THE EFFECT OF FOREIGN JUDGMENTS.

MUNSON PRIZE THESIS.

The courts of this country have long been accustomed to recognize, and in proper cases to enforce, the judgments of the courts of other jurisdictions. The constant development of trade and friendly intercourse with other nations and between the States, has expanded this branch of the law to such an extent, that it becomes a matter of the greatest importance to determine the effect of such foreign judgments.

The subject is a broad and difficult one and it is my object to determine only a few of the general rules and principles governing it.

Although in practical effect it is of little consequence, yet there has been some difference of opinion as to what is the basis of the recognition of such judgments, and the theory of the later authorities is completely at variance with principles at one time apparently well established. The earlier jurists based such recognition solely on the ground of comity. Thus Chancellor Kent says that "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." And Mr. Justice Story cited and approved this theory.[1]

How completely Kent's statement of the law is at variance with the modern rule and theory will presently appear.

In the modern discussions of this question the rule of comity is altogether ignored and the judicial recognition of foreign judgments is based on the broader grounds of obligation, convenience and expediency.[2] The present theory was clearly and forcibly

[1] 2 Kent's Com. 120; Story, Conflict of Laws, § 598.

[2] Williams *v.* Jones, 13 M. & W. 633; Grant *v.* Easton, L. R. 13 Q. B. Div. 302; Hilton *v.* Guyott, 42 Fed. Rep. 249, 257.

laid down by Judge Wallace of the United States Circuit Court in a comparatively recent case, as follows: "These adjudications ignore any considerations of comity as a factor in influencing the effect of foreign judgments. They rest wholly upon the practical and sensible doctrine which is applied to domestic judgments, that a litigant who has had a fair opportunity to try his cause before a competent tribunal, and has availed himself of it, should acquiesce in the result, and, if he has reason to complain, should pursue those means for correcting error provided by the jurisprudence of the tribunal instead of resorting to another court. This is a much safer and more reasonable doctrine than that of the earlier adjudications, and if it works injustice in occasional instances, works less hardship generally and promotes justice upon the whole."[3]

These principles, however, are only applicable to strictly foreign judgments. The recognition of sister State judgments is of course based upon the full faith and credit clause of the Constitution of the United States, and the acts of Congress passed to enforce it.

In the early history of this Republic the application of the constitutional provision to the subject under discussion was very important, and carried out in an effectual manner the intention of its founders to give the greatest possible effect to sister State judgments. It necessarily followed that they were more conclusive than strictly foreign judgments, and there was for a long time a considerable difference in the rules applicable to the two classes of cases. Many of the best authorities have considered this difference so important that they have treated sister State judgments as a distinct branch of the subject. In an exhaustive treatise, this separation undoubtedly simplifies matters and is open to no serious objection, but it involves so much unnecessary repetition that it will not be attempted in this article.

It is proper to observe here, and it will appear clearly in the course of the discussion, that these distinctions between strictly foreign and sister State judgments are now mostly abolished. And it would seem, from the tendency of the courts in recent years that they will soon be entirely done away with. More confidence is felt in the good faith of other nations, and the fact that a foreign tongue does not interfere with clearness of perception and integrity and rectitude of decision is now recognized.

By the term foreign judgments, therefore, as used generally in

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3 Hilton *v.* Guyott, 42 Fed. Rep. 249, 257.

this article, I mean both strictly foreign judgments and sister State judgments. Where it is necessary to make a distinction, the use of the appropriate terms will make it clear.

It can be safely stated as a general rule of universal application, that the judgment of a foreign court is conclusive as to all matters which it professes to decide, provided it was rendered by a lawfully constituted court, of competent jurisdiction, and in the absence of fraud in obtaining the decree.[4]

This rule, it will be observed, precludes an inquiry into the the merits of the original controversy, and has been, from early times, the express doctrine applicable to foreign judgments *in rem.*

As to foreign judgments *in personam*, however, this was not the rule established by the early cases. It was formerly held that they were merely *prima facie* evidence, and the case might be reëxamined on its merits.[5]

The first step toward the establishment of the present rule was taken by Lord Ch. J. Eyre, who suggested that while foreign judgments were merely *prima facie* evidence when set up as a cause of action, they should be conclusive in every other case, and a good bar when pleaded as a defense.[6] The reason for this distinction was, that if it was thus voluntarily submitted to their jurisdiction, it should be obligatory only to the extent which they chose to make it, that is to say, "as consideration *prima facie* sufficient to raise a promise."[7]

This distinction obtained for some time in England and was adopted in this country, but it was gradually abolished, and it is the settled rule to-day that a foreign judgment *in personam* is equally conclusive whether set up as a cause of action or used as a defense.

