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THE school year has opened auspiciously, with an increase of three in the registration. The official figures are (figures for last year in brackets): Graduate Students, 3 [11]; Seniors, 52 [70]; Middlers, 52 [42]; Juniors, 87 [69]; Special Students, 3 [2]; total, 197 [194]. The large increase in the Junior class is especially gratifying. The only changes to be noted are that Prof. Wurts is teaching the classes in junior evidence, Mr. C. H. Harriman, '99, is Junior Quiz Master, and Dr. W. F. Foster has been chosen Secretary of the Faculty in place of Prof. Beers, whose private engagements made it impossible for him to give the time necessary for the office work. It is a source of gratification that President Hadley is giving his course of lectures on Railway Management, though the number of lectures has been reduced to six.

The school is honored in the election of Prof. Simeon E. Baldwin to the Presidency of the International Law Association, to succeed Sir Richard E. Webster, Attorney-General of England. Judge David Dudley Field is the only American who has held this position.

FOREIGN JUDGMENTS IN ENGLISH COURTS.

We are in receipt of an important and interesting decision of the Court of Appeals of the Supreme Court of Judicature (England) reversing the decision of the Chancery Division in the case of *Sarah Elizabeth Pemberton* v. *Hughes*. The material facts of the case were that the plaintiff, while a resident of the State of Florida, was married there according to the laws thereof to one Erwin. Four years after the marriage Erwin sued the plaintiff for and obtained a decree of divorce. The decree stood as a final and subsisting decree. Two years later, Erwin being still alive, plaintiff married one Pemberton, and they lived together as man and wife until the death of Pemberton. Under a power to charge certain estates in England with an annuity in favor of any woman he should marry, he, by his will, made plaintiff the appointee.

The defendants, who claimed the estates, disputed the validity of the appointment, asserting that the decree of divorce was void under the laws of Florida. The ground of their contention was that the subpœna issued to Mrs. Pemberton (who was then Mrs. Erwin) did not leave ten clear days between the date of the writ and the time for appearance in the suit for divorce. The evidence showed that such irregularity in practice and procedure would in any court of Florida be considered as rendering a decree of divorce null and void. In the present case the defendants claim that there being no valid divorce, there was no valid marriage between Pemberton and his so-called wife, and that hence she had no right to the jointure granted to her under the will of Pemberton The case was originally tried in Chancery Division before Judge Kekewich, who decided that the divorce was invalid. In his opinion he declared that the preponderance of evidence of the expert witnesses called for the defendants was undoubted in establishing that such error in the serving of the subpœna would render the decree void for want of proper jurisdiction.

The reasoning of the Court of Appeals reversing this decision may be thus summarized It by no means follows that the judgment of the Florida court was rendered absolutely void by reason of the defect in process, or that, standing unimpeached by a higher court, it would be considered invalid in a collateral proceeding in a Florida court. Even assuming that such judgment would be considered as void in such a collateral proceeding, it does not afford a sufficient reason that the same should be considered as a nullity in an English court, which looks only for a violation of substantial justice. Provided a court has territorial competence and jurisdiction, its competence in other respects is not regarded as material by English courts. Competency of a court from an international, and not from a municipal point of view, determines the validity of a judgment, and therefore it is not dependent on the exact observance of the court's own rules of procedure. A judgment of a foreign court having jurisdiction of the parties and subject matter—i. e., having jurisdiction to summon the defendants before it, and to decide such matters as it has decided—cannot be impeached in England on its merits, although there may be an error in procedure. (According to this declaration no consideration is given to the possibility that such an error in procedure might gloss over that very essential lack of jurisdiction over either the person or subject matter.) A decree of divorce altering the status of the parties concerned, and affecting the legitimacy of their afterborn children, is much more like a judgment in rem than a judgment in personam, and, therefore, the decisions on foreign judgments in rem should be the guides in determining this case. As no collusion in obtaining the divorce is shown, there is no ground upon which an English court can refuse to recognize the validity of the decree of the Florida court.

