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Enforcement of American Judgments Abroad (summary)

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they have been subject to different systems of law within the same domicile. Therefore the wife became, by her marriage, subject to that system of law of the domicile which governed the husband. The rights and obligations of the testatrix fell then to be determined by Roman-Dutch law, and not by native law, and as the Native (Wills) Act applies only to persons subject to native law, it did not apply to her when she made a will, and her will therefore was valid. A contrary view would have led to strange results in other cases as regards proprietary and personal rights during the subsistence of the marriage.

With these few exceptions, however, no questions of any difficulty arise in any part of the Union owing to mixed marriages. And the reason that there are no such questions has been indicated. In the Transvaal and the Free State the mixed union hardly exists, and where it exists the offspring is not regarded as a white person. In the Cape, where it exists, the policy has been to treat the offspring of mixed unions as white persons for all purposes. It is owing to the existence of two different systems of law, applicable respectively to Europeans and natives, that any questions have arisen as to the offspring of mixed unions.

THE ENFORCEMENT OF AMERICAN JUDGMENTS ABROAD.

[Contributed to the "Yale Law Journal" by Professor Ernest G. Lorenzen.]

As one studies the rules of the conflict of laws of the different countries, one is struck by the fact that most countries assume a fundamentally different attitude in the enforcement of foreign judgments from what they do with respect to foreign laws in general. Although there are various theories concerning the ultimate legal basis upon which the recognition and enforcement of foreign laws rest, there is agreement on the point that under modern conditions a State is in duty bound to determine the consequences of legal acts, under certain circumstances, in accordance with the law of some foreign State. Notwithstanding many differences in detail, there exists to-day a striking similarity in the rules governing the conflict of laws in the various countries. An examination of the law governing the recognition and enforcement of foreign judgments in the different countries reveals, however, the surprising fact that there are, so far as this subject is concerned, no principles which have so far met with anything like universal approval.

This difference in the enforcement of foreign laws and foreign judgments

1 The article has been slightly abridged, and the valuable footnotes omitted throughout.
arises from a deep-rooted distrust in the administration of justice in other countries, and the fear arising therefrom that irreparable injury may be done to an individual. The laws of foreign countries apply, with few exceptions, with equal force to citizens and foreigners alike. In the case of foreign judgments it is felt, on the other hand, that the Courts of certain countries, because of the incompetency, the lack of independence and partiality of their judges, do not afford sufficient guarantees of an even-handed and enlightened administration of justice. In many countries the view prevails that the enforcement and recognition of foreign judgments can be established only through International Conventions between countries that have confidence in each other's Courts. Thus far very little has been accomplished, however, by this means. Through the initiative of the Dutch Government in 1874 and of the Italian Government in 1881, efforts were made to have the subject-matter under discussion regulated by an International Convention, but these steps led to no practical results. Even at the time of the holding of the Conferences of The Hague in 1893, 1894, 1900, and 1904, which dealt with various topics in the conflict of laws, the time was not deemed ripe for an international agreement with respect to the enforcement of foreign judgments. The only international regulation on the general subject relates to the enforcement of costs, which is found in Art. 16 of the International Convention on Civil Procedure, signed at The Hague on November 14, 1896, and modified by the Convention of July 17, 1905.

Greater progress in this direction has been made by some of the South American countries, which at the Congress of Montevideo, in 1889, agreed upon the conditions under which the judgments of the States ratifying the Convention should be enforced.

Much dispute exists in the different countries concerning the question whether the principles governing the enforcement of foreign judgments should be applied also when foreign judgments are set up by way of defence to a new action. In support of a radical distinction between the principles applicable to the enforcement of foreign judgments and their recognition in \textit{res judicata}, it is contended that the execution of judgments involves a direct act of sovereignty which should be allowed only after an examination of the fairness and justice of the foreign decision by the Courts of the State in which execution is sought. With respect to the recognition of foreign judgments as \textit{res judicata}, it is maintained, however, by some writers, following in the footsteps of Roman law, that a judgment is in the nature of a contract or quasi-contract, and that the obligation arising therefrom must, or should, be recognised upon the same footing as any other obligation when the judgment is pleaded in bar to another suit upon the same cause of action. By submitting the case to the foreign Court the parties are deemed, according to this view,
to have made an implied agreement that they will abide by the decision of the Court. The obligation arising from the judgment is referred, therefore, to the will of the parties rather than being derived directly from the sovereign power of the foreign State. Others deny the contract or quasi-contract theory, but support a similar distinction between the enforcement of foreign judgments and their recognition as res judicata on some general theory concerning the conflict of laws.

