

# THE ENFORCEMENT OF AMERICAN JUDGMENTS ABROAD<sup>157</sup>

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Foreign countries enforcing American judgments on principle may decline to do so in particular classes of cases or for special reasons which must now be considered.

## FINALITY AND BINDING NATURE OF JUDGMENT

Before a foreign judgment can be enforced it must be shown that it is subject to immediate execution in the country in which it was rendered. This fact must be established in the manner prescribed by the rules of procedure of the state in which the judgment is to be enforced. If the foreign judgment was rendered in a country in which an appeal suspends execution thereon, the judgment cannot be enforced in any other state during the pendency of such appeal. Whether it will be enforced where the appeal in the foreign country does not operate as a *supersedeas* will depend upon the law of the state in which the judgment is presented for execution. Some countries permit the enforcement of foreign judgments in such a case.<sup>158</sup> The law of other countries requires the foreign judgment to be final in the sense that no further recourse is open in such foreign country with respect to the original proceedings.<sup>159</sup>

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<sup>157</sup> Continued from (1919) 29 YALE LAW JOURNAL, 188.

<sup>158</sup> *Austria*: Law of May 27, 1896, art. 80 (3) not subject to recourse which suspends its execution; *Chile*: art. 242 (4); *Costa Rica*: art. 1067 (3); *England*: *Scott v. Pilkington* (1862, Q. B.) 2 B. & S. 11; *France*: App. Paris, May 11, 1867, Sirey (1870) 2, 10; Trib. civ. Seine, July 9, 1880, Clunet (1881) 255; July 5, 1881, Clunet (1882) 530; Feb. 21, 1896, Clunet (1896) 621; Feb. 8, 1898, Clunet (1898) 736. See Daguin, *op. cit.*, 108; Moreau, *op. cit.*, 86; 6 Weiss, *op. cit.*, 55-56; *Greece*: App. Patras, 1896, Clunet (1901) 842; *Italy*: Cass. Naples, Dec. 6, 1866, *Annali* (1866-67) 1, 119 (The decree of July 30, 1919, requires that the judgment be "irrevocable" and enforceable where rendered, sec. 1 (5). *Gazzetta ufficiale*, July 30, 1919, no. 181); *Mexico*: art. 785 (4), Code Civ. P.; *Peru*: art. 1159 (3), Code Civ. P.

<sup>159</sup> *Germany*: sec. 723, Code Civ. P. The following countries require foreign judgments to be *res judicata* (rechtskräftig): *Belgium*: Law of March 25, 1876, art. 10 (2), Code Civ. P.; *Brazil*: Law of Nov. 20, 1894, no. 221, sec. 4 (2); *Colombia*: Art. 879 (2), Code Civ. P.; *Croatia and Slavonia*: sec. 550 (2), Code Civ. P.; *Denmark*: O L G Hamburg, Nov. 6, 1907, 17 *Recht-*

The judgment must be subject to immediate execution in the country where it was rendered *at the time of its presentation for execution in another state*. This is of especial interest with respect to the statute of limitations, which, according to the continental doctrine is generally regarded as relating to the substance and not to procedure. Hence, if an action on the judgment of an American court for the payment of money is barred in the state in which such judgment was rendered, it cannot be enforced in any foreign country in which the above doctrine prevails.<sup>160</sup>

#### JURISDICTION OF THE FOREIGN COURT

That a foreign judgment, before being entitled to execution in another country, must have been rendered by a court of competent jurisdiction is, in the nature of things, admitted by all. Great difficulty has been experienced, however, in determining the principles in accordance with which the existence of jurisdiction should be determined. The term "jurisdiction" has different significations, and both legislators and text writers fail ordinarily to define its meaning with precision. The codes use a great variety of expressions. Some state merely that the foreign court must have had jurisdiction. (Brazil,<sup>161</sup> Costa Rica,<sup>162</sup> Lichtenstein,<sup>163</sup> Portugal,<sup>164</sup> Rumania<sup>165</sup> and Uruguay).<sup>166</sup> Croatia and Slavonia<sup>167</sup> add that such jurisdiction must have existed "according to general principles." The Code of Bosnia and Herzegovina<sup>168</sup> makes it clear that the rules referred to are those relating to "local" jurisdiction. Others provide that jurisdiction must exist according to the law of the state in which execution is

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*sprechung der Oberlandesgerichte*, 157; Hæger, *op. cit.*, 229; Ecuador: Law of Nov. 14, 1904; *Anuario de legislacion ecuatoriana*, (1904) 220; Italy: see *supra* (The addition of the word "irrevocable" to the former provision signifies probably that hereafter a foreign judgment will be enforced in Italy only if there is no recourse left open under the foreign law); Lichtenstein: Law of 1891, art. 1 (2); Monaco: art. 473 (4), Code Civ. P.; Rumania: art. 374 (2), Code Civ. P.; Appenzell (Outer Rhodes): sec. 117 (1), Code Civ. P.; Basel-City: sec. 258 (2), Code Civ. P.; Grisons: art. 306 (1), Code Civ. P.; Schaffhausen: sec. 345 (1), Code Civ. P.; Zurich: art. 377, Code Civ. P.

The term *res judicata* is usually, but not always, understood in the sense that no further recourse is available. See App. Brussels, May 13, 1879, *Pasicrisie* (1879) 221; 1 Gaupp-Stein, *op. cit.*, 841; Francke, *Die Entscheidungen ausländischer Gerichte über bürgerliche Rechtstreitigkeiten in ihrer Wirksamkeit nach deutschen Reichsrecht*, 8 *Zeitschrift für deutschen Civilprozess*, 32, 85.

<sup>160</sup> App. Chambéry, Feb. 12, 1869, Sirey (1870) 2, 9; Moreau, *op. cit.*, 87; 6 Weiss, *op. cit.*, 53.

<sup>161</sup> Law of Nov. 20, 1894, art. 12, sec. 4 (3).

<sup>162</sup> Art. 1067 (4), Code Civ. P.

<sup>163</sup> Law of Dec. 16, 1891, art. 1 (1).

<sup>164</sup> Art. 1088 (1), Code Civ. P.

<sup>165</sup> Art. 374 (1), Code Civ. P.

<sup>166</sup> Art. 514 (1), Code Civ. P.

<sup>167</sup> Art. 550 (1), Code Civ. P.

<sup>168</sup> Sec. 446 (3), Code Civ. P.

sought. (Austria,<sup>169</sup> Germany,<sup>170</sup> Japan,<sup>171</sup> Schaffhausen.)<sup>172</sup> Venezuela<sup>173</sup> requires that the foreign court must have had jurisdiction in the international sense. Others provide that the jurisdiction assumed by the foreign court must not have been in violation of their own jurisdiction (Argentina<sup>174</sup> and Chile<sup>175</sup>). Foreign judgments are not enforced in Peru<sup>176</sup> if the jurisdiction belongs exclusively to the courts of Peru, and in Belgium<sup>177</sup> if the jurisdiction of the foreign court was based exclusively upon plaintiff's nationality. In Monaco<sup>178</sup> jurisdiction must exist according to the foreign law without being in conflict with that of Monaco. The recent law of Zurich<sup>179</sup> prescribes that the foreign court must have had jurisdiction both according to its own law and the law of Zurich. According to the new code of civil procedure of Hungary<sup>180</sup> a foreign judgment will not be enforced if no court of such foreign country had jurisdiction according to the laws of Hungary, or if the jurisdiction was based on a ground which, according to the laws of Hungary, cannot be applied to a Hungarian subject. The Italian decree of July 30, 1919,<sup>181</sup> requires: (1) that the foreign court was competent to hear the case according to the general principles of international law, and with special reference to the Preliminary Dispositions of the Civil Code if the judgment was rendered against an Italian citizen; (2) that the foreign court had jurisdiction according to the law of the place where the judgment was rendered.

