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## FOREWORD

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The editors of the Iowa Law Review are to be congratulated upon selecting a topic for their symposium of specific professional interest and then on nurturing their project to fruition along lines both practical and scholarly. The result is a work at once of scientific interest and a useful professional tool, a credit to the leadership in legal thinking and the sense of responsibility therefor which is now so happily and properly a characteristic of our law school journals.

Since in litigation as in other things the proof of the pudding is in the eating,<sup>1</sup> study of cases and of trials might well start with the ultimate step to which all else is but prelude, namely the enforcement of the judgments secured. For a litigant and his counsel, if well advised, will spare themselves the time, trouble and expense of initiating a law suit and then of pressing it to the usual lengthy conclusion if in the end they have nothing of reality to show for their pains. Of course they may have satisfied academic longings or provided scholarly precedents for the books, but such returns are hardly sufficient to make up for money in the pocket or separate reparation from the injurer. Yet we find little direct attention in the schools and the reviews to the problems of *execution*, a legal term almost vanishing from the periodical indices.<sup>2</sup> A partial reason for this disinterest in a field not without difficulty may well stem from a professional failure to think things through and examine all contingencies as a proper prelude to action—a failure which this symposium should help to repair. But I am convinced that much of it is due to the general law school attitude of giving emphasis to the problems of the substantive law and of treating procedure as rather beneath the

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<sup>1</sup> DE CERVANTES, DON QUIXOTE c. 10, p. 322 (Modern Library Giant ed.).

<sup>2</sup> Thus the latest volume of the INDEX TO LEGAL PERIODICALS, that for 1955-1956, and the current part, contain no entries under "Execution"; while earlier volumes rather interestingly show a high proportion of English items.

dignity of legal gentlemen and scholars. This I have adverted to many times and at length elsewhere.<sup>3</sup> Hence I should not whip a jaded horse again further than to point out the obvious consequences of this attitude in fostering courses merely in antiquarian pleading or procedure, useful only as adjuncts to the substantive courses to explain the queer terms or outmoded processes which the substantive teachers are too rushed to define. Or if this rather usual mould is somewhat broken, it is likely to be only by either a general survey course, a bird's-eye view of all the procedural diversities of all the various states, or strictly vocational courses in purely local practice.

But of late there appears to be developing some considerable departure from such debilitating restrictions and burdens. Procedure—the routine but impartial handling of successive cases—is so important in the judicial process that it has a way of coming to the fore no matter how much condescended to. I am disposed to believe that there is really an increasing awareness of how much a matter of intellectual challenge the development of a workable procedure may be. It will not present the same type of question as does the matter of consideration or conditions in the law of contracts or the new definition, say, of a right of privacy; but it will pose the vital present day problem of how to get court business done in all the turmoil and congestion of modern urban conditions. In fact it involves quite the liveliest of present legal problems. Both the bar and the bench have become increasingly aware of their joint responsibility and there are now some striking examples of the response to a real public need shown by those courts which have realized a proper concern for law administration as well as legal jurisdiction. This change of emphasis must permeate the law schools in time. Indeed, its development may be noted in courses still nominally denominated substantive; is it not more than chance that the book reviews in this issue are devoted to case books on “conflict of laws” and “creditors’ rights”?<sup>4</sup> For the essays herein show how large the problems in those fields do loom in our general topic. So I am particularly pleased that the editors have boldly centered their subject matter in the procedure field under the direct and properly descriptive title of “Post-Judgment Proceedings by

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<sup>3</sup> See *e.g.* Clark, Book Review, 62 YALE L.J. 292 (1953), Clark, Book Review, 97 U. PA. L.REV. 917 (1949) and Clark, Book Review, 47 HARV. L. REV. 148 (1933), also prefaces to CLARK, MODERN PLEADING VII (1952) and CLARK, CASES ON PLEADING AND PROCEDURE VII, IX (2d ed. 1940). See also Donnelly, Book Review, 60 YALE L.J. 377 (1951); James, Book Review, 62 YALE L.J. 130 (1952). For the general approach to pleading see CLARK, CODE PLEADING 69-71 (2d ed. 1947); CLARK, MODERN PLEADING 1008-14 (1952); Chorley, *Pleading: A Subject for Scientific Study?* 12 MODERN L.REV. 319 (1949).

<sup>4</sup> See pp. 333, 336, *infra*.

the Plaintiff." Let us hope it is but the forerunner of many direct and practical forays in the every day aspects of court practice.