Foreign judgments may relate to a great variety of subjects. The judgment in question may be—to give only a few illustrations—a divorce decree, a judgment determining the capacity of a party to enter into a contract, a bankruptcy decree, a decision of a Prize Court, or a judgment for the payment of money. With respect to many of these subjects there are great differences of policy; with respect to others the internal law of the various countries is more nearly alike, the similarity being closest in the law of obligations.

(1) Anglo-American System.—According to English law a foreign judgment is never enforced as such. Execution will issue only on a domestic judgment. A foreign judgment for the payment of money is accepted, however, as evidence of the creation of an obligation which can be enforced by means of a new suit on the judgment. A similar system appears to prevail in Denmark. The proceedings in England are of a summary character, and a new judgment may be obtained within ten days or two weeks.

(2) Continental System.—In most of the Continental and South American countries execution will issue on the foreign judgment as such, but only after leave to do so has been obtained from the local Government. In some of the Swiss cantons the preliminary or exequatur proceeding is a governmental or administrative one, but in most countries it has a judicial character. In some countries, for example Germany, a formal action is necessary which the defendant may drag out for months by the interposition of all kinds of defences. Before the judgment of execution can be granted, a local creditor may have attached the property of the defendant, or the defendant himself may have secreted the property. A better system prevails in other countries, in Austria for example, where the foreign judgment is declared subject to execution upon the plaintiff’s petition, after an examination by the Court of the question whether the foreign judgment satisfies the requirements of the Austrian law for the enforcement of foreign judgments. The defendant is not informed of the proceeding until after the exequatur is granted and the judgment has become a lien upon his property. If he has any defences he is allowed to interpose them before execution is issued. The proceeding is swift in its operation and entails little expense.

Regarding the question whether foreign judgments will be enforced there are the following systems:
(1) Countries declining to enforce Foreign Judgments in the Absence of Treaty.—In certain countries no foreign judgment will be enforced in the absence of a treaty or International Convention. To this group belong Finland, Haiti, Holland, Japan, Russia, Santo Domingo, Servia, and probably also the Swiss cantons of Basel-Country, Neuchâtel, and Unterwalden (Obwalden). In Norway and Sweden the practice of the Courts is not so clear, but it seems that in these countries also foreign judgments will not be enforced in the absence of treaty.

As no treaties relating to the subject have been entered into between the United States and any foreign Government, American judgments cannot be enforced in the above countries or cantons. A new suit upon the original cause of action must therefore be brought.

In certain of the countries belonging to this group the foreign judgment may be received as evidence of the original obligation.

(2) Countries declining to enforce Foreign Judgments if the Plaintiff or Defendant is a Subject of such Country.—In Turkey foreign judgments were enforceable before the war in suits between foreigners, but judgments to which a Turk was a party were not. A judgment rendered in a suit between subjects of the same country, other than Turkey, could be enforced directly by the consul of such country, except as against realty, with respect to which the co-operation of the Ottoman authorities was necessary. If the parties had different nationalities, and neither of them was a Turk, the judgment would be enforced by a consul of the country to which the defendant belonged. Such consul would apply the rules relating to the enforcement of foreign judgments governing in his country.

(3) Countries enforcing Foreign Judgments without the Requirement of Reciprocity—(a) The Italian System.—Of all the foreign countries enforcing foreign judgments as such, Italy has had the distinction for many years of having adopted the most liberal policy. According to this system the status of the foreign judgment is fixed once for all. The review of the judgment relates only to certain points which have no reference to the correctness of the decision. Before the foreign judgment is enforced a preliminary proceeding takes place (giudizio di delibazione) whose object it is to ascertain whether the judgment was rendered by a Court of competent jurisdiction, whether the defendant had due notice of the original proceeding, whether he appeared or was duly defaulted, and whether the enforcement of the foreign judgment would be contrary to the public policy of Italy. If the judgment satisfies these requirements, the justice or injustice of the plaintiff's claim will not be reviewed.