Most of the above provisions leave in doubt the exact meaning of

<sup>169</sup> Most of the more recent cases of the Supreme Court of Austria take this view. O G H, Aug. 6, 1884, Glaser-Unger, *Civilrechtliche Entscheidungen*, no. 10124, vol. 22, 382; Dec. 17, 1884, Glaser-Unger, no. 10339, vol. 22, 624; March 30, 1886, Glaser-Unger, no. 10981, vol. 24, 159. Pollak would determine the question according to the principles of foreign law, 18 *Grünhut's Zeitschrift*, 76, and Menger, according to the principles of international law, 1 *System*, 180; see 1 Leske & Löwenfeld, *op. cit.*, 136; Pollak, 18 *Grünhut's Zeitschrift*, 75.

<sup>170</sup> Sec. 328 (1), Code Civ. P.

<sup>172</sup> Sec. 305 (2), Code Civ. P.

<sup>171</sup> Art. 515 (3), Code Civ. P.

<sup>173</sup> Art. 748 (1), Code Civ. P.

<sup>174</sup> Art. 869 (1), Code Civ. P.

<sup>175</sup> Art. 242 (2); see also Mixed Court of Appeal of Egypt, May 2, 1901, *Clunet* (1903) 905, and as regards Uruguay, Carrio, *Apuntes de derecho internacional privado*, 401.

<sup>176</sup> Art. 1160, Code Civ. P., provides that exclusive jurisdiction shall belong to the Peruvian courts with respect to the following cases: (1) real property in Peru; (2) vessels flying the Peruvian flag; (3) torts committed in Peru; (4) successions of Peruvians or foreigners domiciled in Peru, provided that the heirs (whether Peruvians or foreigners) were domiciled in Peru or the inheritance belongs to the "Beneficencia" (Charity) or to the State.

<sup>177</sup> Law of March 25, 1876, art. 10 (5).

<sup>178</sup> Art. 473 (2).

<sup>179</sup> Art. 107 (2), Code Civ. P.

<sup>180</sup> Sec. 414 (1), Code Civ. P. The particular court must have had jurisdiction according to Hungarian law, Gottl, *op. cit.*, 307.

<sup>181</sup> Art. 1 (1, 2).

the legislator. The term "jurisdiction" is sometimes used with respect to the jurisdiction of the courts of different states without reference to the jurisdiction of any particular court. In other cases it refers, or may refer, to the jurisdiction of the various courts of a country either in respect of the subject-matter or of locality. The following illustration will help to bring out the different meanings of the term. Suppose that a contract is made in the state of X, that it is to be performed in the state of Y, and that the defendant is domiciled in the state of Z. According to the Anglo-American view, personal service is sufficient to confer jurisdiction, in the international sense, upon the courts of the state in which such service is made. Under the continental doctrine, such service does not confer jurisdiction in any sense, for the suit must be brought either at the domicile of the defendant or where the contract was to be performed. Under the law of some countries it might be brought also in the state in which the contract was made. The question whether in the above case the suit should be brought in the state of Y or in the state of Z, would involve a question of international jurisdiction. If we suppose, on the other hand, that the place of making, the place of performance, and the domicile of the defendant were in the state of X, the question might be which one of the local courts of the state of X had jurisdiction. The term "jurisdiction" would be used here in a local sense—*ratione territorii*. Should the contract be a commercial one, which according to the law of some countries belongs to the jurisdiction of commercial courts, the question whether the particular case should be determined by a commercial or by a civil court would present a question of local jurisdiction—*ratione materiae*.

The survey of the legislative provisions above given discloses three principal points of view. One would determine the question of jurisdiction according to the law of the state in which the suit for the enforcement of the foreign judgment is brought. Another would apply the law of the country in which the judgment was rendered, and the third would apply the law of both countries. By reason of the fact that the term "jurisdiction" is not defined, great uncertainty naturally exists in most countries concerning the meaning of the particular provision of the code. The matter is complicated still further by the fact that the rules relating to jurisdiction may become connected with the doctrine of public policy. It may happen, therefore, that if a code should provide that the jurisdiction of the foreign court shall be ascertained in accordance with the foreign law, no effect may be given to such judgment on grounds of policy, if the jurisdiction of the court was contrary to the laws of the state in which the judgment is presented for execution. In view of these difficulties it may be helpful to give the law of some of the leading countries with somewhat greater detail.

(a) *English law.* The English courts require that the foreign judgment shall have been rendered by a court of competent jurisdic-

tion. Ordinarily it is stated that the foreign court must have had jurisdiction over the parties and the subject-matter. The meaning of these terms is, however, not well defined and much confusion of thought exists on the subject. According to Piggott,<sup>182</sup> a distinction should be made between competence and jurisdiction,—“competence” being, properly used subjectively, of the nature of the action which any court may entertain, and “jurisdiction,” objectively, of the nature of the persons in respect of whom these actions may be entertained. What the English courts mean by the phrase “court of competent jurisdiction” will appear from the following cases.

In *Vanquelin v. Bouard*<sup>183</sup> an action was brought in England on a French judgment. The original suit was on a bill of exchange and had been brought before a French commercial court, the court being competent to try such action and the defendant being within its jurisdiction. The defendant allowed judgment to go by default. In an action on the judgment in England the defendant pleaded that, not being a trader, the action should have been brought before a civil court. The Court of Common Pleas held that the plea was bad and should have been raised in the French courts.

In *Pemberton v. Hughes*,<sup>184</sup> the plaintiff's claim depended upon the validity of a previous divorce obtained by her from her former husband in Florida, where both parties were domiciled at the time. The decision was pronounced by a court having jurisdiction to grant a divorce to persons domiciled in Florida. The defence to the suit was that the subpoena to appear did not give the wife ten clear days for appearance, in consequence of which it was alleged the decree was a nullity under the law of Florida. The Court of Appeal held the plea to be bad and Lindley, M. R., said:

“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 in the foreign court, unless they offend against English views of substantial justice. Where no substantial justice, according to English notions, is offended, all English courts look to is the finality of the judgment and the jurisdiction of the court, in this sense and to this extent—namely, its competence to entertain the sort of case which it did deal with, and its competence to require the defendant to appear before it. If the court had jurisdiction in this sense and to this extent, the courts of this country never inquire whether the jurisdiction has been properly or improperly exercised, provided always that no substantial injustice, according to English notions, has been committed. . . . But the jurisdiction which alone is important in these matters is the competence of the court in an international sense—i. e., its territorial competence over the subject-matter and over the defendant. Its competence or jurisdiction in any other sense is not regarded

<sup>182</sup> 1 Piggott, *op. cit.*, 101-102.

