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Russell G. Lloyd

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## THE ENFORCEABILITY OF FOREIGN JUDGMENTS IN AMERICAN COURTS

### Introduction

A major problem in the field of Conflicts of Law is "the measure of respect which must be accorded a judgment of one state when it is placed in issue before the courts of another."<sup>1</sup> Today, at least with respect to judgments rendered in "foreign" States of the Union, the law is clear. Under "full faith and credit," such a judgment must be accorded the same effect in a sister state as it enjoys at home, *i.e.*, it is entitled to extraterritorial recognition and enforcement so long as it is valid under the due process clause of the fourteenth amendment and was handed down by a court competent to act under its local law.<sup>2</sup> With respect to judgments rendered in foreign nations, however, there is no such certainty.<sup>3</sup> *Hilton v. Guyot*,<sup>4</sup> which established the requirement of the reciprocity of enforcement of American judgments as a condition precedent to giving conclusive effect to foreign judgments in American courts, is still the last pronouncement of the United States Supreme Court in this area. Fortunately, the recognition accorded *Hilton*<sup>5</sup> in the United States today is limited.

However, it is not because of legal uncertainty that the problem of recognition of foreign judgments is examined here. Rather, the extension of American commercial interests outside the territorial limits of the United States, and the increased contact of Americans with non-Americans, require that rights determined in American courts be given conclusive effect outside the United States. One commentator in the field of private international law illustrates this need by comparing the relations between the United States and the other nations of the world today to the relations between the original 13 Colonies in 1789.

"Effects liable to justice may be suddenly and secretly translated in any stage of the process within a foreign jurisdiction," Madison remarked in his comments on the full faith and credit clause in *The Federalist*, and he pointed at the special difficulties on the borders of contingent states. Today, with our banking techniques and the modern means of transportation, almost every place on the globe has become a "contingent state" in this respect. It is therefore equally important that judgments duly obtained in the domestic courts are recognized, and can be enforced, outside the United States, in Canada, Mexico, or at any other place.<sup>6</sup>

Aside from the argument of sound public policy, it is felt that the doctrine of reciprocity punishes a private party for an assumed fault in the law of a foreign nation<sup>7</sup> — an argument of natural justice.

If public policy and natural justice decree that issues once litigated in an American court be given conclusive effect outside the territorial limits of the United States, how best can this be achieved? Giving conclusive effect within the United States to judgments rendered by foreign courts is the most obvious solution. Only then can there be mutual respect and trust for the United States and its courts within the community of nations.

The scope of this note is a re-examination of the case law and the views of

1 Reese, *The Status In This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783 (1950).

2 U.S. CONST. art. IV, § 1; see generally Reese and Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153 (1949); LEFLAR, CONFLICT OF LAWS 133-34 (1959).

3 Reese, *supra* note 1, at 783. "In this country there has been a variety of opinions expressed as to the effect to be given a foreign judgment." GOODRICH, CONFLICT OF LAWS 605 (3d ed. 1949); The full faith and credit clause of the Constitution does not extend to judgments of foreign states or nations. *Aetna Life Ins. Co. v. Tremblay*, 223 U.S. 185 (1912).

4 159 U.S. 113 (1895).

5 *Ibid.*

6 Nadellmann, *Non-Recognition of American Money Judgments Abroad and What To Do About It*, 42 IOWA L. REV. 236 (1957).

7 LEFLAR, *supra* note 2, at 132.

commentators on the enforceability of foreign judgments in the United States. The purpose is more than to delineate the areas of conflict. In addition, it is an attempt to pose the argument for uniformity in the enforcement of foreign judgments within the United States—a view which, it is believed, would lead to the recognition of American judgments in foreign courts.

