

Louisiana Law Review

Volume 10 | Number 3

Student Symposium: Comments on the Conflict of

Laws

March 1950

Enforcement of Foreign Judgements in Personam: Reciprocity

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Repository Citation

Donald J. Zadeck, *Enforcement of Foreign Judgements in Personam: Reciprocity*, 10 La. L. Rev. (1950)

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in another federal court. Even if such an injunction were issued by another federal court, it would appear that the federal court in which the litigation was pending would transfer the case rather than honor the injunction by sustaining it as a special plea in bar. If the court felt that it had sufficient reasons to refuse to transfer the case, surely the same reasons would be sufficient for the court to disregard the injunction. Likewise, it would seem that if a state court issued an injunction directed at parties to a suit in a federal court, the federal court would transfer the case to the federal district court for the district in which the state court granting the injunction is located or to some other, more convenient, federal court. Further, if the federal court felt there were sufficient reasons to refuse transfer of the case, then the same reasons should be sufficient for the federal court to disregard the injunction.

JACK J. ROGERS*

ENFORCEMENT OF FOREIGN JUDGMENTS IN PERSONAM: RECIPROCITY

P procures a personal judgment in a foreign country against *A* and then attempts to enforce it in *B*, a member state of the United States of America. Is this judgment, when *P* seeks to enforce it in State *B*, prima facie evidence only and hence examinable upon the merits or is it conclusive in its res judicata effects and in an action for its enforcement? What difference does it make whether or not the courts of foreign country *A* regard the judgments of State *B* as conclusive proof of the merits? Will the result be the same if the suit is brought in a state court or in a federal court? The scope of this comment is to resolve, if possible, these questions regarding the enforcement of judgments of foreign countries.

At early common law, both in England¹ and in this country,² the large majority of cases in which foreign judgments were

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1. Phillips v. Hunter, 2 H. Bl. 402, 126 Eng. Reprint 618 (1795); Hall v. Odber, 11 East. 118, 103 Eng. Reprint 949 (1809); Walker v. Witter, 1 Doug. 1, 99 Eng. Reprint 1 (1813); Arnott v. Redfern, 3 Bing. 353, 130 Eng. Reprint 549 (1826); Houlditch v. Donegal, 8 Bligh N.S. 301, 5 Eng. Reprint 955 (1834). 2 Black, The Law of Judgments (2 ed. 1902) 1234, § 325.

2. Burnham v. Webster, 1 Wood. & M. (U.S.) 172, Fed. Cas. No. 2,179 (C. C. D. Maine 1846); Bartlett v. Knight, 1 Mass. 401, 2 Am. Dec. 36 (1805). See Aldrich v. Kinney, 4 Conn. 380, 10 Am. Dec. 151 (1822); Bissell v. Briggs, 9 Mass. 462, 6 Am. Dec. 88 (1812); Benton v. Burgot, 10 Serg. & R. 240 (Pa. 1823); Boston India Rubber Factory v. Hoit, 14 Vt. 92 (1842); Story, Conflict of Laws (5 ed. 1857) 973, § 608.

sought to be enforced held them to be prima facie evidence only. The later English cases manifested a definite change, however, and from the time of *Godard v. Gray*³ (1870) to the present, there has been no doubt that in England a foreign judgment is, in the absence of fraud, lack of jurisdiction, et cetera, as conclusive upon the parties as if it were a domestic judgment.⁴ These later English decisions exerted persuasive influence upon the American courts, and shortly after the turn of the Nineteenth Century the various jurisdictions that had considered the problem, with one possible exception,⁵ had given conclusive effect to foreign judgments and had rejected their earlier position that foreign judgments, simply because they were foreign judgments, should be re-examinable upon the merits.⁶