<sup>183</sup> (1863) 15 C. B. N. S. 341.

<sup>184</sup> (1899, C. A.) 1 Ch. 781, 68 L. J. Ch. (N. S.) 281.

as material by the courts of this country. . . . The defendants' contention is based upon the assumption that an irregularity in procedure of a foreign court of competent jurisdiction in the sense above explained is a matter which the courts of this country are bound to recognize if such irregularity involves nullity of sentence. No authority can be found for any such proposition. . . . A judgment of a foreign court having jurisdiction over 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 this country on its merits."<sup>185</sup>

The general position of the English courts in the matter under discussion appears clearly from the above quotation. It follows therefrom that the English courts do not sit as courts of appeal with respect to foreign judgments. The competence of the foreign court to deal with the subject-matter before it must be determined in the nature of things by the rules prevailing in such foreign country. But aside from that the question is not what are the rules of jurisdiction sanctioned by the foreign law, nor what are those adopted by English law, but what are the *international* rules of jurisdiction which the English courts have set up with respect to foreign courts.<sup>186</sup> In other words, the English courts do not test the jurisdiction of the foreign courts by the standard which they have set up for themselves in similar circumstances, for sometimes they will assume jurisdiction themselves when they will not enforce a foreign judgment based on the same rule of jurisdiction.<sup>187</sup>

(b) *French law.* The French law leaves the question of the standard to be applied respecting the jurisdiction of foreign courts, in doubt.<sup>188</sup> According to some decisions the foreign court must have had jurisdiction according to the provisions of the foreign law.<sup>189</sup> Others hold or imply that the jurisdiction of the foreign court must satisfy the French rules relating to international jurisdiction, and the foreign rules as to local jurisdiction.<sup>190</sup> All agree that where according to the law of France French courts have exclusive jurisdiction in

<sup>185</sup> *Ibid.*, 790-792.

<sup>186</sup> "The term 'court of competent jurisdiction' means a court belonging to a country the courts whereof may rightly, according to the principles maintained by English courts, determine or adjudicate upon a given matter." Dicey, *op. cit.*, 355.

<sup>187</sup> Piggott, *op. cit.*, 104; Dicey, *op. cit.*, 368, note.

<sup>188</sup> See Martin, *De la compétence des tribunaux étrangers comme condition de l'exequatur d'un jugement étranger*, Clunet (1904) 5, 802; (1905) 59, 815; (1906) 27, 995.

<sup>189</sup> Cass. Feb. 18, 1862, Sirey (1862) 1, 427; App. Paris, Feb. 13, 1883, Clunet (1883) 286; August 12, 1902, Clunet (1903) 169; Dec. 20, 1906, Clunet (1907) 397; App. Chambéry, August 13, 1900, Clunet (1901) 151.

<sup>190</sup> Cass. April 27, 1870, Sirey (1871) 1, 91; Daguin, *op. cit.*, 104.

the matter a judgment rendered by a foreign court will have no effect.<sup>191</sup>

(c) *German law.* Under section 661 of the old code of civil procedure, there was doubt whether it was necessary that the particular foreign court should have had jurisdiction. A decision of the Imperial court,<sup>192</sup> and some of the authors,<sup>193</sup> supported the view that such jurisdiction must exist both as to the subject-matter and local jurisdiction of such court. The wording of section 328, subdivision 1, of the present Code of Civil Procedure clearly expresses the intention of the legislator, however, that the German judge is to inquire thereafter only into the jurisdiction of the courts of the foreign country, generally, and not into the jurisdiction of the particular foreign court rendering the decision.<sup>194</sup> The German code directs the judges, therefore, to inquire solely into the jurisdiction of the foreign country from an international point of view, regardless of the foreign internal rules relating to the distribution of jurisdiction among the different courts of the country.<sup>195</sup> The question of the jurisdiction of the foreign court, in an international sense, is to be determined according to the principles of German law. If the courts of the foreign country would have been competent, either because the defendant was domiciled there or because the contract was made there or was to be performed there, had such foreign country been part of German territory, effect will be given to the foreign judgment; otherwise not.<sup>196</sup>

(d) *Italian law.* Article 10 of the Preliminary Dispositions of the Civil Code contains the provision that jurisdiction of the foreign court shall be determined in accordance with the foreign law. In Article 11 of the Preliminary Dispositions it is provided, however, that foreign judgments shall not be enforced if they violate the Italian

<sup>191</sup> App. Grenoble, July 7, 1894, Clunet (1895) 1047, App. Rouen, March 23, 1897; Clunet (1899) 836; Trib. civ. Nice May 16, 1898, Clunet (1899) 131; App. Lyon, June 18, 1907, Clunet (1908) 158; App. Aix, July 22, 1901, Clunet (1901) 976.

<sup>192</sup> Decision of Imperial Court, March 25, 1891, 27 R G 410.

<sup>193</sup> 2 Wilmowski & Levy, *Civilprozessordnung* (7th ed.) 952; 1 Petersen, *Civilprozessordnung für das deutsche Reich* (5th ed.) 668. *Contra*, Francke, 8 *Zeitschrift für deutschen Civilprozess*, 37; 27 *ibid.*, 130-131; Kohler, *Gesammelte Aufsätze*, 557; *Zum internationalen Civilprozessrecht*, 10 *Zeitschrift für deutschen Civilprozess*, 472; Rintelen, *Zwei Streitfragen betreffend die Zwangsvollstreckung aus Urteilen ausländischer Gerichte*, 9 *Zeitschrift für deutschen Civilprozess*, 465; 1 Wach, *Handbuch des deutschen Civilprozessrechts*, 232.

<sup>194</sup> Decision of Imperial Court, March 21, 1902, 51 R G, 135; Francke, 27 *Zeitschrift für deutschen Civilprozess*, 130-131; 1 Gaupp-Stein, *op. cit.*, 841; 1 Hellwig, *Lehrbuch*, 131; 1 Hellwig, *System*, 828; Haeger *op. cit.*, 14.

<sup>195</sup> O L G Celle, March 17, 1902, 5 *Rechtsprechung der Oberlandesgerichte*, 122; 1 Gaupp-Stein, *op. cit.*, 841; Kohler, *Zum internationalen Civilprozess*, 10 *Zeitschrift für deutschen Civilprozess*, 472.