*Hilton v. Guyot—The Doctrine of Reciprocity*

Prior to 1895, the American view on the enforceability of foreign judgments in American courts was probably best represented by the language of Chancellor Kent:

Foreign judgments are never re-examined, unless the aid of our courts is asked to carry them into effect by a direct suit upon the judgment. The foreign judgment is then held to be only *prima facie* evidence of the demand; but when it comes in collaterally, or the defendant relies upon it under the *exceptio rei judicatae*, it is then received as conclusive. . . .<sup>8</sup>

Contrast with this the English view set forth in *Godard v. Gray*,<sup>9</sup> which still represents the accepted English doctrine.<sup>10</sup> In that case, action was brought in England on a French judgment. Defendant argued that the French court, in rendering the judgment, had made a mistake as to English law and therefore the judgment could not be enforced in England.<sup>11</sup> Nevertheless, the court held that the judgment was conclusive, Lord Blackburn saying:

Several of the continental nations (including France) do not enforce the judgments of other countries, unless where there are reciprocal treaties to that effect. But in England and in those states which are governed by common law, such judgments are enforced, not by virtue of any statute, but upon a principle. . . . Where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts are supported and enforced.<sup>12</sup>

Twenty-five years later the United States Supreme Court rejected this argument and embraced the doctrine of reciprocity. In *Hilton v. Guyot*,<sup>13</sup> suit was brought in a federal court to enforce a French judgment rendered against two citizens of the United States in favor of a French firm. The lower court entered judgment for the plaintiff without examining the merits of the original cause of action. On appeal to the United States Supreme Court, the defendants contended that failure to examine the merits constituted error. The Court held that, because France did not grant conclusive effect to American judgments, conclusive effect would not be given to the judgment of the Court of Appeals of Paris. Justice Gray, speaking for the majority of five, concluded:

[J]udgments rendered in France, or in any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are *prima facie* evidence only of the justice of the plaintiffs' claim.<sup>14</sup>

In support of his conclusion Justice Gray wrote:

In holding such a judgment, for want of reciprocity, not to be conclusive evidence of the merits of the claim, we do not proceed upon any theory of retaliation upon one person by reason of injustice done to another; but upon the broad ground that international law is founded upon mutuality and reciprocity, and that by the principles of international law recognized in most civilized nations, and by the comity of our own country, which it is our judicial duty to know and to declare, the judgment is not entitled to be considered conclusive.<sup>15</sup>

8 *Smith v. Lewis*, 3 Johns, 157, 163 (N.Y. 1808).

9 [1870] 6 Q.B. 139.

10 Goodrich, *supra* note 3, at 605.

11 *Godard v. Gray*, [1870], 6 Q.B. 139, 146.

12 *Id.* at 148.

13 159 U.S. 113 (1895).

14 *Id.* at 227.

15 *Id.* at 228.

Chief Justice Fuller, who wrote the dissenting opinion, believed that the doctrine of *res judicata* applicable to domestic judgments should apply to foreign judgments also.<sup>16</sup> He felt that the underlying rationale — the termination of litigation — was applicable to both situations.<sup>17</sup> It should be noted, however, that the doctrine of reciprocity applied only to in personam judgments where the foreigner was the defendant in the original suit and judgment went against him. It did not apply to a foreign in rem judgment where the court had jurisdiction of the cause and followed regular proceedings giving due notice,<sup>18</sup> to in personam judgments of a suit between two citizens of the rendering state,<sup>19</sup> to an action which the foreigner began by invoking the jurisdiction of the foreign court,<sup>20</sup> or to suits by a citizen against a foreigner won by the foreigner.<sup>21</sup> The Supreme Court repeated the doctrine of reciprocity the same day it delivered the *Hilton* decision. In *Ritchie v. McMillen*,<sup>22</sup> a Canadian judgment on a contract obtained against a citizen of Ohio was granted conclusive effect because, among other reasons, "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."<sup>23</sup> While the doctrine of reciprocity has been strongly criticized,<sup>24</sup> it has never been repudiated by the United States Supreme Court.