In 1895, in the case of *Hilton v. Guyot*,⁷ the Supreme Court of the United States interjected a new element into the enforcement of foreign judgments. Here the plaintiff, a French firm, had recovered a money judgment in the Tribunal of Commerce of Paris against an American partnership owning property in France. Plaintiff sought to enforce the judgment in the Circuit Court of the United States in New York. Notwithstanding a request by the defendants, the circuit court refused to review the French judgment on the merits. Defendants appealed to the United States Supreme Court. Mr. Justice Gray, in the face of a strong dissent by Mr. Chief Justice Fuller, recognized the general rule to be that such a foreign judgment is conclusive as to the merits, but laid down the collateral and qualifying rule that, on principles of "comity," judgments rendered in France, by whose law judgments of the United States are reviewable on their merits, are not conclusive when sued upon in the United States and are only prima facie evidence of the plaintiff's claim. The decree of the circuit court was reversed and the cause remanded with directions to try the case upon the merits.

In the case of *Ritchie v. McMullen*,⁸ decided the same day

3. L.R. 6 Q.B. 139.

4. *Guiard v. DeClermont* [1914] 3 K.B. 145. See *Roussillon v. Rousillon* [1880] 14 Ch. D. 351, 370; *Harris v. Taylor* [1915] 2 K.B. 580, 591. See also *Goodrich, Conflict of Laws* (3 ed. 1949) 605, § 208.

5. *Tourigny v. Houle*, 88 Me. 406, 34 Atl. 158 (1896); *Tremblay v. Aetna Life Ins. Co.*, 97 Me. 547, 55 Atl. 509, 94 Am. St. Rep. 521 (1903).

6. *Hilton v. Guyot*, 42 Fed. 249 (C.C. N.Y. 1890); *Jones v. Jamison*, 15 La. Ann. 35 (1860); *Fisher v. Fielding*, 67 Conn. 91 (1895); *Baker v. Palmer*, 83 Ill. 568 (1876); *McEwan v. Zimmer*, 38 Mich. 765, 31 Am. Rep. 332 (1878); *Lazier v. Westcott*, 26 N.Y. 146, 82 Am. Dec. 404 (1862); *Konitzky v. Meyer*, 49 N.Y. 571 (1872); *Dunstan v. Higgins*, 138 N.Y. 70, 33 N.E. 729, 20 L.R.A. 668, 34 Am. St. Rep. 431 (1893).

7. 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95.

8. 159 U.S. 235, 16 S.Ct. 171, 40 L.Ed. 133 (1895).

as *Hilton v. Guyot*, the facts were substantially the same. Plaintiffs recovered a money judgment against the defendant in the High Court of Justice for Ontario. Plaintiffs then sought to enforce this judgment in the Circuit Court of the United States for Ohio. The circuit court refused to re-examine the merits of the claim. The Supreme Court affirmed. Mr. Justice Gray, speaking for the court, pointed out that the "judgment of the Canadian court, is beyond all doubt, sufficient to support this action, unless it is sufficiently impeached. Testing the answer in this case by the rules laid down in *Hilton v. Guyot*, just decided, no adequate ground for impeaching the judgment is shown. . . ."⁹ By the law of England, prevailing in Canada, a judgment rendered by an American court under like circumstances would be allowed full and conclusive effect."¹⁰

This doctrine of reciprocity became, of course, binding upon the lower federal courts. If the judgment sought to be enforced in the federal court was rendered by the court of a country allowing American judgments to be re-examined *au fond*, and the defendant successfully established this fact, the court would likewise allow a re-examination upon the merits. If, however, the judgment was rendered by the court of a country giving conclusive effect to American judgments or having a similar doctrine of reciprocity, the judgment was deemed conclusive upon the merits. Thus, in *Gioe v. Westervelt*,¹¹ the court reluctantly denied a motion to dismiss suit upon an Italian judgment. The judgment was "fearfully and wonderfully made, and, so far as one can make out from the documents, rankly unjust."¹² The court, citing *Hilton v. Guyot*, felt there was "nothing to do save to accept it as a finality,"¹³ it appearing that "under Italian law similar judgments of the courts of this country are not reviewable upon the merits when sued on in Italy, but are given full credit and conclusive effect."¹⁴ Likewise in *Strauss v. Conried*,¹⁵ plaintiff sought an injunction to protect rights acquired under an Austrian judgment. In granting the injunction the court refused to examine into the merits of the decree, having found that in "Austria the rule of reciprocity . . . has long been established by imperial decrees and judicial decisions. . . ."¹⁶

9. 159 U.S. 235, 240, 16 S.Ct. 171, 173, 40 L.Ed. 133, 135.