<sup>196</sup> 1 Gaupp-Stein, *op. cit.*, 841, 1 Hellwig, *Lehrbuch*, 133; 1 Hellwig, *System*, 829.

rules of public policy. In consequence of the above provisions most courts held before the decree of July 30, 1919, that the particular court of the foreign country rendering the decision must have been competent according to the rules of such foreign law.<sup>197</sup> Where the case was decided by the wrong court,—for example, by a commercial court, when under the rules of the foreign country the case belonged to the competence of the civil courts, the judgment was not enforced.<sup>198</sup> Even if the foreign court had jurisdiction according to its own rules, no effect was given to the judgment if such jurisdiction was based exclusively upon the principle of nationality,<sup>199</sup> or was deemed otherwise contrary to the Italian public policy.<sup>200</sup> It would seem, therefore, although it was not so stated generally by the courts, that the foreign judgment, before it could be enforced in Italy, had to satisfy both the local rules of jurisdiction prescribed by the foreign law, and the Italian rules relating to international jurisdiction. Some of the most prominent Italian writers have called attention to the fact that such a distinction between the international jurisdiction of courts, and jurisdiction from a local point of view should be made, but they have had to acknowledge that such distinction was not clearly recognized by the Italian code.<sup>201</sup> Some of the more recent decisions have accepted this view,<sup>202</sup> which has been adopted also by the decree of July 30, 1919. According to this decree the foreign court must have had jurisdiction according to the general principles of international law and according to the law of the country in which the judgment was rendered.<sup>203</sup> If the defendant is an Italian citizen the general

<sup>197</sup> Cass. Turin, Oct. 6, 1871, *Monitore* (1871) 881; App. Milan, Sept. 22, 1879, *Clunet* (1881) 536; Nov. 21, 1888, *Clunet* (1891) 294; Cass. Rome, April 10, 1878; *Foro italiano* (1881) 1, 520; App. Genoa, Dec. 18, 1883, *Giurisprudenza italiana* (1884) 2, 101; De Rossi, *op. cit.*, 95; Gianzana, *Lo straniero nel diritto civile italiano*, vol. 1, pt. 3, 93, note 2. *Contra*, Saredo, *Istituzioni di procedura civile*, vol. 2, 509. See also App. Venice, July 7, 1882, *La Legge* (1882) 2, 348.

<sup>198</sup> App. Lucca, Jan. 12, 1871, *Annali* (1871) 2, 51; De Rossi, *op. cit.*, 101; *contra*, Fiore, *Effetti internazionale delle sentenze e degli atti*, 145; Fusinato, *op. cit.*, 92.

<sup>199</sup> Cass. Turin, August 30, 1887, *Clunet* (1889) 338; App. Ancona, June 13, 1889; *Foro italiano* (1889) 1, 694, *Clunet* (1890) 375; App. Milan, Dec. 17, 1889, *Monitore* (1890) 118; App. Catania, April 16, 1889, *La Legge* (1889) 2, 349, App. Florence, April 7, 1869, *Annali* IV, 2, 98; App. Genoa, Oct. 15, 1895, *Giurisprudenza italiana* (1895) 734; De Rossi, *op. cit.*, 100. *Contra*, Asturi, *Se possa concedersi l'executur alle sentenze francesi emanate in forza del art. 14. Cod. Nap.*, 23; La Loggi, *op. cit.*, 370.

<sup>200</sup> Where the Italian jurisdiction is invaded no effect will be given to the foreign judgment. App. Lucca, April 26, 1867, *Annali* (1867) 2, 287; Gianzana, *op. cit.*, 1, pt. 3, 75.

<sup>201</sup> Baisini, *Studi di diritto civili internazionale*, 211, 212; Cesareo-Consolo, *Trattato delle espropriazione contro il debitore* (2d ed.) 472; Diena, *op. cit.*, 410; Fiore, *Effetti*, 145; Fusinato, *op. cit.*, 86-87, 93.

<sup>202</sup> App. Casale, Feb. 26, 1907, *Clunet* (1908) 595.

<sup>203</sup> Sec. 1 (1, 2).



principles of international law are to be determined with special reference to the Preliminary Dispositions of the Italian Civil Code.

#### SERVICE OF SUMMONS AND APPEARANCE

Personal service in the Anglo-American sense is not required under the continental system of procedure.<sup>204</sup> The continental law does not base jurisdiction upon the service of process but looks upon it solely as a means of informing the defendant of the pendency of the action. It is generally sufficient, therefore, if the summons be left at the defendant's home. If the defendant is not in the country, and the local courts have jurisdiction because of the fact that he is domiciled in the country, or because the contract was made there, or was to be performed there, the codes generally provide for the forwarding of the summons to the defendant through diplomatic channels.<sup>205</sup> The leading continental countries are now members of the Hague Convention of July 17, 1905, which specifies the mode in which the service of summons and other documents, under the above circumstances, is to be made.<sup>206</sup>

Regular service of the summons or citation is required by all foreign countries as a condition precedent to the enforcement of foreign judgments. As the mode of service is not jurisdictional but purely procedural, the service is deemed sufficient if it satisfies the law of the state in which the original action was brought.<sup>207</sup> In some countries this rule is modified, however, by special provisions. In Germany a foreign judgment will not be enforced against a German who did not appear in the proceeding, if such defendant was not personally served within the territory of the foreign state or by means of German judicial assistance.<sup>208</sup> According to the law of Japan also personal service is required with respect to Japanese subjects<sup>209</sup> either in the foreign jurisdiction or in Japan through such process of judicial assistance as prevails between Japan and the country of the foreign jurisdiction. The Austrian law has a provision relating to personal service which has created considerable difficulty. As regards Germany, it has now been provided, however, by a decree of the Austrian Minister of Justice, of October 19, 1904, that with respect to German judgments personal service shall be required only if the defendant

<sup>204</sup> See Pillet (1905) 18 HARV. L. REV. 325, 335.

<sup>205</sup> French Cass. Jan. 12, 1892, Clunet (1892) 885; Cass. Milan, Nov. 26, 1863, *Giurisprudenza italiana* (1863) 1, 836; Cass. Turin, Jan. 5, 1852, *Giurisprudenza italiana* (1852) 1, 16; Cass. Rome, April 10, 1878, *Foro italiano* (1878) 1, 520.

<sup>206</sup> *Revue de droit international privé* (1905) 782.

<sup>207</sup> App. Lyon, Jan. 21, 1897, Clunet (1897) 797; App. Paris, March 19, 1902, Clunet (1903) 634; Fiore, *Effetti*, 154-155; Lachau & Daguin, *De l'exécution des jugements étrangers d'après la jurisprudence française*, 59; Carrio, *op. cit.*, 402.

<sup>208</sup> Sec. 328 (2), Code Civ. P.

<sup>209</sup> Art. 514 (4), Code Civ. P.

is an Austrian and the judgment is by default.<sup>210</sup> Personal service is prescribed also by the Italian decree of July 30, 1919, where the foreign judgment is by default.<sup>211</sup> The Italian Code of Civil Procedure<sup>212</sup> requires that whenever a citation to appear before a foreign authority, or a notification of acts proceeding from a foreign country is to be made, the authorization of the judicial officer representing the Italian government in the district in which such citation or notification is to be made, must be obtained. In consequence of this provision a number of courts have held that foreign judgments will not be enforced if the defendant was notified in Italy without such a preliminary authorization.<sup>213</sup> The prevailing view appears to be, however, that the article applies only to the service of process by an official of the Italian courts, and that any service which is permitted by the law of the state in which the suit was brought and which does not require the intervention of an Italian official, is proper and sufficient.<sup>214</sup>

The enforcement of a foreign judgment against a person who has had no opportunity to defend is generally deemed opposed to the public policy of the state in which such enforcement is sought.<sup>215</sup> In some codes there is an express provision to this effect.<sup>216</sup>

Inasmuch as personal service in the state in which the suit is brought is the rule in the vast majority of cases decided by English and American courts in personal actions, the above special provisions relating to service will not interfere to any appreciable extent with the enforcement of American judgments abroad.