Of the recent American decisions, few adhere to the old doctrine. Although we have as yet no authoritative ruling of the Federal Supreme Court, the decided weight of authority both in the State and lower Federal Courts, has established the rule, that personal judgments, rendered by a foreign court of competent

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4 Bank of Australasia *v.* Nias, 16 Q. B. 717; Goddard *v.* Gray, L. R. 6 Q. B. 139; Lazier *v.* Westcott, 26 N. Y. 14; Baker *v.* Palmer, 83 Ill. 568, 574; Hilton *v.* Guyott, 42 Fed. Rep. 249; McMullen *v.* Richie, 41 Fed. Rep. 502.

5 Walker *v.* Witter, 1 Doug. 1, 6; Sinclair *v.* Frazer, 2 How. St. Tr. 469; Burnham *v.* Webster, 1 Wood & M. 172; Buttrick *v.* Allen, 8 Mass. 273; Green *v.* Sarmiento, 1 Pet. C. C. 74.

6 Phillips *v.* Hunter, 2 H. Bl. 402, 410.

7 Phillips *v.* Hunter, *supra.*

jurisdiction, are binding and conclusive, and cannot be examined on the merits.[8]

The above remarks apply particularly to strictly foreign judgments, and, while the same rules obtain at present in actions on sister State judgments, *the reasons on which they are based* are slightly different. The Constitution 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."[9] In pursuance of this provision the Congress soon passed the following act: "That the records and judicial proceedings of the courts of any State shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And 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 States from whence said records are or shall be taken."[10] This was extended by a subsequent provision "to the territories of the United States and the countries subject to the jurisdiction of the United States."[11]

The only question therefore, as between the States, was to determine the effect of these constitutional and statutory provisions. There was for some time a great diversity of opinion as to their proper construction, and there was a strong tendency in some courts practically to nullify their effect, by declaring that the record of a judgment of another State thus authenticated was only conclusive as to the fact that such judgment had been passed, leaving their effect to be ascertained by the rules of the common law.[12] It is obvious that the effect of this construction was to put them on the same basis as strictly foreign judgments, which at that time were only *prima facie* evidence of debt.

Other courts were inclined to put them on the same footing as

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8 Lazier *v.* Westcott, 26 N. Y. 146; Baker *v.* Palmer, 83 Ill. 568; McMullen *v.* Ritchie, 41 Fed. Rep. 502; Hilton *v.* Guyott, 42 Fed. Rep. 249.

9 Cons. U. S., Art. 4, § 1.

10 U. S. Rev. St. 905.

11 2 Stat. at Large 298.

12 Gleason *v.* Dodd, 4 Met. 333.

domestic judgments, so that no plea would be admissible except such as denied the existence of the judgment itself.[13] It is evident that this rule was too broad and went too far the other way. Such a rule might be construed to preclude an inquiry into the jurisdiction.

The true rule, as it obtains at present, was stated by Mr. Justice Story in his opinion in the case of Mills *v.* Duryee.[14] He said; "It is argued that this act provides only for the admission of such records as evidence, but does not declare the effect of such evidence when admitted. This argument cannot be supported. The act declares that the record duly authenticated shall have such faith and credit as it has in the State court from whence it is taken. If in such court it has the faith and credit of evidence of the highest nature, viz., record evidence, it must have the same faith and credit in every other court. Congress has therefore declared the effect of the record by declaring what faith and credit shall be given to it." This case was shortly afterward reaffirmed by the same court,[15] and has been generally followed in the State courts.

The true doctrine, therefore, as to the construction of the full faith and credit clause and the acts of Congress passed in accordance therewith, as determined by this and later decisions of the Supreme Court, is, that the judgment of a State court shall receive the same faith and credit in other States which is accorded to it *at home.*[16] And this is true even though such a judgment, rendered under like circumstance by the courts where it is sought to be enforced, would be absolutely void.[17]

Having thus established the rule that neither a foreign nor a sister State judgment can be reëxamined on the merits, let us now inquire when they are impeachable for fraud, and what is necessary to confer jurisdiction. By fraud in this connection is meant fraud in obtaining the decree. That fraud may have been back of that and tainted the original contract is of no importance. That would have constituted a valid defense in the original action, and to allow an inquiry in a suit on the judgment would amount to a re-opening of the case on the merits.

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[13] Noble *v.* Gold, 1 Mass. 410; Armstrong *v.* Carson, 2 Dall. 302; Gleason *v.* Dodd., *supra.*

[14] 7 Cranch, 481.

[15] Hampton *v.* McConnel, 3 Wheat. 234.

[16] Christmas *v.* Russell, 5 Wall. 270; Renand *v.* Abbot, 116 U. S. 277.

[17] Ritter *v.* Hoffman, 35 Kan. 215.