This decision may be regarded as an indirect contradiction to the general rule regarding foreign judgments in existence at the present day, which has been given clearness and definiteness by a vast series of English and American decisions. At present it is well settled that a judgment rendered by a court of competent authority and jurisdiction is absolutely conclusive as to the merits of the controversy which it settles, and to that extent is binding upon the courts of all other States and countries, and will be recognized by them as evidence of the facts decided. Moreover, at the present day there is no distinction made between judgments in rem and judgments in personam of foreign courts, but all are given the same credit. Therefore, it has always been considered that valid judgments will be both recognized and enforced if they are of such a character as to be given recognition and enforcement in the jurisdiction where they were pronounced. But it is here that the first distinction is to be found. It must always appear that there have been proper proceedings and notice to the parties in order to give the judgment conclusiveness in a foreign jurisdiction. *Bradstreet* v. *Neptune Ins. Co.*, 3 Sumner (U. S.) 600, is the earliest case of authority in this country. Furthermore, there has never been any doubt of recent years that a foreign judgment may under all circumstances be impeached for want of jurisdiction, either over the person or the subject matter, and in this country the rule is not changed, even by the "full faith and credit" clause in the United States Constitution. These questions were all gone into very thoroughly by the counsel on either side in the trial of this case in the Court of Appeals, yet with the result that the court unanimously handed down the decision finding that a judgment pronounced by a foreign court will be considered final in English courts, and that English courts will never investigate the propriety or validity of the proceedings of such court unless they offend against English views of substantial justice. Consequently a judgment, though void in law in the country where it is pronounced, will not necessarily be so regarded in England. There is no doubt that neither the court nor the counsel on either side were in agreement as to the principles laid down in the leading cases cited, viz.: *Vanquelin* v. *Bouard*, 15 C. B. N. S. 341; *Castrique* v. *Imrie*, 23 L. T. Rep. 48; *Doglioni* v. *Crispin*, 15 L. T. Rep. 44.

Lindley, M. R., said in part: "The court which pronounced the decree ought to be credited with knowing what irregularities, if any, were fatal to its jurisdiction and what were not, and the court had before it all the materials necessary for forming a judgment, and oversight or carelessness ought not to be presumed by us. * * * Assuming that the defendants are right, and that the decree of divorce is void by the law of Florida, it by no means follows that it ought to be so regarded in this country. It sounds paradoxical to say that a decree of a foreign court should be regarded here as more efficacious or with more respect than it is entitled to in the country in which it is pronounced. But this paradox disappears when the principles on which English courts act in regarding or disregarding foreign judgments are borne in mind. If a judgment is pronounced by a foreign court over persons within its jurisdiction and in a matter with which it is competent to deal, English courts never investigate the propriety of the proceedings of a foreign court, unless they offend against English views of substantial justice. Where no substantial justice, according to English notions, is offended, all that English courts look to are the finality of the judgment and the jurisdiction of the court in this sense and to this extent, viz., its competence to entertain the sort of case which it did deal with, and its competence to require the defendant to appear before it."