<sup>210</sup> 15 *Zeitschrift für internationales Privat- und Strafrecht*, 489. As regards other countries personal service is required although the defendant is not an Austrian. Haeger, *op. cit.*, 168.

<sup>211</sup> Sec. 1 (3).

<sup>212</sup> Art. 947, Code Civ. P.

<sup>213</sup> Cass. Turin, March 7, 1874, *Monitore* (1874) 276; App. Milan, March 4, 1884, *Annali* (1884) 2, 391; Cass. Turin, March 21, 1892, *Clunet* (1893) 238; App. Turin, July 12, 1890, *Clunet* (1892) 512; App. Florence, Nov. 9, 1870, *Annali* IV, 2, 557, *Monitore* (1873) 179; App. Casale, Feb. 26, 1907, *Rivista di diritto internazionale* 1907, 364; De Rossi, *op. cit.*, 114.

<sup>214</sup> App. Genoa, June 16, 1894, *Clunet* (1898) 782; App. Florence, May 16, 1907, *Clunet* (1908) 593; App. Casale, Feb. 26, 1907, *Clunet* (1908) 595; App. Turin, April 2, 1907, *Rivista di diritto internazionale* (1907) 362; Anzilotti, *Clunet* (1908) 594.

<sup>215</sup> App. Aix, July 9, 1903, *Clunet* (1904) 150; App. Rennes, Dec. 26, 1879, *Sirey* (1881) 2, 81; 1 Hellwig, *System*, 831; 1 Hellwig, *Lehrbuch*, 135. See Daguin, *op. cit.*, 109; 6 Weiss, *op. cit.* 57; Möller, *Internationale Rechtsverfolgung*, 114.

<sup>216</sup> *Austria*: Law of May 27, 1896, Art. 81 (1); *Belgium*: Law of March 25, 1876, Art. 10 (4); *Bosnia & Herzegovina*: sec. 466 (2); *Hungary*: sec. 414 (3); *Monaco*: art. 473 (3); *Montenegro*: art. 796 (1) (if the defendant is a subject of Montenegro); *Venezuela*: art. 748 (3). A court is not bound by the recitals in the judgment concerning the service of summons. 1 Hellwig, *Lehrbuch*, 134.

## FRAUD, MISTAKE, OR WRONG APPLICATION OF A RULE OF THE CONFLICT OF LAWS

In England fraud is a defence to an action on a foreign judgment. The fraud referred to need not be external fraud, that is, fraud in the procurement of the judgment, but may be false and fraudulent testimony of the plaintiff or other fraud which was presented to and passed upon by the foreign court.<sup>217</sup> On the continent fraud is not enumerated as a defence in any of the codes, excepting the Italian code since its modification by the decree of July 30, 1919.<sup>218</sup> The doctrine of public policy may be invoked, however, to prevent the execution of foreign judgments obtained through fraud.<sup>219</sup>

Mistake is not a defence in England,<sup>220</sup> nor in any of the continental countries, excepting Italy since the decree above mentioned. This decree provides that the merits of the case shall be reviewed if the defendant relies upon subdivisions 1-4 of article 494 of the Code of Civil Procedure. These permit the annulling of judgments in the following cases: (1) Where the judgment has been obtained through the plaintiff's fraud; (2) where the judgment is based upon legal documents which have been recognized or pronounced to be forgeries since the judgment was rendered or prior to that time, if the defendant was ignorant of such fact; (3) where a document of a conclusive character has been found subsequent to the trial, which could not be produced at the time owing to the plaintiff's conduct; (4) where the judgment was rendered under a mistake of fact resulting from the record and documents of the case. Such an error is deemed to exist if the decision was based upon the supposition of a fact, the falsity of which is beyond a doubt, or if the non-existence of a fact was assumed, the existence of which has been positively established, provided that in either case the fact was not a point in issue and thus determined in the case. It is possible that a foreign judgment may be impeached in England if the law of the foreign country refuses to give recognition to the law of other nations, as is required by the principles of private international law.<sup>221</sup> In other countries likewise foreign judgments may be denied recognition in certain instances on grounds of public policy, if the foreign court applied a rule of the

<sup>217</sup> *Abouloff v. Oppenheimer* (1882, C. A.) 10 Q. B. D. 295; *Vadala v. Lawes* (1890, C. A.) 25 Q. B. D. 310. But see *Cammell v. Sewell* (1858) 27 L. J. Ex. 447; *Crawley v. Isaacs* (1867) 16 L. T. Rep. 529; *Bank of Australasia v. Nias* (1851) 20 L. J. Q. B. 284.

<sup>218</sup> Decree of July 30, 1919, sec. 2, referring to art. 494, Code Civ. P. Pillet in his report to the Institute of International Law recommends that fraud be made a ground for the non-enforcement of foreign judgments. *Annuaire*, (1913) 432-433.

<sup>219</sup> 1 Hellwig, *Lehrbuch*, 134; 1 Hellwig, *System*, 830.

<sup>220</sup> *Bank of Australasia v. Nias* (1851) 16 Q. B. 717, 20 L. J. Q. B. 284; *Castrique v. Imrie* (1870) L. R. 4 H. L. 414; *Godard v. Gray* (1870) L. R. 6 Q. B. 139. As to willful error see 1 Piggott, *op. cit.*, 378.

<sup>221</sup> See note 67, *supra*.

conflict of laws contrary to the one obtaining in the state in which execution is sought.<sup>222</sup>

Courts of equity may in England enjoin the execution of all judgments, domestic and foreign, in case of fraud, mistake, accident or surprise.<sup>223</sup>

#### PUBLIC POLICY

However liberal the law of a foreign country may be in the enforcement of foreign judgments, it will decline to give effect to them, if the enforcement thereof would conflict with the policy of the state. Many attempts have been made to define the term "public policy" or "public order," but none has been successful.<sup>224</sup> Von Bar<sup>225</sup> speaks of the doctrine as a safety valve which it is necessary for each country to have to enable its courts to deny effect to those foreign laws and judgments which, for one reason or another, they feel should not be enforced.

Public policy is invoked most frequently with respect to foreign judgments other than those for the payment of money.<sup>226</sup> It plays an important part, however, even as regards money judgments. We have seen to what extent it may enter into the question of the jurisdiction of foreign courts. We have seen also that although the manner of bringing a party into court is governed on the continent on principle by the rules of the country in which the suit is brought, a judgment rendered in conformity with those rules will not be enforced, on grounds of public policy, if the defendant had no opportunity to defend. On grounds of public policy courts have declined to enforce also the following: (1) A foreign judgment contrary to the decision of a domestic court, although the latter was rendered later;<sup>227</sup> (2) a

<sup>222</sup> See note 223, *infra*.

<sup>223</sup> 2 Pomeroy, *Equitable Remedies* (4th ed. 1918) secs. 657 ff.

<sup>224</sup> "No attempt to define the limits of that reservation (public policy) has ever succeeded, even to the extent of making its nature clearer than by saying that it exists in favour of any stringent domestic policy, and that it is for the law of each country, whether speaking by the mouth of its legislature or by that of its judges, to determine what parts of its policy are stringent enough to require its being invoked." Westlake, *Private International Law* (5th ed. 1912) 55.