In 1926, the Court of Appeals of New York expressly rejected the doctrine of reciprocity as the basis for determining the effect in New York courts of foreign judgments.<sup>25</sup> A New York resident brought suit for an alleged misdelivery of goods by the defendant, a steamship carrier. Defendant set up as a defense an adjudication of the Tribunal of Commerce at Paris upon the same cause of action. The courts below refused to give effect to the French judgment on the authority of *Hilton v. Guyot*.<sup>26</sup> The Court of Appeals reversed, holding the French judgment to be conclusive upon the merits. Speaking for the court, Judge Pound said:

It is the settled law of this state that a foreign judgment is conclusive upon the merits. . . . The judgments of the courts of a sister state are entitled to full faith and credit in the courts of the other states under the Constitution of the United States, but effect is given to the judgments of the courts of foreign countries by the comity of nations which is part of our municipal law. The refusal of the foreign court to allow a commission to examine witnesses here does not affect the conclusive character of the judgment. . . . But even if it appeared in this case, as it does not, that some legal right of the defendant was denied in refusing the application that would not affect the validity or conclusive nature of the judgment, so long as it stood unreversed and not set aside. . . . Where a party is sued in a foreign country, upon a contract made there, he is subject to the procedure of the court in which the action is pending, and must resort to it for the purpose of his defense, if he has any, and any error committed must be reviewed or corrected in the usual way. So long as he has the benefit of such rules and regulations as have been adopted or are in use for the ordinary administration of justice among the citizens or subjects of the country he cannot complain, and justice is not denied to him.<sup>27</sup>

16 *Id.* at 229.

17 *Ibid.*

18 *Id.* at 166-67.

19 *Id.* at 170.

20 *Ibid.*

21 *Ibid.*

22 159 U.S. 235 (1895).

23 *Id.* at 242.

24 2 BEALE, *THE CONFLICT OF LAWS* 1388 (1935); see Nadelmann, *Reprisals Against American Judgments*, 65 HARV. L. REV. 1184 (1952); RESTATEMENT, *CONFLICT OF LAWS* § 434 (1934).

25 *Johnston v. Compagnie Generale Transatlantique*, 242 N.Y. 381, 152 N.E. 121 (1926).

26 159 U.S. 113 (1895).

27 *Johnston v. Compagnie Generale Transatlantique*, 242 N.Y. 381, 152 N.E. 121, 122 (1926).

Judge Pound had more to say about the applicability of *Hilton v. Guyot*:

To what extent is this court bound by *Hilton v. Guyot*? It is argued with some force that questions of international relations and the comity of nations are to be determined by the Supreme Court of the United States; that there is no such thing as comity of nations between the state of New York and the republic of France; and that the decision in *Hilton v. Guyot* is controlling as a statement of the law. But the question is one of private rather than public international law, of private right rather than public relations, and our courts will recognize private rights acquired under foreign laws and the sufficiency of the evidence establishing such rights. A right acquired under a foreign judgment may be established in this state without reference to the rules of evidence laid down by the courts of the United States. Comity is not a rule of law, but it is a rule of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question. . . . It therefore rests, not on the basis of reciprocity, but rather upon the persuasiveness of the foreign judgment. When the whole of the facts appear to have been inquired into by the French courts, judicially, honestly, and with full jurisdiction and with the intention to arrive at the right conclusion, and when they have heard the facts and come to a conclusion, it should no longer be open to the party invoking the foreign court against a resident of France to ask the American court to sit as a court of appeal from that which gave the judgment.

I reach the conclusion that this court is not bound to follow the *Hilton* Case and reverse its previous rulings.<sup>28</sup>

One year later, in *Cowans v. Ticonderoga Pulp and Paper Co.*,<sup>29</sup> the doctrine of reciprocity was again urged. A money judgment rendered in Quebec was sued upon. Respondent argued "that the courts of New York state should not recognize the judgments of the province of Quebec as adjudications of the issues because the courts of Quebec do not reciprocate as to judgments of the state of New York."<sup>30</sup> Judge Van Kirk, for the New York Supreme Court, Appellate Division, stated:

. . . , if there is want of reciprocity between the two countries, that court [United States Supreme Court] would deny to the foreign judgment the persuasiveness it really possesses. Our Court of Appeals has, we think, definitely refused to accept that holding as the policy of this state, and, without reciprocity, would give to the foreign judgment the full effect to which its persuasiveness entitles it. The decision in the *Hilton* Case would deprive a party of the private rights he has acquired by reason of a foreign judgment because the country in whose courts that judgment was rendered has a different rule of evidence than we have and does not give the same effect as this state gives to a foreign judgment.