10. 159 U.S. 235, 242, 16 S.Ct. 171, 174, 40 L.Ed. 133, 136.

11. 116 Fed. 1017 (C.C. N.Y. 1902).

12. *Ibid.*

13. *Ibid.*

14. *Id.* at 1018.

15. 121 Fed. 199 (C.C. N.Y. 1902).

16. *Id.* at 200.

In *Kessler v. Armstrong Cork Company*¹⁷ an action was brought against a New York firm of bankers. Defendants set up a prior French adjudication. No offer was made to prove the French law on the subject of foreign judgments. Relying solely upon *Hilton v. Guyot*, the trial court held that the French judgment was not conclusive. The circuit court of appeals criticised the trial court, pointing out that mere reliance on the *Hilton* case was not sufficient and that "foreign law must be proved in every case as a fact,"¹⁸ but held that the French judgment was not res judicata because there was no privity between the parties at bar and the parties to the French suit.

In *Cruz v. O'Boyle*¹⁹ plaintiff sought enforcement of a Mexican judgment in a federal court in Pennsylvania. The court quoted from the *Hilton* case that "In Mexico the system of reciprocity has been adopted, by the Code of 1884,"²⁰ and refused to allow a retrial into the merits of the cause. The same effect was reached in *Harrison v. Triplex Gold Mines*.²¹ Here an action was brought to enjoin enforcement of an Ontario money judgment. The court held that the Canadian decree on the issue of fraud was res judicata and refused the injunction, saying, "The principle of comity is extended by the courts of this country to the judgments of the courts of a foreign country to the same extent that courts in a foreign country extend the principle to judgments of the courts in this country,"²² and, "by the law of England, prevailing in Canada, a judgment rendered by an American court cannot be collaterally attacked except under practically the same conditions as prevail under the 'full faith and credit' clause of the Federal Constitution."²³ Similarly, in *Vogel v. New York Life Insurance Company*,²⁴ the question arose as to the validity of a German decree of administration, under which title to insurance proceeds was alleged to have been transferred. The court pointed out that according to the record the making and filing of the will along with its opening in court resembled a probate in common form, and the administration founded thereon "is entitled to faith and credit here; Germany extending such faith and credit to our like proceedings."²⁵

17. 158 Fed. 744 (C.C.A. 2d, 1907).

18. Id. at 748.

19. 197 Fed. 824 (D.C. Pa. 1912).

20. Id. at 829.

21. 33 F. (2d) 667 (C.C.A. 1st, 1929).

22. Id. at 671.

23. Ibid.

24. 55 F. (2d) 205 (C.C.A. 5th, 1932).

25. Id. at 209.

In *Compania Mexicana Rediodifusora Franteriza v. Spann*,²⁶ the defendant, the unsuccessful plaintiff in a prior suit brought in Mexico against the present plaintiff, alleged that he could not be held for costs imposed upon losing litigants under a Mexican statute. The federal court, sitting in Texas, pointed out that the imposition of costs upon an unsuccessful litigant is entirely consistent with the Texas policy; that "In Mexico the system of reciprocity has been adopted by the code of 1884,"²⁷ and hence, "There is no reason why the rule that a judgment valid by the laws and practice of the country where rendered, should not apply here."²⁸

One significant limitation on the doctrine of reciprocity was pointed out in *Direction Der Disconto-Gesellschaft v. United States Steel Corporation*.²⁹ In that case the question arose as to whether the United States should recognize a title derived in an English seizure under the Trading with the Enemy Act when England might not recognize a title derived from a similar seizure by the United States. The plaintiffs argued that the United States should not extend recognition until it was proved that the United Kingdom would extend like recognition. Judge Learned Hand said, "Whatever may be thought of that decision [*Hilton v. Guyot*], the court certainly did not mean to hold that an American court was to recognize no obligations or duties arising elsewhere until it appeared that the sovereign of the locus reciprocally recognized similar obligations existing here. That doctrine I am happy to say is not a part of American jurisprudence."³⁰