It would seem very much as if the distinction here introduced is so subtle and so without foundation as to have perverted the proper application of the general principles hitherto applied to the recognition of foreign judgments. The learned judge, whose opinion has just been quoted, himself admitted in another place that the courts of England do not enforce foreign judgments of courts which have no jurisdiction in the sense above explained, i. e., over the subject matter or the persons brought before them, but claims that the jurisdiction which alone is important is the territorial competence over the subject matter and the parties. If this were true any or all of the essential points of procedure in courts of law might be omitted or only partially performed, and yet a decree of the court would be considered valid. The truth of the matter seems to be that the existing, valid jurisdiction of any court is territorial in nature, and in any case is dependent upon the established procedure and the statutory enactments governing that court whose jurisdiction is under investigation. This being so, any defect of a technical nature will render the jurisdiction of the court *void*, and any decree under such void jurisdiction *absolutely invalid*. Justice Lindley, citing the cases of *Castrique* v. *Imrie*, 23 L. T. Rep. 48, and *Messina* v. *Petrocochino*, 26 L. T. Rep. 561, reiterates the proposition that a judgment of a foreign court cannot be impeached on its *merits*, but seems to stop there, and omits to notice that both those cases acknowledge in common with *Schibsby* v. *Westenholz*, 24 L. T. Rep. 93, that the jurisdiction of the court of a foreign country may always be inquired into in order to ascertain whether the laws of the State were conformed to in making the decree of court, or whether it was unduly or irregularly obtained. If these latter facts appear, the judgment in question is considered null and void. The English cases, too numerous to mention by name, which were cited as authority for the view that "English courts are bound to receive a judgment of a foreign court without inquiry as to its conformity or nonconformity with the laws of the country where it was pronounced," are by no means in contradiction to the leading case of *Phillips* v. *Hunter*, 2 H. Bl. 402, in which Lord Chief Justice Eyre draws the very distinction which escapes, apparently, the attention of Justice Lindley, and which was the basis of the general rule prevailing until the present case. Justice Eyre said in part, "In one way only is the sentence or judgment of the court of a foreign State examinable in our courts, and that is when the party who claims the benefit of it applies to our courts to enforce it. When it is thus voluntarily submitted to our jurisdiction we examine it as we do all other considerations of promises, and for that purpose we receive evidence of what the law of the foreign State is, and whether the judgment is warranted by that law." In brief, if it is proved that a foreign judgment is invalid because of some defect in procedure or in practice, the judgment is considered as not being in existence, and evidence substantiating this is always admissible in a court of another country. But if no such claim is made the verity of the judgment will stand unimpeached, as would the present judgment of the court of Florida, had not the question of the nonexistence of the judgment as a judgment been raised. The only way in which, under the prevailing rule, the defendants could have been estopped from disputing the validity of the decree of divorce would have been on the ground that they were parties to the proceeding in Florida, and as this was not the fact, a refusal of the court to receive evidence adverse to the validity of the decree is inherently in opposition to the rule prevailing up to the present time.

The fundamental consideration upon which has rested the right to attack

the jurisdictional power of a foreign court has been that otherwise a citizen of one country could not avoid the effect of a judgment rendered by such court, when same is brought up in a proceeding in another court, without going back into such foreign jurisdiction, and there have the same reversed. This has never been required by English or American courts. Thus when Justice Lindley asserts that the errors of the Florida court should have been rectified by impeachment in Florida, he seeks to invoke a duty never before recognized by English courts.

RIGHT TO ENJOYMENT OF STREAM—PERCOLATING WATERS.

The Court of Appeals of New York extends the rights of riparian owners in *Smith* v. *Brooklyn*, 54 N. E. 787. Smith owned land on which there was and had been a pond and natural water-course. The city of Brooklyn, to secure water for municipal purposes, established, on land of its own, at a distance of about 2,400 feet, an aqueduct and reservoir, which it supplied with water by means of a conduit and a system of wells, pumped by powerful steam-suction pumps. When the conduit was laid the stream failed perceptibly, and when the pumping station was put in operation disappeared. Both stream and pond have remained dry ever since. The jury found that the acts of the defendant had caused the disappearance of the pond and water-course. In final affirmance, the Court of Appeals, all concurring and speaking by Gray, J., says: "The right of this plaintiff to the enjoyment of his running stream and to his pond was absolute. The diversion of the water therefrom was established as a fact by the verdict, and the right of the former to maintain the action for the recovery of damages was clear."