We think the general rule as above stated must be applied to this case, and that the proposition which the respondent would maintain is in conflict with the policy and law of this state.<sup>31</sup>

Judge Learned Hand commented on *Hilton v. Guyot* in *Direction der Disconto-Gesellschaft v. U.S. Steel Corp.*:<sup>32</sup>

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.<sup>33</sup>

In *Oilcakes and Oilseeds Trading Co., Ltd. v. Sinason-Teicher Inter American*

28 *Id.* at 123.

29 219 App. Div. 120, 219 N.Y. Supp. 284 (1927), *aff'd*, 246 N.Y. 603, 159 N.E. 669 (1927).

30 *Id.* at 285-86.

31 *Id.* at 288.

32 300 Fed. 741 (S.D.N.Y. 1924), *aff'd*, 267 U.S. 22 (1924).

33 *Id.* at 747. Other New York decisions which have rejected the doctrine of reciprocity: *Coudenhove-Kalergi v. Dieterle*, 36 N.Y.S.2d 313 (Sup. Ct. 1942) (A New York action will lie upon award made by German arbitration court); *In re Rutherford's Estate*, 182 Misc. 1019, 46 N.Y.S.2d 871 (1944).

*Grain Corp.*, plaintiff was allowed to sue upon an English arbitration award.<sup>34</sup> The Supreme Court of Georgia apparently has also rejected the doctrine of reciprocity. In *Coulborn v. Joseph*,<sup>35</sup> plaintiff was seeking enforcement of an English alimony decree rendered while both parties were domiciled in England. The court said:

The issues having been submitted and adjudicated in an apparently regular manner to a court of competent jurisdiction of a foreign country whose laws and judicial system are not only not inconsistent with, but in harmony with, those fundamental concepts of justice under the law to which we in this country are accustomed, the judgments there rendered will be by the court of this State held to be conclusive, and rights thereunder accruing will be enforced by the courts of this State.<sup>36</sup>

California has rejected reciprocity by statute.<sup>37</sup> In *164 East Seventy-Second Street Corp. v. Ismay*,<sup>38</sup> the mandate of the statute was made clear, the court saying: "The courts are required by section 1915 of the Code of Civil Procedure to give a final judgment of a foreign country the same effect as a final judgment rendered in this state."<sup>39</sup> To date, California is the only state to have enacted such a statute.

It is not certain whether Illinois follows *Hilton v. Guyot*. In *Truscon Steel Co. of Canada, Ltd. v. Biegler*,<sup>40</sup> the court uses language which indicates rather clearly that reciprocity is not necessary for the enforcement of a foreign judgment: "And by the rule of comity, the same force and effect is given to judgments of foreign countries as is given to the judgments of sister states."<sup>41</sup> However, in *Clubb v. Clubb*<sup>42</sup> the court, in dicta, quotes the holding of *Hilton v. Guyot*, saying: "Comity does not require, in absence of treaty or statute, that judgments of a foreign country be recognized as conclusive in this country, where such foreign country does not give like effect to our own judgments."<sup>43</sup>

In all jurisdictions, including those which have refused to follow the doctrine of reciprocity, there are other well-established methods of attacking judgments of a foreign court. A court will refuse to give a foreign judgment conclusive effect when the rendering court lacked jurisdiction over a party;<sup>44</sup> where the judgment would be against public policy if enforced;<sup>45</sup> where there was no fair hearing in

34 170 N.Y.S.2d 378 (Sup. Ct. 1958). Plaintiff had obtained a default judgment in England for the balance due under an arbitration award. When suit was brought in New York upon this default judgment defendant answered that the judgment was invalid in New York because jurisdiction had not been obtained over the defendant by the English court. Plaintiff amended its complaint by dropping the allegations as to the judgment and transforming the action from one on the judgment to one on the award. Plaintiff's motion for summary judgment was then granted.

35 195 Ga. 793, 25 S.E.2d 576 (1943).

36 *Id.* at 581.

37 "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." CAL. CIV. PROC. CODE § 1915.