The above system is derived from the principle of the equality of all States, and rests upon the fundamental assumption that the judgments of other States are entitled to full trust and confidence. As in the case of domestic judgments, a foreign judgment, so far as its merits are con-
cerned, imports absolute verity—an irrebuttable presumption being created in favour of its fairness and inherent justice.

In adopting the above principle Italy expected that other countries would follow her example. Having been disappointed in her expectations, Italy has now restricted somewhat her former liberal policy by a decree of July 30, 1920. According to this decree the merits of the foreign judgment may be inquired into in the following cases: (1) Where the judgment is by default; (2) where the judgment has been obtained through the plaintiff's fraud; (3) where the judgment is based upon legal documents which have been recognised or pronounced to be forgeries since the judgment was rendered, or prior to that time, if the defendant was ignorant of such fact; (4) where a document of a conclusive character has been found subsequent to the trial which could not be produced at the trial owing to the plaintiff's conduct; (5) where the judgment was rendered under a mistake of fact resulting from the record or documents of the case. Such an error is deemed to exist if the decision was based upon a supposition of fact, the falsity of which has since been established beyond a doubt, or if the non-existence of a fact was assumed, the existence of which has been positively established, provided that in either case the fact was not a point in issue and thus determined in the case.

The only countries that have followed the Italian policy are: Brazil, Portugal, San Marino, and the Swiss cantons of Basel-City and Tessin. Costa Rica also belongs to this group, the enforcement of foreign judgments being there restricted to those based on personal actions.

With respect to these countries there can be no doubt that American judgments for the payment of money can be enforced.

(b) The French System.—Under the Ordinance of 1829 the French Courts would enforce foreign judgments obtained by Frenchmen without a review of the merits. No effect would be given, however, to foreign judgments against a Frenchman. As against them a new suit would have to be brought on the original cause of action. According to Maleville the law was not changed by the Code Napoléon, but this view is now generally abandoned. The system actually prevailing is one which reviews the merits of the case (révision au fond). It does not content itself with inquiring into the jurisdiction of the foreign Court, the regularity of the service of the summons, appearance or default, and the public policy of the State in which the proceeding for the enforcement of the foreign judgment is brought; but examines the merits of the decision itself. The French doctrine rests upon an assumption diametrically opposed to that underlying the Italian system, and emphasises the fact that, while the different States of the civilised world are in theory equal and entitled to the same respect, their Courts do not actually inspire the same degree of confidence in regard to their decisions. It takes notice of the fact that the judges of certain countries are less competent
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than those of others, and are sometimes not free from bias against defendants belonging to a foreign country. Under these circumstances it is felt to be the duty of a State, before allowing the execution of foreign judgments within its territory, to ascertain whether the foreign judgment was fair and just.

Some of the French writers and decisions appear to favour the system of integral revision, according to which new issues may be raised, new proofs offered, and a different judgment rendered. Others hold that the right of revision on the part of French Courts, called upon to enforce foreign judgments, is more restricted, and support, therefore, the doctrine of limited revision. Some of these hold that the power possessed by the French Court is that of a Court of Appeal. According to Pillet, foreign judgments will be enforced in France unless a gross error has been committed or their enforcement is incompatible with the most elementary notions of justice.

The French Courts purport to go on the theory that the exequatur proceeding involves no substitution of a French judgment for a foreign judgment. They hold, therefore, that no additional amount to that specified in the foreign judgment can be recovered, not even interest. The exequatur may be granted, however, for a smaller amount. Contrary to the great weight of authority, there are a number of decisions which hold that the foreign judgment is conclusive with respect to the merits of the case.

The system of revision is applied in Belgium, Luxemburg, and probably in the Swiss cantons of Freiburg and Geneva, in Egypt and Monaco if reciprocity does not exist, and in Greece if one of the parties is a Greek subject. In the above countries American judgments for the payment of money are not conclusive, with the qualifications just made, and will not be enforced without a re-examination of their merits.