<sup>225</sup> von Bar, *Private International Law* (Gillespie's transl. 1892) 98.

<sup>226</sup> Hungary (sec. 1114 (4), Code Civ. P.) and Peru (art. 1158 Code Civ. P.) will not enforce foreign judgments relating to the status of a subject. Austria (Law of May 27, 1896, art. 81 (3)), Bosnia & Herzegovina (sec. 467, Code Civ. P.), and Germany (sec. 528 (3), Code Civ. P.) decline to enforce such judgments to the prejudice of their subjects. See also Portugal, art. 1088 (4). Peru applies the same doctrine to foreigners who are domiciled in Peru (art. 1158, Code Civ. P.). Many others reach similar results under their rules relating to public order without any express statutory enactment to that effect.

<sup>227</sup> Cass. Nov. 18, 1891, Clunet (1892) 667, Trib. civ. Seine, April 10, 1899, Clunet (1899) 796; App. Paris, Nov. 28, 1912, Clunet (1913) 922, *Revue de droit international privé* (1913) 849; App. Bordeaux, Dec. 8, 1902, Clunet (1904) 913; App. Turin, March 12, 1875 (Clunet) 1879, 212; App. Lucca, April 11, 1889, Clunet (1890) 738.

foreign judgment in which the foreign court had applied, in the estimation of the court asked to enforce the judgment, an erroneous rule of the conflict of laws;<sup>228</sup> (3) a judgment against a married woman, a subject of the country in which the enforcement is sought who had not been authorized by her husband to defend the suit;<sup>229</sup> (4) a foreign judgment for the recovery of a gambling debt or usury, or for the breach of any other contract the enforcement of which is regarded as opposed to its public or moral interests;<sup>230</sup> (5) foreign judgments based on penal causes of action.<sup>231</sup>

The Italian decree of July 30, 1919, prohibits the enforcement of foreign judgments not only where prior to the proceedings for the enforcement of the foreign judgment an Italian judgment has been rendered in the matter, but also when a suit between the same parties with respect to the same subject-matter is merely pending.<sup>232</sup>

That foreign judgments calling for the doing of acts which cannot be enforced under the law of the forum will be given no effect, is self-evident, although a provision to this effect may be found in several codes.<sup>233</sup>

American judgments for the payment of money which violate any of the above principles, cannot be enforced abroad.

<sup>228</sup> A foreign judgment against a Portuguese subject will not be enforced in Portugal in violation of the principles of Portuguese civil law, provided the controversy was governed by Portuguese law. According to Manoco e Souza, *op. cit.*, 238, the question whether Portuguese law is applicable should not be determined according to Portuguese law but in accordance with the principles of international law of the state in which the judgment was rendered.

According to sec. 328 (3) of the German Code of Civil Procedure foreign judgments will not be enforced if they deviate from the rules governing the conflict of laws laid down in certain articles of the Introductory Law of the Civil Code to the prejudice of a German subject. While the articles referred to relate to capacity and status it has been suggested that the principle may be extended so as to include all cases where the provisions of the conflict of laws of the German Civil Code have been violated to the prejudice of a German. Seuffert, 22 *Zeitschrift für deutschen Civilprozess*, 343.

<sup>229</sup> Trib. civ. Seine, March 27, 1901, *Clunet* (1902) 116.

<sup>230</sup> Trib. civ. Seine, May 25, 1892, *Clunet* (1892) 970; Gottl, *op. cit.*, 308; Heiberg, *Internationale Rechtsverfolgung*, 117 (Norway); 1 Hellwig, *Lehrbuch*, 134; 1 Hellwig, *System*, 830-831; 1 Petersen, *op. cit.*, 672.

<sup>231</sup> *Hunting on v. Attrill* [1893] A. C. 150.

<sup>232</sup> Sec. 1 (7). So *France*: Cass. March 10, 1914, *Neuvelle Revue pratique de droit international privé* (1914) 195. *Contra*, Cass. Turin, July 27, 1904, *Revue de droit international privé* (1905) 759 (where suit was brought in Italy after the foreign judgment had been rendered).

According to Kohler, a foreign judgment should have preference over an earlier German judgment, except where it was rendered with knowledge of the German judgment on the theory that the latter was not binding. *Gesammelte Aufsätze zum Civilprozessrecht*, 555.

<sup>233</sup> So expressly *Austria*: Law of May 27, 1896, art. 81 (2); *Bosnia & Herzegovina*: sec. 466 (1), Code Civ. P.

## SPECIAL CONDITIONS

(a) *Judgments by default.* Judgments by default will not be enforced under any circumstances in Mexico,<sup>234</sup> or Paraguay<sup>235</sup>. They will not be enforced in Argentina<sup>236</sup> if the defendant was domiciled in the state; nor in Chile,<sup>237</sup> Cuba;<sup>238</sup> Honduras,<sup>239</sup> or Panama,<sup>240</sup> if reciprocity does not exist but the judgments of these states are enforced in the foreign country; nor in Spain,<sup>241</sup> if it is not possible to ascertain whether or not reciprocity exists. The Italian courts were greatly divided on this point.<sup>242</sup> The decree of July 30, 1919, provides that foreign judgments by default may be examined with reference to their merits.<sup>243</sup>

(b) *Personal actions.* In Colombia,<sup>244</sup> Costa Rica,<sup>245</sup> Ecuador,<sup>246</sup> and Mexico,<sup>247</sup> foreign judgments will be recognized or enforced only if they are based on a personal action. In Cuba,<sup>248</sup> Honduras,<sup>249</sup> Panama,<sup>250</sup> and Paraguay<sup>251</sup> this requirement exists in the absence of reciprocity, if notwithstanding such fact the foreign country enforces their respective judgments,—and in Spain,<sup>252</sup> if it is not possible to ascertain whether or not reciprocity exists.

(c) *Validity of cause of action.* Certain countries will not enforce a foreign judgment if it was based on a cause of action which is invalid according to their law. To this group belong Argentina,<sup>253</sup>

<sup>234</sup> Art. 785 (2), Code Civ. P.

<sup>235</sup> Art. 493, Code Civ. P. Paraguay does not require reciprocity. The statement to the contrary at p. 200, *supra*, is erroneous.

<sup>236</sup> Art. 869 (2), Code Civ. P.

<sup>238</sup> Art. 953 (2), Code Civ. P.

<sup>237</sup> Art. 242 (3), Code Civ. P.

<sup>239</sup> Art. 629 (2), Code Civ. P.

<sup>240</sup> Art. 584 (2), Code Civ. P.

<sup>241</sup> Art. 954 (2), Code Civ. P.

<sup>242</sup> In favor of enforcement: Cass. Turin, April 28, 1893, *Clunet* (1897) 1078; App. Genoa, Sept. 5, 1896, *Clunet* (1899) 1047; App. Rome, March 9, 1905, *Clunet* (1906) 1235; Cass. Rome, August 17, 1904, *Giurisprudenza italiana* (1904) 1, 1292; La Loggia, *op. cit.*, 352, 455; De Rossi, *op. cit.*, 128. See also Ansaldo, *De l'exécution des jugements étrangers important condamnation sur le simple défaut du défendeur*, *Clunet* (1907) 646.