In this symposium my function, I assume, is to sound the dinner bell, not to sample the viands. For the actual consumption is for the reader, and I guarantee that a pleasant and rewarding task lies before him. Herein there is a good balance between the directly professional and the more theoretical, the practical and the scholarly, so far as they can be properly dictomized. In particular, the scholars have opened some wide vistas, as in Professor Nadelmann's exposition of the difficulties resulting from the nonrecognition of foreign judgments in civil law countries and what we should do about it.<sup>5</sup> An opening for extensive exploration is made by the student note on imprisonment for debt, one of the law's cruelties often thought to be a thing of the past but still a matter for legislation and reform.<sup>6</sup> Without stopping for further general analysis, I should like to refer briefly to a matter in which I have long been interested, namely the registration of judgments, federal and state, in other jurisdictions.<sup>7</sup>

American interest in this procedure undoubtedly stems from the classic article by Professor Walter Wheeler Cook in 1919, describing particularly its use and utility in Australia.<sup>8</sup> Actual movement for the reform got under way in 1937 with the action of the Advisory Committee on the civil rules in recommending a rule for such registration to the Supreme Court for adoption.<sup>9</sup> Although the Court omitted this rule from the rules then adopted, presumably because of question as to its power—one of the only two proposals then rejected<sup>10</sup>—this draft became the basis of the statute ultimately adopted in 1948 providing for such

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<sup>5</sup> See p. 236, *infra*.

<sup>6</sup> As in New York; see Report of Committee on Law Reform, *Civil Arrest and Execution Against the Person*, 11 THE RECORD 402-11 (October, 1956).

<sup>7</sup> Discussed particularly in the article by Professor Paulsen, *Enforcing the Money Judgment of a Sister State*, p. 202, *infra*, and the note, *Registration of Federal Judgments*, p. 285, *infra*.

<sup>8</sup> Cook, *The Powers of Congress Under the Full Faith and Credit Clause*, 28 YALE L.J. 421, 426 (1919).

<sup>9</sup> Proposed Rule 77, Report of Advisory Committee, April 1937, pp. 197-99; Final Report, November 1937, p. 49; see also Preliminary Draft, May 1936, XVII, XVIII, 153-57.

<sup>10</sup> While supporting the policy, the Advisory Committee pointedly and in four separate places, see note 8 *supra*, stated the problem of power to adopt this particular rule. The other proposals not adopted were provisions in the deposition and evidence rules allowing the showing of contradictory statements by a witness without their being first called to his attention. See CLARK, *CODE PLEADING* 37 (2d ed. 1947). The Advisory Committee has now been discharged, Order of October 1, 1956, 77 Sup. Ct. IX (1956), and that source of reform is therefore at least in abeyance for the present.

registration.<sup>11</sup> To my observation this statute has worked well and has facilitated the unimpeded enforcement of federal judgments throughout the vast and important federal judicial establishment.<sup>12</sup> The commentator below<sup>13</sup> remarks on the comparatively few cases which seem to have arisen under the statute, but that may well be an indicia of its smooth operation. Blessed is that country whose history is brief or legal device whose exegesis is limited!

In his informing article "Enforcing the Money Judgment of a Sister State,"<sup>14</sup> Professor Paulsen gives hearty support to this procedure for the federal system and recognizes its theoretical value for the states as well. But he expresses doubt of the possibility of its enactment in state legislation, in view of constitutional worries and other state concerns. So he supports the proposed Uniform Enforcement of Foreign Judgments Act, providing in effect for a summary judgment procedure especially suited to actions on foreign judgments, as "the only proposal for reform with a realistic chance of being enacted widely." I certainly shall not question his judgment as to the possibilities of legislative response in this perhaps technical field and would heartily agree that at least the Uniform Act should gain widespread support. But procedural reform is never static but must be continuing; and recognition of judgments among the states is certainly one indicia of greater unity and protection of citizens not really "foreign" by those mythical lines we call state boundaries. So initial steps in this direction may suggest others looking eventually to much greater confidence in other and in all courts and simplicity in the vindication of their mandates.

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<sup>11</sup> 28 U.S.C. § 1963 (1952), quoted p. 288, *infra*, which, as the Revisor's Note shows, follows the proposed Rule, except that it is limited to a judgment "in an action for the recovery of money or property."

<sup>12</sup> Cases under this statute in which I have participated include *Hadden v. Rumsey Products*, 196 F.2d 92 (2d Cir. 1952) and *Vaughan v. Petroleum Conversion Corp.*, 211 F.2d 499 (2d Cir. 1954), *cert. denied*, 348 U.S. 873 (1954).

<sup>13</sup> See p. 287, *infra*

<sup>14</sup> See p. 202, *infra*.