(c) The English System.—The English law, by requiring a suit on the foreign judgment, differs from the other foreign systems in the mode of enforcing foreign judgments for the payment of money. It differs from them also in that it regards foreign judgments as enforceable on principle, and imposes upon the defendant the burden of establishing the defences recognised by law. As regards the conclusive effect of foreign judgments, the English law stands between the French and Italian systems. Originally foreign judgments were regarded as being only prima facie evidence of the justice of plaintiff's claim, but since the case of Godard v. Gray they are ordinarily conclusive. In this respect the English law has abandoned the viewpoint of the French law and accepted that of Italy (before the decree of July 30, 1919). It does not go so far, however, as does the former Italian law, for in exceptional cases it will try the merits of the case over again. The law appears to be established in England 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. Such fraud may be shown, although it cannot be done without a retrial of the case. The object of such retrial is not, however, to show that the foreign Court came to a wrong conclusion, but that it was fraudulently misled into coming to a wrong conclusion. Courts of equity may enjoin the enforcement of judgments, domestic or foreign, if they have been procured through fraud, accident, mistake, or surprise.

The modern English doctrine has been followed in Canada with some local variations, and in other parts of the British Empire. In Quebec any defence which was or might have been set up in the original action may be pleaded to an action brought upon the judgment rendered out of Canada.

(4) **Countries requiring Reciprocity.**—The great majority of foreign countries do not follow any of the systems so far discussed, but adopt the principle of reciprocity. The countries belonging to this group differ from those belonging to the Italian system in that they do not admit the principle of the conclusive effect of all foreign judgments. Nor do they support the system adopted by the French Courts, which review the merits of the foreign judgment in every case, with the object of ascertaining whether the decision was fair and just. The mere fact that the Courts of a particular country present strong guarantees regarding the inherent justice of their decisions is not sufficient to entitle their judgments to enforcement, nor does the absence of such guarantees in other countries preclude the enforcement of their judgments. The only test applied with respect to the enforceability of the judgments of a particular State is a political one—whether the Courts of such State enforce the judgments of the State in which the question arises.

The following countries belong to the above group: Argentina, Austria, Bosnia-Herzegovina, Bulgaria, Chile, Colombia, Croatia and Slavonia, Cuba, Egypt, Guatemala, Honduras, Hungary, Lichtenstein, Mexico, Monaco, Montenegro, Panama, Paraguay, Peru, Roumania, the Baltic Provinces of Russia, Spain, the Swiss cantons of Aargau, Appenzell (Outer Rhodes), Berne, Grisons, Lucerne, Saint Gall, Schaffhausen, Schwiz, Thurgau, Unterwalden (Nidwalden), Valais, Zug, Zurich, Uruguay, and Venezuela.

The great majority of the above countries, whose law relating to the subject under discussion is statutory, enumerate additional requirements to that of reciprocity, the particulars of which will be discussed hereafter. Some of the Swiss cantons, however—Aargau, Appenzell (Outer Rhodes), Grisons, Lucerne, Saint Gall, Unterwalden (Nidwalden), and Zug—content themselves with mentioning reciprocity as the sole condition for the enforcement of foreign judgments.

1 They are contained in an appendix to the article in *The Yale Law Journal*.
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The requirement of reciprocity raises many intricate and difficult problems. Let us ascertain in the first place what is meant by reciprocity, how it is applied and how it is to be ascertained. A country having this requirement will not, of course, enforce the judgments of a foreign country which does not enforce its judgments. But what is its significance if the foreign law does enforce its judgments? Will an English judgment be enforced by means of a new suit upon the judgment and will the defences be those available in England in such action? Will the merits of a French judgment be examined within the limits established by the French Courts, and will an Italian judgment be examined with respect to the conditions laid down by the Italian Code of Civil Procedure? Or, will the foreign judgment be enforced only if the conditions required by the foreign country for the enforcement of foreign judgments are identical or substantially the same?

Modes of procedure are governed in all countries by the law of the forum, but there is a difference of view as to what matters fall within the purview of this rule. It would seem, however, that the method of enforcing a foreign judgment, whether by suit on the judgment or by some other procedure, should be controlled by the law of the State in which the enforcement is sought.