But even the rule that there can be an inquiry as to whether fraud was practiced in obtaining the decree must be received with great caution at the present time. To be sure this rule still obtains in actions on strictly foreign judgments,[18] but it is much qualified in its application, where it is interposed as a defense in an action to enforce the judgments of sister States. It is certainly the settled law, that such a defense is not admissible unless it could be set up in the courts of the State where the judgment was rendered.[19] This in fact is the true test. Any rule absolutely forbidding an inquiry in regard to fraud, would, in effect, be giving greater faith and credit than the judgment receives at home, which is more than the Constitution requires.

Want of jurisdiction is fatal to any decree, and an inquiry can be made by any court in which the judgment of another court is sought to be enforced.[20] This is true in those cases in which suit is brought on the judgment of a court of a sister State, even though the effect of such an inquiry may be to contradict the record.

The constitutional provision that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State" can mean no more than that full faith and credit shall be given to the *valid and lawful* judgments and records of the courts of a sister State. If the want of jurisdiction is apparent on the face of the record "the document is stripped of its character and dignity as a record, no presumption will be indulged in its favor, and it will not be treated as possessing any force or validity whatever."[21]

Even if it appears on the face of the record that the jurisdiction attached, the later and better authority has established the rule that it may still be questioned. The mere recital should not be conclusive, for the credibility of the record itself depends on the competency of the court whence it issues. "On the whole we think it clear that the jurisdiction of the court by which a judgment is rendered in any State, may be questioned in a collateral proceeding in another State, notwithstanding the provisions of the fourth article of the Constitution and the law of 1790, and not-

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18 Rankin *v.* Goddard, 54 Me. 28, 89 Am. Dec. 718; Ward *v.* Quinlivin, 57 Mo. 425.

19 Anderson *v.* Anderson, 8 Ohio 108; Christmas *v.* Russell, 5 Wall. 290; Maxwell *v.* Stewart, 22 Wall. 77; Hanley *v.* Donoghue, 116 U. S. 1, 4.

20 Story, Conf. of Laws, 586; Rose *v.* Himely, 4 Cranch. 241.

21 Black on Judgments, 895.

withstanding the averments contained in the record of the judgment itself."[22]

The presumption to be sure is in favor of the jurisdiction of the court pronouncing the judgment, and the presumption is even stronger where the credibility of the record is in question, but it is not conclusive and can be rebutted by strong proof to the contrary.

What then is necessary to give a court jurisdiction so that a decree there rendered cannot be impeached in a collateral proceeding in another jurisdiction?

In order to render a judgment valid and binding in every respect, it is essential for the court to have jurisdiction of the cause, the *res* and the parties.[23] An inquiry into these elements of its authority is always proper.

It does not appear worth while to dwell at any length upon, or to attempt to determine, when the court would have jurisdiction over the cause. Nor indeed would it be possible to lay down any general rules applicable to all courts. This is a matter that is dependent entirely on statutes, which determine the rule in each case, and which differ greatly in different jurisdictions.

As to the *res*, if the matter in controversy is land, or other immovable property, the judgment of the *forum rei sitæ* always governs. On the other hand, the judgment of a foreign court touching such immovable property is of no binding force.[24]

There is an apparent exception to the last rule, in the case of a court of equity, in a suit between parties properly within the jurisdiction, decreeing specific performance of a contract for the sale of land situated in another jurisdiction. Relief is given in this case for the reason that equity always acts *in personam*. It does not operate directly upon the land, but simply compels the person within its jurisdiction to obey its decree. This decree is in its very nature a personal decree, and jurisdiction over the parties is all that is necessary.[25]

So also if the matter in controversy is movable property, the judgment of the *forum rei sitæ* is conclusive, provided such property was properly within the jurisdiction of the court. It is

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[22] Mr. Justice Bradley in Thompson *v.* Whitman, 18 Wall. 457; see also Knowles *v.* Gaslight Co., 19 Wall. 58; Hall *v.* Lanning, 91 U. S. 160; Pennoyer *v.* Neff, 95 U. S. 714.

[23] Story, Conf. of Laws, § 586; Rose *v.* Himely, 4 Cranch. 241; Cheriot *v.* Foussat, 3 Binn. 220.

[24] Story, Conf. of Laws, § 591.

[25] Massie *v.* Watts, 6 Cranch. 148.

essential, however, that such jurisdiction should be *bona fide* and not obtained by fraud. So, where the subject matter of the litigation is property, properly within the jurisdiction of the court, jurisdiction of the parties is not necessary. But when we say that judgments are binding in such case, we mean binding only *in rem*, *i. e.*, to the extent of the property attached. It is obvious that a court cannot render a binding *personal* judgment unless it has also obtained jurisdiction of the person.