The doctrine that the owner of land has it to the sky and the lowest depths was very clearly modified as to water-courses in *Shury* v. *Piggott*, 3 Bust. 339, where Whitlock, J., says: "Ways or commons * * * may become extinct by unity of possession, because the greater benefit shall drown the less. * * * but a water-course doth begin *ex jure naturæ*, and cannot be averted." But *Acton* v. *Blundell*, 12 M. & W. 324, denied the right or interest of the owner of land, through which water flowed in a subterraneous course, sufficient to enable him to bring action for its diversion by an adjacent owner. Where, however, these subterranean waters are the principal or only source of supply of a water-course on his land, what are the rights of the parties? *Greenleaf* v. *Francis*, 18 Pick 117, held the right of the first owner paramount, "unless he was actuated by a mere malicious intent to deprive his neighbor of the water without a benefit to himself." *Parker* v. *B. & M. R.*, 3 Cush. 107. The next distinction made was between a subterranean flow of water so well defined as to constitute a regular and constant stream and percolations. The former were capable of a right of enjoyment in the person on whose land they issued as a spring and could not be diverted. *Smith* v. *Adams*, 6 Paige 435. But the owner of land had no right of action against a neighboring owner who diverted, without malice or negligence, the mere percolations of his own land, even though a spring was destroyed thereby. *Wheatly* v. *Baugh*, 25 Pa. St. 528. It does not follow that each land owner has the entire and unqualified ownership of all water found in his soil, not gathered into natural water-courses in the common acceptation of that term. The rights of each land-owner being similar, and his enjoyment dependent upon the action of other land-owners, these rights must be valueless unless exercised with reference to each other, and are correlative. Each is restricted, therefore, to a reasonable exercise of his own rights and a reasonable use of his own property. *Bassett* v. *Salisbury Mfg. Co.*, 43 N. H. 569.

This was the basis of the decision of Hatch, J. (in 18 App. Div. Rep. 341), and we think it a sound one. The maxim, *Sic utere uo.*, etc., applied to the facts, harmonizes the American cases. The English cases refuse to apply this doctrine to percolating waters where the rights of riparian owners in a defined water-course are not involved. *Chaseman* v. *Richards*, 7 H. L. 349; *Bradford* v. *Pickles*, 1895 Appeal Cases 587.

Civilization must move from absolute individual rights and absolute ownership to correlative rights and ownership reasonably restricted. While, therefore, we approve the decision of the case upon the facts found by the verdict, we question the propriety of stating an "absolute right of enjoyment" in a water-course, unless it is used in the sense of vested or individual. *U. S.* v. *Northway*, 17 Fed. Rep. 65. The plaintiff had rights in his stream, the city of Brooklyn had rights in the percolations of its land. When it was established that these percolations fed almost exclusively the plaintiff's stream, their rights became correlative and the city was bound to show that its acts were a reasonable use of its land with due care.

GEOGRAPHICAL NAMES AS TRADE-MARKS.

In *Canal Co.* v. *Clark*, 13 Wall. 311, we find the general law as to the use of geographical names for trade-marks laid down that no one can apply the name of a geographical district to a well known article of commerce, and obtain thereby such an exclusive right to the application as to prevent others inhabiting the district or dealing in similar articles coming from the district, from truthfully using the same designation. Until lately no exception to this general rule has been recognized as established law in this country. The United States Circuit Court for the Southern District of New York, however, has recently handed down a decision in the case of *American Waltham Watch Co.* v. *Sandman*, 96 Fed. 330, that considerably modifies the views formerly held on this point. In this case the defendant began the manufacture of watches in Waltham under the name of "Columbia Watch Company" and stamped his watches with the name of this fictitious corporation and the words, "Waltham, Mass." His object in locating at this place was for the avowed purpose of using the name "Waltham" in order that he might thereby reap the benefits of the labor of the original Waltham Watch Company, who had succeeded in making the "Waltham watch" known the world over. In a suit in equity for an accounting and an injunction, a decree was entered in favor of the plaintiff. The court in reaching this conclusion recognizes that a geographical name may acquire a secondary meaning that entitles it to the protection of the law. By long use and association with the manufacture of an article it may come to be a means of designating that article and as such acquire the value and invoke the protection accorded to a trade-mark. We find this point arising in the case of *Sexio* v. *Provezende*, L. R. I. Ch. 192, but not until the case of *Montgomery* v. *Thompson*, 1891 App. Cases 217, was it very fully discussed. The Massachusetts Supreme Court followed this latter case in *Waltham Watch Co.* v. *United States Watch Co.*, 53 N. E. 141, and the reasoning there of Judges Knowlton and Holmes seems to have had great influence upon the circuit court in the present case. The case before us is important as tending to establish a line between meritorious claims that have come into conflict. The principle that one can not appropriate a geographical name as against any one else manufacturing a similar article in the same place is a just one. But should even a right as strong as this be allowed to cover an intentional fraud on the public? It is the protection of the public that is aimed at. Not being in a favorable position to protect itself, the court considers its protection a duty incumbent upon it, and that a greater injustice would be done if it did not afford such protection than if it merely set limits upon a well established rule of law. The element of intentional fraud upon the public is the feature that the courts have grasped in order to set this limit, and a stronger one it would be hard to