Some courts decline to enforce foreign judgments by default if the plaintiff's claim was not proved in the case. Cass. Turin, August 25, 1874, *Annali VIII*, 1, 478, Dec. 29, 1883, *Foro italiano* (1884) 1, 692, *Monitore* (1884) 82; App. Brescia, April 9, 1888, *Annali* (1888) 3, 123; Cass. Rome May 20, 1889, *Giurisprudenza italiana* (1889) 793; Cesareo-Consolo, *op. cit.*, I, 515; Gianzana, I, pt. 3, 109; 6 Mattiolo, *Trattato di diritto giudiziario civile italiano* (4th ed.) 949. In France there is a marked tendency to enforce foreign judgments by default. App. Paris, April 1, 1887, *Clunet* (1891) 931; App. Paris, March 19, 1902, *Clunet* (1903) 634; Trib. civ. Seine, Jan. 18, 1902, *Clunet* (1902) 812. But see Trib. civ. Versailles, May 8, 1877, *Clunet* (1877) 424.

<sup>243</sup> Sec. 2.

<sup>248</sup> Art. 953 (1), Code Civ. P.

<sup>244</sup> Art. 878 (1), Code Civ. P.

<sup>249</sup> Art. 629 (1), Code Civ. P.

<sup>245</sup> Art. 1067 (2), Code Civ. P.

<sup>250</sup> Art. 584 (1), Code Civ. P.

<sup>246</sup> Law of Nov. 14, 1904.

<sup>251</sup> Art. 493, Code Civ. P.

<sup>247</sup> Art. 785 (1), Code Civ. P.

<sup>252</sup> Art. 954 (1), Code Civ. P.

<sup>253</sup> Art. 869 (3), Code Civ. P.

Colombia,<sup>254</sup> Mexico,<sup>255</sup> Paraguay<sup>256</sup> and Venezuela;<sup>257</sup> Cuba,<sup>258</sup> Honduras,<sup>259</sup> and Panama<sup>260</sup> if reciprocity does not exist but their respective judgments are enforced in the foreign country,—and Spain,<sup>261</sup> if it is not possible to ascertain whether or not reciprocity exists.

So far as the foregoing discussion relates to the enforcement of American judgments for the payment of money in foreign countries we may sum up the result as follows:

American judgments for the payment of money are enforceable in England and in the British possessions in which the common law prevails, by a new suit on the judgment. The American judgment is on principle conclusive, the main grounds of defence being lack of jurisdiction and fraud.

In the other foreign countries, with the possible exception of Denmark, no action on the foreign judgment can be brought, but a special proceeding must be instituted the object of which it is to declare the foreign judgment subject to execution. (a) In Brazil, Costa Rica, Denmark, Italy (but note exceptions introduced by decree of July 30, 1919), Portugal, San Marino, and in the Swiss cantons of Basel-City and Tessin, American judgments are conclusive and enforceable. (b) In Belgium, France, Luxemburg, and the Swiss cantons of Freiburg and Geneva, foreign judgments are not conclusive. In some of these countries they establish a *prima facie* case in the plaintiff's favor. In others they are merely some evidence of the plaintiff's claim. Before an American judgment is declared enforceable in these countries, its merits will be reviewed both as to law and fact. (c) In the great majority of countries the enforcement of American judgments depends upon the existence of reciprocity. In these the status of American judgments is quite uncertain. Some maintain the doctrine that the same effect will be given to them as is given to their judgments in this country. In these countries it would seem that the judgments of those American states in which foreign judgments are regarded as conclusive, should be enforced without a re-examination of their merits. Owing to the fact, however, that an action on the foreign judgment is necessary in this country, and that courts of equity exercise a certain control with respect to foreign judgments, there is a possibility that the existence of reciprocity will be denied. Judgments of states which regard foreign judgments as *prima facie* evidence only of the justice of the claim, should be given the same force which they possess where rendered, but the reasons just indicated make it doubtful whether any effect will be given to them. As regards the judgments of our federal courts which in their turn apply the doctrine of reciprocity, there is an added difficulty

<sup>254</sup> Art. 878 (2), Code Civ. P.

<sup>255</sup> Art. 785 (3), Code Civ. P.

<sup>256</sup> Art. 493, Code Civ. P.

<sup>257</sup> Art. 748 (4), Code Civ. P.

<sup>258</sup> Art. 953 (3), Code Civ. P.

<sup>259</sup> Art. 629 (3), Code Civ. P.

<sup>260</sup> Art. 584 (3), Code Civ. P.

<sup>261</sup> Art. 954 (3), Code Civ. P.

arising from the fact that the foreign court may require proof of the fact that the federal courts, or the particular federal court in question, have actually enforced their judgments. (d) In Finland, Haiti, Holland, Japan, Norway, Russia (except the Baltic Provinces), Santo Domingo, Servia, Sweden, and probably also in several of the Swiss cantons American judgments are not enforced. A new suit on the original cause of action is therefore necessary. (e) Countries which on principle enforce American judgments, will decline to do so if the American court had no jurisdiction according to their rules relating to the subject, or if the enforcement of the judgment would be against their public policy. A judgment for the breach of a contract may be unenforceable therefore in foreign countries other than Great Britain if the defendant was not domiciled in the state in which the judgment was rendered, or if the contract was not to be performed in such state. On grounds of public policy effect will be denied to judgments based on gambling debts or usury and the same conclusion may be reached with respect to judgments for the breach of contract procured through fraud or duress.

In addition to the above general grounds, there are special grounds under which, in certain countries, the enforcement of foreign judgments will be denied.<sup>262</sup>

#### APPENDIX

##### PRINCIPAL PROVISIONS OF THE DIFFERENT COUNTRIES RELATING TO THE ENFORCEMENT OF FOREIGN JUDGMENTS<sup>263</sup>

*Argentina.*<sup>264</sup> Code of Civil and Commercial Procedure of the Province of Buenos Aires (1911),<sup>265</sup> art. 869. In the absence of treaty

<sup>262</sup> The above summary reveals a state of affairs which is discreditable to the civilization of the present day. While there may be reasonable ground for suspicion in regard to the administration of justice in certain countries, there can certainly be no real basis for the general lack of confidence which is shown by the law relating to foreign judgments. The ideal arrangement no doubt would be the conclusion of an international convention between the leading nations of the world which would specify the conditions upon which foreign judgments shall be enforced and fix the grounds of international jurisdiction, and the creation of an international tribunal to interpret that convention. But it is quite apparent that the world is not yet ready for this step. The main obstacle in the way of any real progress along this line appears to be the question of jurisdiction, in regard to which no country is willing to give up its own notions. It is to be hoped, however, that the new order of things in Europe, that will undoubtedly arise when the true lesson of the great war has been learned, will unite the continental countries in the common purpose of bringing about an international convention for the enforcement of money judgments, and that Great Britain, the United States and the Latin-American countries, will join the convention as soon as their respective conditions may permit.

<sup>263</sup> The provisions relating to local practice have been omitted. As a general rule only the substance of the articles and subsections has been given.

<sup>264</sup> Many of the codes referred to were placed at the disposal of the writer through the kindness of the Harvard Law School.

