duration of the stay "the time for appeal expires."

1. Under Section 3 of this Act, a foreign-country judgment is not within the scope of this Act unless it is conclusive and enforceable where rendered. Thus, if the effect of appeal under the law of the foreign country in which the judgment was rendered is to prevent it from being conclusive or enforceable between the parties, the existence of a pending appeal in the foreign country would prevent the application of this Act. Section 8 addresses a different situation. It deals with the situation in which either (1) the party seeking a stay has demonstrated that it intends to file an appeal in the foreign country, although the appeal has not yet been filed or (2) an appeal has been filed in the foreign country, but under the law of the foreign country filing of an appeal does not affect the conclusiveness or enforceability of the judgment. Section 8 allows the forum court in those situations to determine in its discretion that a stay of proceedings is appropriate.

SECTION 9. STATUTE OF LIMITATIONS. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

Comment

Source: This Section is new. The 1962 Act did not contain a statute of limitations. Some courts applying the 1962 Act have used the state's general statute of limitations, *e.g.*, Vrozos v. Sarantopoulos, 552 N.E.2d 1053 (Ill. App. 1990) (as Recognition Act contains no statute of limitations, general five-year statute of limitations applies), while others have used the statute of limitations applicable with regard to enforcement of a domestic judgment, *e.g.*, La Societe Anonyme Goro v. Conveyor Accessories, Inc., 677 N.E. 2d 30 (Ill. App. 1997).

1. Under Section 3 of this Act, this Act only applies to foreign-country judgments that are conclusive, and if the judgment grants recovery of a sum of money, enforceable where rendered. Thus, if the period of effectiveness of the foreign-country judgment has expired in the foreign country where the judgment was rendered, the foreign-country judgment would not be subject to this Act. This means that the period of time during which a foreign-country judgment may be recognized under this Act normally is measured by the period of time during which that judgment is effective (that is, conclusive and, if applicable, enforceable) in the foreign country that rendered the judgment. If, however, the foreign-country judgment remains effective for more than fifteen years after the date on which it became effective in the foreign country, Section 9 places an additional time limit on recognition of a foreign-country judgment. It provides that, if the foreign-country judgment remains effective between the parties for more than fifteen years, then an action to recognize the foreign-country judgment under this Act must be commenced within that fifteen year period.

2. Section 9 does not address the issue of whether a foreign-country judgment that can no longer be the basis of a recognition action under this Act because of the application of the fifteen-year limitations period in Section 9 may be used for other purposes. For example, a common rule with regard to judgments barred by a statute of limitations is that they still may be used defensively for purposes of offset and for their preclusive effect. The extent to which a foreign-country judgment with regard to which a recognition action is barred by Section 9 may be used for these or other purposes is left to the other law of the forum state.

SECTION 10. UNIFORMITY OF INTERPRETATION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

Source: This Section is substantively the same as Section 8 of the 1962 Act. The section has been rewritten to reflect current NCCUSL practice.

SECTION 11. SAVING CLAUSE. This [act] does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this [act].

Comment

Source: This section is based on Section 7 of the 1962 Act.

1. Section 3 of this Act provides that this Act applies only to certain foreign-country judgments that grant or deny recovery of a sum of money. The purpose of this Act is to establish the minimum standards for recognition of those judgments. Section 11 makes clear that no negative implication should be read from the fact that this Act does not provide for recognition of other foreign-country judgments. Rather, this Act simply does not address the issue of whether foreign-country judgments not within its scope under Section 3 should be recognized. Courts are free to recognize those foreign-country judgments not within the scope of this Act under common law principles of comity or other applicable law.

SECTION 12. EFFECTIVE DATE.

[(a) This [act] takes effect … .

[(b) This [act] applies to all actions commenced on or after the effective date of this [act] in which the issue of recognition of a foreign-country judgment is raised.]

Comment

Source: Subsection 12(a) is the same as Section 11 of the 1962 Act. Subsection 12(b) is new.

1. Subsection 12(b) provides that this Act will apply to all actions in which the issue of recognition of a foreign-country judgment is raised that are commenced on or after the effective date of this Act. Thus, the application of this Act is measured not from the time the original action leading to the foreign-country judgment was commenced in the foreign country, but rather from the time the action in which the issue of recognition is raised is commenced in the forum court. Subsection 12(b) does not distinguish between whether the purpose of the action commenced in the forum court was to seek recognition as an original matter under Subsection 6(a) or was an action that was already pending when the issue of recognition was raised under Subsection 6(b).

SECTION 13. REPEAL. The following [acts] are repealed:

(a) Uniform Foreign Money-Judgments Recognition Act,

(b)

.]

Comment

Source: This Section is an updated version of Section 10 of the 1962 Act.