find. As the law reaches a higher development, the establishment of limits to general principles become its predominant feature, and the present case is simply an illustration of this tendency.

CONSTITUTIONAL INTERPRETATION—INHERITANCE TAX.

That an inheritance tax is constitutional has long since been affirmatively decided by the great weight of authority. But the opinion handed down by the court in *In re Stanford's Estate*, 58 Pac. 462, is not only instructive, but settles for California, at least, that such tax, though it never came into the possession of the State, but was due the State, belongs to the State; and decides that a legislative act exempting individuals and certain private corporations from the payment of this tax is void, as being in direct conflict with the State constitution, prohibiting the Legislature from making a gift of any public money or thing of value. (Overruling *In re Stanford's Estate*, 54 Pac. 259.) The facts in this case were as follows: Leland Stanford by his will left large legacies in favor of the Leland Stanford Junior University and to certain of his nephews and nieces. A few days previous to Stanford's death a legislative enactment went into effect which provided for the payment of a collateral inheritance tax on property devised to certain classes. The tax so imposed was to become due and payable at decedent's death. In April, 1896, the Superior Court of San Francisco made an order on Stanford's executrix, requiring her to make payment of the tax due on the collateral bequests under the will. From this order an appeal was taken. In 1897 the Legislature amended the original act by exempting from such tax certain persons and classes (under which certain legatees under the Stanford will were included), and provided that such exemptions "shall apply to all property which has passed by will, succession or transfer since the approval of the act of which this act is amendatory, except in cases where taxes have been paid."

On the hearing of the appeal (54 Pac. 259) it was held that such appeal must be determined in accordance with the amendment, and that inasmuch as the amendment in question extended to every part of the State and applied to every person within a class, the same was in effect a general law and therefore did not conflict with the constitutional provision which in terms applied only to local or special laws. In the case under review the court, however, reaches a different conclusion, and hold that though in form the act in question may not be local or special legislation, yet the framers of the constitution, and the people who adopted it, did not hedge about the Legislature with such restraints in the matter of conferring favors, or making gifts or donations by special and local legislation, and at the same time leave the door wide open for similar abuses to enter under the guise of general legislation.

A contention was made that as the State had not come into possession of the tax, there could be no violation of such constitutional provision, inasmuch as the State could not give what it had never possessed. The fallacy of such contention is apparent when considered from the standpoint that it is only by virtue of statute that an heir is entitled to receive any of his ancestors' estate, and that it is in the power of the Legislature to provide that the whole or only a portion shall go to the heirs or other beneficiaries upon the death of the ancestor. This being so, and as all the property of a decedent must vest in some one at his death, if the law provides that only a certain portion can go to the heirs or other beneficiaries, the remainder being reserved to the State as a tax on the right of succession, it of necessity follows that such remainder must vest in the State at the same time that the other property vested in the heirs or beneficiaries. The State, therefore, has a present fixed right of future enjoyment to such a tax, and this is property or a thing of value belonging to the State. It is not possession alone, but the right to possess, which constitutes ownership. Inasmuch as the State's right to such a tax after it is due is property, it seems apparent that any legislation which releases such right would be in conflict with a constitutional provision forbidding the releasing or extinguishing of the indebtedness, liability or obligation to the State.

It would also seem to the average mind a pernicious piece of legislation to exempt those who had not paid the tax and not to exempt those who had complied with the law, as it would appear to set a premium upon the non-fulfillment of an obligation and the imposing of a penalty upon those who obeyed such a statute.