These principles are particularly important in admiralty cases, and, if jurisdiction is rightfully obtained, the judgments of admiralty courts, in prize cases, forfeitures, collisions and the like, are binding and conclusive the world over, as to all matters *essential to the decree.*[26] Indeed this rule is carried to the extent of holding such a decree binding, even though it was given under sovereign edict, unjust in itself, and which had been declared by the United States government to be a direct and flagrant violation of international law.[27]

In those actions *in rem* where the primary object is to determine the *status*, jurisdiction over the parties, or at least over one of them, is essential from the very nature of the case. Thus, in order that a decree of divorce shall be valid, one of the parties, usually the applicant, must be *bona fide* domiciled within the territorial jurisdiction of the court. The other party may be a non-resident, and constructive service of process only, is sufficient.[28]

Finally, what is necessary to give a court jurisdiction over the parties? There can certainly be no question if they were domiciled within the territorial jurisdiction, or if they entered into the contract there, or if they voluntarily came there to bring suit.

The question arises usually where the *defendant* was not a resident of the State or country where the judgment was rendered. In this case personal service of process within the jurisdiction is necessary, and a judgment, without personal service, or notice, or appearance, is a mere nullity.[29] Extra-territorial service of process is, for this purpose, absolutely ineffectual. A judgment obtained upon such service, where no appearance is made by the person served, can impose no personal liability which will be recognized beyond the jurisdiction of the court in which the action

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26 *The Helena*, 4 Ch. Rob. 3; Williams *v.* Armroyd, 7 Cranch. 423.

27 Williams *v.* Armroyd, *supra.*

28 2 Bishop, Mar. & Div. §§ 155, 156; Pennoyer *v.* Neff, 95 U. S. 714; Tolen *v.* Tolen, 2 Blackf. 407.

29 Bishoff *v.* Wethered, 9 Wall. 812.

originated.[30] If however, the defendant, after such a service, files an answer and allows the case to proceed to judgment, such judgment will be valid everywhere.[31] Personal service within the territorial limits, (in the absence of fraud in getting the party there), gives the court jurisdiction, and having once attached, it is not lost even if he immediately escapes.

These principles are important in their application to non-resident corporations, and many of the States now make the appointment of a resident officer or agent, authorized to accept service, a condition precedent to the right to do business within their borders.

I have not attempted in this article to do more than determine a few of the general rules and principles applicable in testing the validity of judgments when questioned collaterally in another jurisdiction. To these rules there are exceptions, however, some of the most important of which it will be well to notice.

In the first place it is necessary that a foreign judgment should be valid, subsisting and final. It should be capable of enforcement and fit to serve as the foundation for final process in the place where it was rendered. Adjudications, therefore, which are merely interlocutory, cannot properly be made the foundation for a suit, nor are they conclusive upon a similar application in an action in another State.[32] Similarly the courts will not give effect to foreign judgments rendered upon summary proceedings, in derogation of the common law and justified only by local statutes.[33]

Nor is any State or nation bound to recognize the penal or revenue laws, or the local police regulations of another jurisdiction. The courts therefore will not enforce any decree of a foreign court where such laws were the foundation of the decree.[34]

There was formerly some difficulty in determining the meaning of the word "penal" or "penalty" as used in this connection. In a recent case before the Supreme Court of the United States it was construed to mean vengeance, not reparation. It therefore

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[30] Shepard *v.* Wright, 59 How. Pr. 512; McEwan *v.* Zimmer, 38 Mich. 765; Pennoyer *v.* Neff, 95 U. S. 714.

[31] Jones *v.* Jones, 36 Hun. 414.

[32] Brinkley *v.* Brinkley, 50 N. Y. 184.

[33] Sevier *v.* Roddie, 51 Mo. 580; Anderson *v.* Haddon, 33 Hun. 435.

[34] *The Antelope*, 10 Wheat. 66, 123; Attrill *v.* Huntington, 70 Md. 199 affirmed in Huntington *v.* Attrill, 146 U. S. 657.

applies only to forfeitures payable to the public or to representatives of the public, not to individuals.[35]

There is one other distinction which it would be well to notice. In the case of strictly foreign judgments there is no merger of the original cause, and suit can be brought upon the original contract rather than upon the judgment, if the party suing thinks it for his interest to do so.[36] In the case of a sister State judgment, however, the original cause of action is merged.

Harry G. Day.

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[35] Huntington *v.* Attrill, *supra.*

[36] Hatch *v.* Spofford, 22 Conn. 495; Bank of U. S. *v.* Merchants Bank, 7 Gill. 415; Green *v.* Starr, 52 Vt. 426; Hogg *v.* Charlton, 25 Pa. St. 200; Barnes *v.* Gobbs, 31 N. J. Law. 317.