The doctrine of reciprocity enunciated in *Hilton v. Guyot* has not gone unchallenged. As Professor Stumberg points out, "The reciprocity doctrine is based upon an idea of retaliation, which as between nations should fall within the province of the department of foreign affairs."³¹ The same thought was put forth by Mr. Chief Justice Fuller, speaking for the dissent in the *Hilton* case. He said, "The application of the doctrine of *res judicata* does not rest in discretion; and it is for the government, and not for the courts, to adopt the principle of retorsion, if it be deemed under the circumstances desirable or necessary."³² Black, in his *Treatise on the Law of Judgments*, writes, "A judgment, whether

26. 41 F. Supp. 907 (D.C. Tex. 1941).

27. *Id.* at 909.

28. *Ibid.*

29. 300 Fed. 741 (D.C. N.Y. 1924).

30. *Id.* at 747.

31. Stumberg, *Conflict of Laws* (1 ed. 1937) 126.

32. 159 U.S. 113, 234, 16 S.Ct. 139, 171, 40 L.Ed. 95, 133 (1895).

foreign or domestic, raises a binding obligation to pay the sum awarded by it. . . ." and further that, "It is not the policy of the law to encourage litigation."³³ Justice Story, in his Commentaries on Conflict of Laws, calls attention to numerous difficulties inherent in a retrial of the merits. "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 . . . 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? . . . are all circumstances to be reexamined 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 aequo 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?"³⁴

Perhaps the most notable case refusing to extend recognition of the reciprocity doctrine is *Johnston v. Compagnie Générale Transatlantique*.³⁵ Here a New York resident sued a French company in a New York court for misdelivery of goods. Defendant set up, as a defense, a judgment rendered by the Tribunal of Commerce of Paris upon the same cause of action by and against the plaintiff. Judge Pound, in speaking for the New York Court of Appeals and holding the French judgment to be conclusive upon the merits, pointed out, "The New York rule was stated in *Dunstan v. Higgins* (138 N.Y. 70), decided in 1893, as follows: 'It is the settled law of this State that a foreign judgment is conclusive upon the merits';³⁶ that the enforcement of foreign judgments should rest, "not on the basis of reciprocity, but rather upon the persuasiveness of the foreign judgment,"³⁷ and further "that this court is not bound to follow the *Hilton* case. . . ."³⁸

The very next year in *Cowans v. Ticonderoga Pulp and Paper Company*³⁹ the doctrine was again urged. Here a money

33. 2 Black, *The Law of Judgments* (2 ed. 1902) 1242, § 829.

34. Story, *Conflict of Laws* (5 ed. 1857) 971, § 607.

35. 242 N.Y. 381, 152 N.E. 121, 46 A.L.R. 435 (1926).

36. 242 N.Y. 381, 384, 152 N.E. 121, 122, 46 A.L.R. 435, 437.

37. 242 N.Y. 381, 387, 152 N.E. 121, 123, 46 A.L.R. 435, 439.

38. 242 N.Y. 381, 387, 152 N.E. 121, 123, 46 A.L.R. 435, 439.

39. 219 N.Y. Supp. 284, 219 App. Div. 120 (1927).

judgment rendered in Quebec was sued upon. Quebec does not give conclusive effect to judgments rendered in other countries and the defendant, urging lack of reciprocity in the Province of Quebec, rested "its contentions confidently on the decision in *Hilton v. Guyot*."⁴⁰ Judge Van Kirk, speaking for the New York Supreme Court, Appellate Division, pointed out that the "force and effect to be given to a foreign judgment is for each sovereign power to determine for itself. . . . The Court of Appeals in its latest utterance has not accepted the decision in the *Hilton* case as controlling authority in this state upon the question. . . . The rule controlling in this state is held to be the rule as stated in *Dunstan v. Higgins*."⁴¹ The New York Court of Appeals affirmed without opinion.⁴²