38 65 Cal. App. 2d 547, 151 P.2d 29 (1944).

39 *Id.* at 30.

40 306 Ill. App. 180, 28 N.E.2d 623 (1940).

41 *Id.* at 623-24.

42 402 Ill. 390, 84 N.E.2d 366 (1949).

43 *Id.* at 369.

44 *In re Estate of Paramythiotis*, 15 Misc. 2d 133, 181 N.Y.S.2d 590 (1958); *Boivin v. Talcott*, 102 F. Supp. 979 (N.D. Ohio 1951); *Bethune v. Bethune*, 192 Ark. 811, 94 S.W.2d 1043 (1936).

45 *In re Topcuoglu's Will*, 11 Misc. 2d 859, 174 N.Y.S.2d 260 (1958) (order of adoption procured by fraud in a Turkish court was offensive to public policy of New York); *Christopher v. Christopher*, 198 Ga. 361, 31 S.E.2d 818 (1944) (Mexican mail order divorce decree contrary to public policy of Georgia); *In re Gillies' Estate*, 8 N.J. 88, 83 A.2d 889 (1951) (Greek adoption decree contrary to public policy of New Jersey where child did not live with petitioner for at least one year); *but cf. Zanzonico v. Neeld*, 17 N.J. 490, 111 A.2d 772 (1955) (Italian adoption decree recognized as valid even though child did not live with party for at least one year (In *re Gillies' Estate* distinguished); *but see* *Neporary v. Kir*, 5 App. Div. 2d 438, 173 N.Y.S.2d 146 (1958) (New York will recognize judgment of foreign court based upon cause of action abolished in New York as against public policy).

the original determination;<sup>46</sup> where the foreign judgment was acquired without due process;<sup>47</sup> where the foreign decree was not a final judgment;<sup>48</sup> and where the judgment was obtained by a fraud upon the rendering court.<sup>49</sup> Mexican "mail order" divorce decrees, in particular, have been repeatedly rejected upon the grounds that they are violative of public policy<sup>50</sup> and that the rendering court did not have jurisdiction over the parties.<sup>51</sup> In fact, such divorce decrees are held in such ill-favor that attorneys who aid clients in procuring such divorces have been dealt with rather severely by the courts.<sup>52</sup>

There are very few cases in which state courts have followed the reciprocity rule of *Hilton v. Guyot*. Minnesota apparently accepted the doctrine in *Traders Trust Co. v. Davidson*,<sup>53</sup> an action brought to enforce a Manitoba judgment; the court said: "Effect is given to foreign judgments as a matter of comity and reciprocity and it has become the rule to give no other or greater effect to the judgment of a foreign court than the country . . . whose court rendered it gives to a like judgment of our courts."<sup>54</sup>

Florida has also seemingly accepted reciprocity as a condition precedent to enforcement of a foreign decree. In *Ogden v. Ogden*,<sup>55</sup> the Florida Supreme Court determined that where a wife brought suit in England to restore her conjugal rights and an English court determined that the husband was guilty of desertion, this determination would not be *res judicata* to the issue of desertion raised in the husband's suit for divorce in Florida. The husband had raised an issue of jurisdiction which was dismissed, without determination on the merits, on the grounds that the husband had failed to comply with the court's order requiring costs and security. The Florida Supreme Court found, with the aid of expert testimony by English barristers, that the order of the English Court in this suit to restore conjugal rights, if issued in a foreign country, would not be given effect in England because it was not a final judgment. The court quoted what it felt was the general rule in this area: "[T]he judgments of a foreign court will be given force and effect and will be enforced only when the courts of the jurisdiction where the cause first arose would afford relief under the same circumstances to the judgments of the forum."<sup>56</sup>

The doctrine of reciprocity is binding of course, upon the lower federal courts.<sup>57</sup> However, after the decision in *Erie R.R. Co. v. Tompkins*,<sup>58</sup> an additional complicating factor arose — which law to apply in diversity cases. In 1941, the Supreme

46 *Banco Minero v. Ross*, 106 Tex. 522, 172 S.W. 711, 714-15 (1915). As far as can be determined, this is the only case on this point.