So far as the conclusiveness of foreign judgments is concerned, some countries give to them the same effect as is given by the Courts of the foreign country to their judgments. If no effect is given, the judgment will, of course, not be enforced. If it is enforced only after re-examination of the merits, such a review will be made likewise. If foreign judgments are conclusive, but must satisfy more stringent requirements, the same conditions will be applied.

In other countries the requirement of reciprocity has a different signification. The Austrian Courts at one time regarded French judgments as conclusive, notwithstanding the fact that the French Courts would enforce Austrian judgments only after a review of their merits. The Court would inquire only whether Austrian judgments were enforced in France, and paid no attention to the conditions under which such enforcement took place. This view has been abandoned, however, and to-day French judgments are enforced in Austria only after an examination of their merits. The laws of Peru and Venezuela expressly provide, on the other hand, that judgments of countries in which the merits of their judgments are reviewed shall not be enforced. The same view will be taken, no doubt, without express legislation to that effect by other countries in which foreign judgments are deemed conclusive if reciprocity exists. In these countries no American judgment for the payment of money can be enforced if it was rendered in a State in which foreign judgments are deemed only prima facie evidence. Execution has been denied even to English judgments, notwithstanding the fact that foreign
judgments are regarded as conclusive on principle in England, because the English Courts under exceptional circumstances, especially in connection with the defence of fraud, may inquire into the justice of the foreign decision. In countries taking this view it will be impossible, of course, to enforce American judgments which are rendered in States in which fraud relating to the original cause of action constitutes a defence to an action on a foreign judgment.

A decision of the Imperial Court of Germany of March 26, 1909, has given to the requirement of reciprocity a still wider meaning. The Court was asked to permit the execution of certain California judgments which had been rendered by default against a German insurance company. The application was refused, and the Court based its decision in part on the ground that the Courts of California would not enforce German judgments without inquiring whether the particular German Court rendering the decision had jurisdiction, according to German law, over the person and subject-matter. Such a practice, which is contrary to that of the German Courts, the Imperial Court regarded as an examination of the legality of the foreign judgment and equivalent to a review of the merits (révision au fond).

The exact meaning and scope of this doctrine it is difficult to determine, but in substance it seems to be that the enforcement of a foreign judgment will be denied if the Courts of the State whose judgment it is sought to enforce, inquire, before giving effect to foreign judgment, whether it conformed to the internal law of such foreign country.

Is it not singular that a German Court should decline to enforce an American judgment because the Courts of the United States go somewhat further than the German Courts into the examination of the jurisdiction of foreign Courts? If the requirement of reciprocity implies that the foreign law shall be the same in all its details, it will not promote the enforcement of foreign judgments, but actually operate in the contrary direction. As long as the Imperial Court adheres to the above view, no American judgment can be enforced in Germany. If the above principles were applied to all cases alike, not even an Italian judgment could have been enforced, notwithstanding the fact that the Italian system constituted the most liberal system on the Continent of Europe.

The position of the Imperial Court has created much adverse comment in Germany itself. Most of the writers are of the opinion that reciprocity should be deemed to exist within the meaning of the German law if the foreign Court does not apply more stringent conditions with respect to the enforcement of foreign judgments than are prescribed by German law. Some of the writers argue with much force that, inasmuch as subdivisions 3 and 4 of s. 328 of the German Code of Civil Procedure require an examination of the legality of foreign judgments to a much wider extent than was permissible under s. 661 of the former code, the German
Courts should show greater liberality in the recognition of the existence of reciprocity with respect to foreign countries than they were justified in doing formerly.

There are still other grounds which may preclude the enforcement of any American judgment for the payment of money in a country having the requirement of reciprocity. One is based on a difference in the mode of enforcing foreign judgments. Reciprocity might be deemed to be non-existing as regards England and the United States, because of the fact that judgments for the payment of money cannot be enforced in these countries by means of an *exequatur* proceeding, but only by a new suit on the foreign judgment. This view has actually been taken by the highest Court of Austria in a decision of July 19, 1865.