The *Johnston* and *Cowans* cases have remained the law in New York. In *Coudenhove-Kalergi v. Dieterle*,⁴³ wherein the plaintiff sought recovery upon a judgment rendered in the Republic of Germany, the Supreme Court of New York, in allowing the plaintiff's claim, quotes from the *Johnston* case: "It [a right acquired under a foreign judgment] therefore rests, not on the basis of reciprocity, but rather upon the persuasiveness of the foreign judgment."⁴⁴ Likewise the New York court in *In re Rutherford's Estate*⁴⁵ refused to allow the plaintiff to relitigate a claim, it appearing that the plaintiff had previously been defeated on the same cause of action when suing before a French tribunal. On the basis of the *Johnston* case the French judgment was held to be conclusive.

The Supreme Court of Georgia has also repudiated the reciprocity doctrine. In *Coulborn v. Joseph*⁴⁶ the plaintiff was seeking enforcement of an English alimony decree rendered while both plaintiff and defendant were domiciled in England. After discussing *Hilton v. Guyot*, the court concluded that the facts "would probably justify us in placing on the ground of comity the ruling that the English judgment is conclusive . . . but we prefer to place it on what we consider the more convenient and the safest rule, and the one more consistent with sound principles,"⁴⁷ that

40. 219 N.Y. Supp. 284, 286.

41. 219 N.Y. Supp. 284, 287.

42. *Cowans v. Ticonderoga Pulp and Paper Co.*, 246 N.Y. 603, 159 N.E. 669 (1927).

43. 36 N.Y.S.(2d) 313 (1942).

44. *Id.* at 317.

45. 46 N.Y.S.(2d) 871 (1944).

46. 195 Ga. 723, 25 S.E.(2d) 576 (1943).

47. 195 Ga. 723, 732, 25 S.E.(2d) 576, 581.

a foreign judgment, in the absence of the well settled exceptions, should be held conclusive by the courts of Georgia.

In California, by statute,⁴⁸ the courts are required "to give a final judgment of a foreign country the same effect as a final judgment rendered in this state."⁴⁹ This was pointed out in *164 East 72nd Street Corporation v. Ismay*,⁵⁰ wherein plaintiff was suing to enforce a valid and subsisting English judgment.

Minnesota, on the other hand, has apparently accepted the doctrine of reciprocity. In *Traders Trust Company v. Davidson*⁵¹ the plaintiff sought enforcement of a Manitoba judgment. "Effect is given to foreign judgments as a matter of comity and reciprocity," said the court, "and it has become the rule to give no other or greater effect to the judgment of a foreign court than the country or state whose court rendered it gives to a like judgment of our courts. . . . And we may note in passing that in Manitoba a foreign judgment does not conclude the defendant even as to the merits."⁵² The court, however, chose to ground the decision on the lack of jurisdiction of the Manitoba tribunal over the defendant in the original action.

In Louisiana the cases decided prior to the *Hilton* case made very clear that, in the absence of fraud or lack of jurisdiction, conclusive effect would be given to judgments rendered in foreign countries. In *Jones v. Jamison*⁵³ the Supreme Court of Louisiana, in speaking of the effect to be given a Jamaican judgment, felt that the judgment "ought to be absolutely conclusive everywhere."⁵⁴ Their reasoning was based upon Article 746 of the Code of Practice which, before 1846, allowed a judgment creditor, in addition to the ordinary remedies, to proceed by executory process upon any judgment rendered in a sister state or a foreign country which had the force of *res judicata*. "The statute of 1846," said the court, "does not seem to have lessened the conclusive character of foreign judgments, but to have refused the executory process only The ordinary remedy is still left the creditor; and the judgment of a sister State or foreign country,

48. Cal. Code Civ. Proc. (Deering, 1937) § 1915. "A final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as in the country where rendered, and also the same effect as final judgments rendered in this state."