47 *Parker v. Parker*, 155 Fla. 635, 21 So. 2d 141 (1945), *cert. denied*, 326 U.S. 718 (1945) (Cuban divorce denied effect where service of process was by publication when husband knew wife's address); *In re Deckert's Will*, 141 N.Y.S.2d 855 (Surr. Ct. 1955) (Cuban divorce granted without notice would not be recognized).

48 *In re Cleland's Estate*, 119 Cal. App. 2d 18, 258 P.2d 1097 (1953) (Incomplete Mexican divorce decree would not be recognized in California because not a final judgment).

49 *Perdikouris v. The Olympos*, 185 F. Supp. 140 (E.D. Va. 1960) (plea of accord and satisfaction because of compromise act approved by Greek Justice of Peace in libel by Greek seaman overruled where Greek attorney for seaman was friendly to shipowner); *In re Gillies' Estate*, 8 N.J. 88, 83 A.2d 889 (1951) (adoption proceedings were a fraud on the court).

50 *Smith v. Smith*, 72 Ohio App. 203, 50 N.E.2d 889 (1943); *In re Fleischer's Estate*, 192 Misc. 777, 80 N.Y.S.2d 543 (1943).

51 *Bobala v. Bobala*, 68 Ohio. App. 63, 33 N.E.2d 845 (1940); *People v. Harlow*, 9 Cal. App. 2d 634, 50 P.2d 1052 (1935).

52 *In re Cohen*, 10 N.J. 601, 93 A.2d 4 (1952) (disbarment); *In re Anonymous*, 274 App. Div. 89, 80 N.Y.S.2d 75 (1948).

53 146 Minn. 224, 178 N.W. 735 (1920).

54 *Id.* at 736.

55 159 Fla. 604, 33 So. 2d 870 (1948).

56 *Id.* at 873.

57 See, e.g., *Kessler v. Armstrong Cork Co.*, 158 Fed. 744 (2d Cir. 1907).

58 304 U.S. 64 (1938).

Court held, in *Klaxon Co. v. Stentor Electric Mfg. Co.*,<sup>59</sup> that in diversity of citizenship cases, the federal courts, when deciding questions of conflict of laws, must follow the rules prevailing in the states in which they sit. It would seem, therefore, that this decision bound the federal courts to accept or reject the doctrine of reciprocity according to the law of the state in which they sit.<sup>60</sup> There are no decisions, so far as can be determined, which would confirm or deny this. In one fairly recent case action was brought to enforce a Swiss money judgment which was part of a Swiss divorce decree.<sup>61</sup> The defendant moved to dismiss the complaint for failure to state a claim upon which relief could be granted. Specifically, the defendant attacked the validity of the complaint upon the basis that it did not allege reciprocity of enforcement of American judgments in courts of Switzerland. The court had a perfect opportunity to clarify a cloudy area of the law, *i.e.*, the status of the rule of reciprocity of enforcement. Instead, it evaded the real problem and held that the absence of reciprocity is a matter of defense, which the party who seeks to avoid the burden of the foreign judgment must plead. Thus there is still no authority one way or the other in this area.

Two states have, by statute, adopted the old Field Code provision that foreign judgments are presumptive evidence of a right as between the parties, and that they can only be overturned by evidence of a lack of jurisdiction, failure to give notice, collusion, fraud, or clear mistake of law or fact.<sup>62</sup>

At best the law in this area can be said to be uncertain. Those states which have spoken out against *Hilton v. Guyot* have done so emphatically; those which have apparently accepted the decision have been less explicit. The decision itself is old. Since 1895 the Supreme Court of the United States has not seen fit to affirm or deny the doctrine of reciprocity.

#### *Status of American Money Judgments Abroad*

Up to this point this Note has been concerned with the available case law in this area. The emphasis now switches to a consideration of the effect of the doctrine of reciprocity on the rights of American citizens, determined in American courts, but dependent for their enforcement upon foreign courts.