The German Imperial Court, in the case above referred to, advanced another ground than the one above-mentioned, to show that reciprocity did not exist with reference to California judgments. The learned Court assumed that the existence of reciprocity at the time of the German proceedings for the enforcement of California judgments would be sufficient—and before that time the California Legislature had passed a law giving to foreign judgments the same effect as was possessed by California judgments. There was no doubt, therefore, that at the time of the proceedings in Germany, the merits of the case could not be reviewed by the Courts of California in a suit upon a German judgment. The Imperial Court observed, however, that the true *status* of foreign judgments in the United States could not be determined solely from the doctrine applied by American Courts of Law, and that it was necessary to take into consideration the powers with respect to judgments possessed by the American Courts of Equity. The conclusion reached was that the power of our Courts of Equity to enjoin the execution of foreign judgments procured by fraud, accident, mistake, or surprise, was farther reaching than the grounds of restitution recognised by s. 580 of the German Code of Civil Procedure, and that a means was afforded thereby to challenge the merits of the judgment itself. Inasmuch as the German Courts are not allowed to make such an examination, reciprocity was deemed not to exist. From this decision it would follow that the judgments of any State of this Union in which the merits of the case may be re-examined under any circumstances, either at law or in equity, will not be enforced in Germany.

The unfamiliarity of foreign countries with the operation of the systems of procedure prevailing in England and the United States may be sufficient in itself to create doubt and uncertainty in the minds of the foreign judges regarding the conclusive effect of foreign judgments in such countries, with the result that plaintiff will fail to establish the existence of reciprocity.

There is a final reason, which has not been advanced as yet by any
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foreign Court—the doctrine of non-merger: why countries requiring reciprocity may decline to give effect to American judgments. The long-established rule that a foreign judgment does not operate as a merger of the original cause of action, and that the plaintiff is free, therefore, to elect whether he will sue on the foreign judgment or bring a new suit on the original cause of action, is not yet abandoned in England or in the United States. This doctrine has no longer any rational basis in States regarding foreign judgments as conclusive, and serves only to furnish to the foreign countries requiring reciprocity another argument for holding that reciprocity does not exist.

But for the doctrine of non-merger, and perhaps notwithstanding such doctrine, there would appear to be, upon a reasonable consideration of the matter, no sufficient grounds why judgments of those of our States in which foreign judgments are regarded as conclusive should not be enforced in countries requiring reciprocity. This conclusion was reached also by Wittmaack, Councillor of the German Imperial Court, after a very thorough study of the American law.

So far it has been assumed that the condition of reciprocity existed only in the country which was asked to enforce a foreign judgment, but what if the foreign country has the same requirement? This question has great practical importance with reference to the judgments of our federal Courts, which since Hilton v. Guyot recognise foreign judgments as conclusive only if reciprocity exists in that regard. Suppose that the State of X says to the State of Y, "I will enforce your judgments if you will enforce mine upon substantially the same conditions." A presents a judgment obtained in the State of Y for enforcement in the State of X. If A must prove that the judgments of the State of X are actually enforced in the State of Y, it is quite likely that he may be unable to produce any actual precedents to that effect. Indeed, if the State of Y should insist upon the same proof when a judgment of the State of X were presented for execution in that State, and there is no reason why it should not, no precedent could be established in either State. In other words, the requirement of reciprocity would land us in a circulus inextricabilis, from which circle there is logically no escape. Reciprocity, logically applied, leads to the non-enforcement of the judgments of such States or countries as have the same requirement. This conclusion is not reached, however, in actual practice. The judgments of the State of Y will be enforced in the State of X, notwithstanding the requirement of reciprocity in both States, if the conditions attached to the enforcement of X's judgments in the State of Y are substantially similar to those prescribed by the law of X for the enforcement of Y's judgments. In other words, a presumption is raised in the absence of proof to the contrary, that the judgments of the State of X will be enforced in the State of Y. The only code which has a specific provision on the subject is that of Croatia and
Slavonia, which presumes the existence of reciprocity in the absence of special reasons for doubt. The suggestion has been made that such a presumption can be made only with respect to countries in which the requirement of reciprocity rests upon a statutory foundation, and not where it is established by Court decisions. It would seem, however, that such a distinction cannot be made as regards the judgments of our federal Courts. The requirement of reciprocity is made binding upon all lower federal Courts by the decision of the Supreme Court of the United States in *Hilton v. Guyot*, and should be given the same weight as if it had been laid down by an Act of Congress.