49. *164 East 72nd Street Corp. v. Ismay*, 65 Cal. App.(2d) 574, 576, 151 P.(2d) 29, 30 (1944).

50. 65 Cal. App.(2d) 574, 151 P.(2d) 29.

51. 146 Minn. 224, 178 N.W. 735 (1920).

52. 146 Minn. 224, 227, 178 N.W. 735, 736.

53. 15 La. Ann. 35 (1860).

54. *Id.* at 36.

as a consequence, have no less force than before."⁵⁵ Similarly, in *State ex rel. Plaisent v. Orleans Railroad Company*,⁵⁶ plaintiff was seeking a writ of mandamus to compel a corporation to transfer stock on its books. Plaintiff relied upon a French judgment declaring him to be the owner of the stock. "It is not pretended that the court was without jurisdiction, or that the forms of law were not observed, or that the judgment is not final or executory; but it is claimed that it is erroneous, inasmuch as part of the shares actually belongs to Mrs. Cheron. We cannot review it. The judgment concludes Mrs. Cheron and cannot be vicariously attacked by the company for her benefit when she cannot do so herself. *Res adjudicata, pro veritate habetur*."⁵⁷ Since the decision in the *Hilton* case, the court has again been called upon to give effect to a foreign judgment. The rule has remained unchanged. With regard to the effect to be given a Nicaraguan judgment, the court has said: "It is settled jurisprudence . . . that 'matters once determined by a court of competent jurisdiction, if the judgment has become final, can never again be called into question by the parties or their privies . . .'"⁵⁸ However, lack of reciprocity has never been urged in Louisiana. It is felt that if and when the issue is presented, the Supreme Court of Louisiana will reject the doctrine as New York has done and give effect "rather upon the persuasiveness of the foreign judgment."

Since the decision in *Erie Railroad Company v. Tompkins*,⁵⁹ what effect does *Hilton v. Guyot* have on the lower federal courts? Clearly before the *Erie Railroad Company* case it was settled that questions of conflict of laws or enforcement of judgments of foreign countries, unless controlled by local statute, were questions of "general law," in which the federal courts were not bound to follow the decisions of the state courts. The doctrine of the *Erie Railroad Company* case abolished the distinction between "general law" on the one hand and local or statutory law on the other and made binding upon the federal courts in matters of "substantive law," all state laws, statutory or otherwise, except in matters affected by the Constitution and laws of the United

55. *Ibid.*

56. 38 La. Ann. 312 (1886).

57. *Id.* at 313.

58. *Succession of Fitzgerald*, 192 La. 726, 733, 189 So. 116, 117 (1939). Cf. *Truscon Steel Co. v. Biegler*, 306 Ill. App. 180, 28 N.E. (2d) 623 (1940); *Clubb v. Clubb*, 334 Ill. App. 599, 80 N.E.(2d) 94 (1948); *Korlik v. Curry*, 148 Mich. 214, 111 N.W. 761 (1907). But cf. *Grey v. Independent Order of Foresters*, 196 S.W. 779 (Mo. App. 1917).

59. 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487 (1938).

States.⁶⁰ Decisions of the state courts as to conflict of laws have been held to be substantive law.⁶¹ But as to state rules on the enforcement of foreign judgment, there arises the question of whether they are substantive or procedural within the meaning of the *Erie* rule.⁶² If procedural, then the federal courts are not bound to follow the state court decisions.⁶³ Initially the lower federal courts, and ultimately the Supreme Court of the United States, must decide into which category the state rule falls⁶⁴ and the denomination of the rule as substantive or procedural by the state court is irrelevant to this determination.⁶⁵

The problem appears closely akin to that involving burden of proof, and it has been held by the federal courts that burden of proof is a substantive matter.⁶⁶

The considerations involved in the burden of proof cases, choice of law cases, and cases involving the enforcement of judgments of foreign countries would appear to be the same. The purpose of overruling *Swift v. Tyson*,⁶⁷ and all the jurisprudence thereunder, was to prevent the accident of diversity of citizenship from creating a lack of conformity in the outcome of a lawsuit, whether decided in federal or state court, within the borders of a state. "For the purposes of diversity jurisdiction a federal court is 'in effect, only another court of the state.'"⁶⁸ No matter how predictable an answer may seem, however, the question remains open as to whether the enforcement of judgments of foreign countries will be categorized as substantive or procedural.