Professor Kurt H. Nadelmann of the New York University School of Law, a crusader for uniformity in this area, has probably collected the most complete and available compilation of the status of American money judgments abroad.<sup>63</sup>

In England, since *Godard v. Gray*,<sup>64</sup> valid foreign judgments are granted conclusive effect and cannot be re-examined upon the merits either for mistake of law or fact.<sup>65</sup> India grants conclusive effect to the merits in foreign judgments.

An exception, alien to current English law, is made for the case where the foreign judgment appears on the face of the proceedings to be founded on an incorrect view of international law or as a refusal to recognize the law of British India in cases in which such law is applicable.<sup>66</sup>

The law in France as to American judgments is well known as a result of *Hilton v. Guyot*. However,

in October [1955], the Court of Appeals of Paris in *Charr v. Hasim Ulusahim* denied the defendant the right of *revision au fond* in a case

59 313 U.S. 487 (1941).

60 "[S]ince *Erie R.R. v. Tompkins*, the decision of the Supreme Court [*Hilton v. Guyot*] has lost most if not all of its value as a precedent even for the lower federal courts inasmuch as the federal courts now must apply the law, including the conflicts law, of the state in which they sit." Nadelmann, *supra* note 6, at 241.

61 *Gull v. Costam*, 105 F. Supp. 107 (D.C. Colo. 1952).

62 ORE. REV. STAT. § 43.190 (1959); MONT. REV. CODES § 93-1001-27 (1947).

63 Nadelmann, *supra* note 6.

64 [1870] 6 Q.B. 139.

65 Nadelmann, *supra* note 6, at 242.

66 *Id.* at 242.

involving enforcement of a Turkish judgment. The court declared the doctrine basically faulty and outdated, abandoned for matters of status even in France, and not applied by France in the relations with the many countries with which France has treaties on reciprocal recognition and enforcement of judgments.<sup>67</sup>

In Belgium, by statute, a foreign judgment will not be granted conclusive effect but will be reviewed *de novo*.<sup>68</sup> The Netherlands, by statute, reviews foreign judgments from the beginning.<sup>69</sup> Switzerland has placed enforcement of foreign judgments within the jurisdiction of the Cantons, "except that the treaties concluded by the Federation on recognition and enforcement of foreign judgments supersede the Cantonal law. Various Cantons leave it to the discretion of the courts whether to give conclusive effect to a foreign judgment."<sup>70</sup> This is also true of Turkey.<sup>71</sup> Greece and Portugal distinguish between judgments against foreigners and judgments against nationals. A judgment against a foreigner is conclusive in Greece; a judgment against a national may be reargued by the national on the ground that it is in contradiction to "facts proved."<sup>72</sup> Judgments against nationals in Portugal may be argued on the ground that the judgment violates Portuguese conflicts rules.<sup>73</sup> Italy grants conclusive effect to foreign judgments except for default judgments and judgments which, under Italian law, would allow a party to have a final judgment reopened.<sup>74</sup> "In Scandinavia, the Swedish courts have denied conclusive effect to foreign judgments and in Norway, a treaty is needed to secure conclusive effect to such judgments."<sup>75</sup> Canada, like the United States, permits its provinces to rule upon the effect to be given foreign judgments: Quebec denies a foreign judgment conclusive effect if the defendant desires to reargue his cause;<sup>76</sup> Ontario, however, will grant conclusive effect to foreign judgments;<sup>77</sup> Prince Edward Island allows foreign judgments to be challenged by anyone domiciled on the island;<sup>78</sup> Manitoba allows the defendant in an action upon a foreign judgment to plead to the action on the merits or to set up as a defense any defense which might have been pleaded in the original trial; the plaintiff, however, may apply to the court to strike the pleading on the ground of delay or embarrassment;<sup>79</sup> "New Brunswick and Saskatchewan have adopted the Uniform Foreign Judgments Act . . . which secures conclusive effect to foreign judgments through the restriction of defenses which may be made."<sup>80</sup>

The doctrine of reciprocity is also present in Europe. Austria and Denmark will enforce foreign judgments when the government itself advises the court that reciprocity exists;<sup>81</sup> Germany, Japan, numerous Swiss Cantons, Monaco and Lebanon allow the courts to determine whether reciprocity exists.<sup>82</sup> Spain grants foreign judgments the same effect in Spain that Spanish judgments have in the foreign country involved.<sup>83</sup> Mexico uses the term "international reciprocity" in speaking of foreign judgments but the meaning of the term is not clear and, in addition,

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67 *Id.* at 243-44.