According to the law of a considerable number of States, judgments relating to certain classes of cases will not be enforced. Will that fact in itself prevent the enforcement of their judgments for the payment of money in countries requiring reciprocity? The answer appears to be in the negative, for reciprocity in part is deemed sufficient. In such a case the same distinction is drawn between the different classes of cases as is done by the State whose judgment it is sought to enforce. Hence, if there is nothing in the way of the enforcement of foreign money judgments in such State, its judgments for the payment of money will be enforced. Nor is it necessary, it seems, that the foreign Court should enforce the particular kind of judgment under consideration, the requirement of reciprocity being deemed satisfied if judgments of the same character are enforced.

Must reciprocity exist at the time when the judgment was rendered or at the time when the proceedings for its enforcement are brought? The prevailing opinion appears to be that the time when the enforcement is sought should be controlling. Most authors regard the question as one of procedure, which is governed by the law existing at the time the particular proceeding is brought. Where reciprocity is established, however, by legislation specifically intended to meet a particular situation, such legislation may be disregarded.

The requirement of reciprocity is in certain countries not an absolute one. In Monaco, for example, foreign judgments will, in the absence of reciprocity, be enforced after a review of the merits. In the Spanish Code of Civil Procedure there is a provision to the effect that foreign judgments complying with certain prescribed conditions will be enforced if it is not possible to ascertain whether reciprocity exists or not. Chile, Cuba, Honduras, Panama, and Uruguay, will enforce judgments of countries in which their own judgments are given effect, although reciprocity within the meaning of their codes does not exist, provided such judgments satisfy certain specified conditions.

In certain countries (Austria and Bulgaria) the existence of reciprocity *in fact* is not sufficient. In Austria it must have been declared by the Government, and in Bulgaria by the Minister of Justice. Up to the
present time no such declarations have been made in these countries with respect to the United States. In Hungary a declaration on the part of the Minister of Justice regarding the existence of reciprocity with the particular country is binding upon the Courts.

FRAUDULENT AND VOLUNTARY CONVEYANCES OF PROPERTY.

[Contributed by M. V. Ramaswamy Iyer, Esq.]

The rigour of the law relating to fraudulent transactions has, in all legal systems of the world, been considered absolutely essential for the proper administration of justice, for otherwise the well-being of a community, which is the main object of every civilised system of jurisprudence, would be imperilled, and justice cast to the winds. The principle upon which the world’s law-givers have acted from time immemorial in dealing with fraud has been that innocent persons should not be defrauded or deprived of their proper and legitimate rights. It is with this end in view that law—both ancient and modern—while providing every means for facilitating honest business transactions in the ordinary course of mankind, has always looked askance at any attempt at fraud. The Hindu law, the Mahomedan law, the Roman law, the English Common law and other legal systems are not wanting in effective remedies to check and punish fraud. The writer here proposes to examine by a comparative study the law relating to fraudulent and voluntary conveyances, with special reference to the Hindu and Mahomedan law thereon.

Hindu Law.—In Hindu law, fraud vitiated the entire transaction. Manu—the first Hindu legislator ¹—says: "When the Judge discovers a fraudulent pledge or sale, a fraudulent gift and acceptance, or in whatever other case he detects fraud, let him annul the whole transaction." ² The principles laid down by Manu and the later Smriti writers as to the elements in a fraudulent alienation may be summed up thus: First, Secrecy; Secondly, Inadequacy of price; Thirdly, Embarrassed circumstances of the alienor. The Hindu law-givers required every sale or other alienation of property to be made "publicly before respectable persons." ³ The reason why this was insisted upon was to discountenance secret dealings between two individuals in fraud of the rights of a third party, who was either the real owner of the property, or whose interests

¹ For a history of the Hindu legislators, see article on "Mortgage in Hindu Law," in the Law Quarterly Review, vol. xxxiv., pp. 261 et seq.; see also Cole, Dig. vol. i., Introduction, pp. xiv.–xxii.
² Manu, chap. viii. p. 165 (Sir William Jones’s Translation).