Assume it is held to be substantive law. If *P*, having recovered a judgment in France, seeks to enforce this judgment in a federal court in New York and *D* contends lack of reciprocity, is

60. *King v. United Commercial Travelers*, 333 U.S. 153, 68 S.Ct. 488, 92 L.Ed. 608 (1948).

61. *Klaxon v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941); *Griffin v. McCoach*, 313 U.S. 498, 61 S.Ct. 1023, 85 L.Ed. 1481 (1941).

62. See Gorrell and Weed, *Erie Railroad: Ten Years After* (1948) 9 Ohio St. L.J. 276; Comment (1944) 44 Col. L. Rev. 915.

63. See Federal Rules of Civil Procedure, promulgated by the Supreme Court under authority of a statute of Congress June 19, 1934, 48 Stat. 1064, 28 U.S.C. 2072.

64. See Tunks, *Categorization and Federalism, "Substance" and "Procedure" after Erie Railroad v. Tompkins* (1941) 34 Ill. L. Rev. 271; Comment (1941) 41 Col. L. Rev. 1403, 1416.

65. *Sampson v. Channell*, 110 F.(2d) 754 (C.C.A. 1st, 1940), cert. denied 310 U.S. 650, 60 S.Ct. 1099, 84 L.Ed. 1415 (1940).

66. *Cities Service Oil Co. v. Dunlap*, 308 U.S. 208, 60 S.Ct. 201, 84 L.Ed. 196 (1939).

67. 41 U.S. 1, 10 L.Ed. 865 (1842).

68. *Angel v. Bullington*, 330 U.S. 183, 187, 67 S.Ct. 657, 659, 91 L.Ed. 832, 835 (1947).

the judgment conclusive upon the merits? Apparently the federal court would be duty bound to follow the decisions of the state courts respecting the idea of reciprocity, and must of necessity hold the judgment to be conclusive upon the merits.

In a state where reciprocity has been received with favor, the decision, of course, would be exactly opposite. Here the federal court, for the very same reasons, would be duty bound to apply the doctrine of reciprocity.

Some difficulty arises where a judgment obtained in France is sought to be enforced in a federal court in a state wherein the reciprocity idea has never been considered. For instance, in Louisiana it is the law that in the absence of the well-settled exceptions, that is, fraud or lack of jurisdiction, a judgment obtained in a foreign country is conclusive upon the merits. Since this is the law of Louisiana, under the *Erie Railroad Company* doctrine it must be applied as such. In the absence of circumstances showing a probable reception of reciprocity, what reason would a federal court sitting in Louisiana have to interject the reciprocal comity doctrine? That would not be the law of Louisiana, but clearly federal general common law, and under the *Erie Railroad Company* case, "There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' . . . And no clause in the Constitution purports to confer such a power upon the federal courts."⁶⁹ Hence, the federal court would also be duty bound to hold the judgment conclusive upon the merits.

DONALD J. ZADECK*

LONG DISTANCE TORTS

In the field of torts, as in any other field of law, it is necessary in order for the injured party to bring a successful suit that he be given by some law a cause of action. The question immediately arises as to which law the injured party will look in determining whether he has a cause of action against the defendant. The courts have had little difficulty when all the events giving rise to the action occur in one jurisdiction,¹ whether the forum

69. 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 118, 119, 114 A.L.R. 1487, 1493 (1938). See *Meredith v. Winter Haven*, 320 U.S. 228, 64 S.Ct. 7, 83 L.Ed. 9 (1943).

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1. See 15 C.J.S. 897, note 63, for collection of cases. See also *Hunter v. Derby Foods, Inc.*, 110 F.(2d) 970, 133 A.L.R. 255 (C.C.A. 2d, 1940), and annotations following case.