68 *Id.* at 244.

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*

72 *Id.* at 244-45.

73 *Id.* at 245.

74 *Ibid.*

75 *Ibid.*

76 *Id.* at 246.

77 *Ibid.*

78 *Id.* at 247.

79 *Ibid.*

80 *Ibid.*

81 *Id.* at 249.

82 *Id.* at 249-50.

83 *Id.* at 250.

it is not clear whether this provision is applicable everywhere in Mexico as "national law for aliens."<sup>84</sup>

One further finding of Nadelmann is particularly significant insofar as this Note is concerned.

Where reciprocity is made a condition for recognition, the theories on the meaning of "reciprocity" are many, but . . . the result, as far as judgments from our courts are concerned, generally is the same: they do not "qualify." Where the Government is to certify existence of reciprocity, the list of certified countries does not include the United States or any of the states of the Union. When the decision on reciprocity is with the courts, those decisions which have become known, generally are denials of existence of reciprocity, and most of the text writers support the decisions. This must be kept in mind in evaluating chances for proving to the satisfaction of a foreign court that conclusive effect is given to judgments from its country in the American state from which the judgment to be enforced comes.<sup>85</sup>

### Conclusion

It seems evident that the principal effect of the doctrine of reciprocity announced in *Hilton v. Guyot* has been to deny conclusive effect to judgments of American courts abroad. The implication of *Hilton* — that the doctrine of reciprocity would lead other nations to give conclusive effect to American judgments — has not been fulfilled. In those nations which retain the doctrine of reciprocity, actions upon American judgments are tried de novo — an expensive process of relitigation. This is true even of judgments of states like New York which grant conclusive effect to foreign judgments. Foreign courts have not attempted to resolve the confusion and uncertainty of American law in this area. Therefore, a new approach, necessary solely from the point of view of our own self-interest, must be undertaken. However, there is an even more urgent reason for new American law in this area. The purpose of this Symposium is to discuss the possibility of extending the rule of law throughout the world. A nation's judicial system precedes its rule of law. It is not possible to extend the rule of law if American justice stops at its borders. As long as the doctrine of reciprocity, with its resulting confusion, exists, there can be little but suspicion and distrust of the American judicial system.

What steps can be taken to correct this situation? One possible approach would be a rejection of the doctrine of reciprocity by the Supreme Court, with similar rejection by those states which have adopted it. However, it is unlikely that the ordinary course of individual litigation would bring this about for a long while.

A better approach would be through a treaty. Chief Justice Hughes once said:

The treaty-making power is broad enough to cover all subjects that properly pertain to our foreign relations, and agreement with respect to the rights and privileges of citizens of the United States in foreign countries, and of the nationals of such countries within the United States . . . is within the scope of that power, and any conflicting law of the State must yield.<sup>86</sup>

It has been suggested that one difficulty in using treaties is the problem of defining the jurisdictional requirements for recognition. While differences in system and approach are minor between common law countries, they are considerable between *civil* and common law countries.<sup>87</sup> But a treaty would speedily put uniformity into effect. Professor Nadelmann suggests that "A Uniform Foreign Judgments (Reciprocal Enforcement) Act could be prepared to cover judgments of

84 *Id.* at 250-51.

85 *Id.* at 251.

86 *Santovincenzo v. Egan*, 284 U.S. 30, 40 (1931).

87 Nadelmann, *supra* note 6, at 260.

foreign countries, and the requirements for its availability laid down, where necessary, in Conventions entered into by the United States and interested foreign nations."<sup>88</sup> This author is not so presumptuous as to suggest *the* solution to the problem. It is sufficient that the problem has been defined and a need shown for *a* solution.

*Russell G. Lloyd*

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<sup>88</sup> Nadelmann, *Reprisals Against American Judgments*, 65 HARV. L. REV. 1184, 1191 (1951-52).