<sup>265</sup> There is no uniformity of legislation on the subject in Argentina. The



a foreign judgment will be enforced: (1) if the jurisdiction of the Argentine courts has not been invaded; (2) if in case of a judgment by default the defendant was personally cited and was not domiciled in Argentina during the trial; (3) if the legal relationship upon which the judgment was based was lawful according to the laws of Argentina.

Art. 872. Foreign judgments will not be enforced in the absence of reciprocity.

Art. 873. If other conditions are applied with respect to Argentine judgments, the same conditions will be applied in Argentina.

*Austria.* Law of May 27, 1896,<sup>266</sup> art. 79. Foreign judgments will be enforced if reciprocity results from international treaties or a governmental declaration.<sup>267</sup>

Art. 80. Foreign judgments must also satisfy the following conditions: (1) The foreign court must have had jurisdiction according to Austrian law; (2) the defendant must have been personally served in the territory where the court sits, or in a third state by way of rogatory commission, or on Austrian territory; (3) the foreign judgment must not be subject to any recourse which, according to the foreign law, suspends its execution.

Art. 81. In addition to the above grounds foreign judgments will not be enforced: (1) if the defendant, owing to an irregularity in the procedure, is not permitted to defend; (2) if the remedy demanded is not permitted according to Austrian law; (3) if the judgment concerns the status of an Austrian and is to be enforced against him; (4) if the cause of action is disallowed in Austria because contrary to public order or to good morals.

*Belgium.* Law of March 25, 1876,<sup>268</sup> art. 10. If there exists between

Code of Civil Procedure of the state of Buenos Aires may serve, however, as a model.

<sup>266</sup> *Annuaire de législation étrangère* (1897) 254; von Canstein, 3 Leske & Löwenfeld, *op. cit.*, 233-234; 2 Fürstl, *Die österreichischen Zivilprozessgesetze*, 178.

<sup>267</sup> Reciprocity in fact is not sufficient; (1) von Canstein, 3 Leske & Löwenfeld, *op. cit.*, 406.

Foreign judgments are enforced only on the same conditions and to the same extent as are Austrian judgments in such foreign country. O G H Sept. 21, 1905, *Revue de droit international privé* (1909) 629; von Canstein, 3 Leske & Löwenfeld, *op. cit.*, 406. So already as regards jurisdiction, O G H Jan. 8, 1891, *Clunet* (1891) 1003. Formerly it was sufficient if Austrian judgments were enforced by the courts of the foreign country without reference to the conditions imposed. O G H Jan. 30, 1884, *Clunet* (1888) 127; May 23, 1893, *Clunet* (1894) 908. Most of the decisions of the Supreme Court prior to 1896, especially the later ones, favored the view that the foreign court must have had jurisdiction according to the principles of Austrian law. O G H August 6, 1884, Glaser-Unger, *Civilrechtliche Entscheidungen*, no. 10124, vol. 22, 382; Dec. 27, 1884, no. 10309, vol. 22, 624; March 30, 1886, no. 10981, vol. 24, 159.

<sup>268</sup> *Pasimonie. Collection des lois belges* (1876) 129-130.

Belgium and a foreign country a treaty based on reciprocity, the court shall inquire only into the following points: (1) whether the foreign judgment contains anything contrary to the public policy or to the principles of Belgian public law; (2) whether it was *res judicata* according to the foreign law;<sup>269</sup> (3) whether it is "authentic" according to the foreign law; (4) whether the rights of defence were respected; (5) whether the jurisdiction of the foreign court was not based exclusively upon the plaintiff's nationality.

In the absence of treaty, a foreign judgment will be enforced after a review of the merits of the case, if it satisfies the five conditions above mentioned.<sup>270</sup>

*Bosnia and Herzegovina.* Code of Civil Procedure (1883), sec. 466.<sup>271</sup> A foreign judgment will not be enforced: (1) if it requires some act that is not permissible; (2) if the citation is not proper according to the code of civil procedure, or the defendant has been deprived of an opportunity to defend; (3) if the foreign court had no jurisdiction according to the provisions of the code of civil procedure relating to local jurisdiction.

Sec. 467. A foreign judgment relating to the status of a subject of Bosnia and Herzegovina will be given no effect if it is to be enforced against such subject.

In addition to the above requirements, it is said that reciprocity must also exist.<sup>272</sup>

*Brazil.* Law of November 20, 1894, relating to the organization of federal justice, tit. 2, ch. 1, art. 12, sec. 4.<sup>273</sup>

In the absence of treaty, foreign judgments must be confirmed by the Federal Supreme Court, and will be enforced: (1) if their authenticity is proved; (2) if they are *res judicata* according to the foreign law; (3) if the foreign court had jurisdiction;<sup>274</sup> (4) if the defendant was properly cited or defaulted; (5) if the enforcement of

<sup>269</sup> Cass. Feb. 25, 1886, Clunet (1887) 217; App. Brussels, July 9, 1907, Clunet (1908) 569; 6 Laurent, *Le droit civil international*, 156-157; Trib. civ. Anvers, Nov. 8, 1899, Clunet (1900) 818.

The Civil Tribunal of Liège in its decision of April 28, 1894 has held that the foreign judgment is, in the absence of a treaty, so far as the Belgian courts are concerned, non-existing. Clunet (1895) 654. According to this view a new suit would be necessary on the original cause of action in which the judgment may be used as evidence.

<sup>270</sup> There is conflict on the point whether the term *res judicata* implies that the foreign judgment is subject to immediate execution or that no further recourse is open under the foreign law. App. Brussels, May 13, 1879, *Pasicrisie* (1879) 2, 221.

<sup>271</sup> von Canstein, 1 Leske & Löwenfeld, *op. cit.*, 429.

<sup>272</sup> *Ibid.*

<sup>273</sup> *Collecção das leis*, 1894, no. 221 (1894) 19; *Annuaire de législation étrangère* (1896) 951.

<sup>274</sup> Jurisdiction must exist according to the principles of Brazilian law. Fed. Sup. Ct. Oct. 6, 1906, Clunet (1907) 819; Jan. 24, 1910, Clunet (1913) 238.

the judgment does not violate the public policy or internal public law of Brazil.

In no case is proof relating to the merits of the case admissible.<sup>275</sup>  
*Bulgaria.* Code of Civil Procedure (1892), art. 1209.<sup>276</sup> Foreign judgments will be enforced in the absence of treaty,<sup>277</sup> if reciprocity exists.<sup>278</sup>

Art. 1215. The judge is not to review the merits of the case, but inquire solely whether the enforcement of the judgment is contrary to the public policy or to the laws of Bulgaria.<sup>279</sup>

Art. 1217. Foreign judgments determining *real* rights in immovable property in Bulgaria, will not be enforced.

*Chile.* Code of Civil Procedure (1918), art. 239. Foreign judgments will be enforced if a treaty to that effect exists.

Art. 240. In the absence of treaty, foreign judgments will be enforced in the case of reciprocity.<sup>280</sup>

Art. 241. If judgments of Chile are not enforced in the foreign country, the judgments of such country will not be enforced in Chile.

Art. 242. If the preceding articles are not applicable, foreign judgments will have the same effect as if they were rendered in Chile, provided: (1) they are not contrary to the laws of Chile, but procedural laws of Chile are not to be considered; (2) the assumption of jurisdiction by the foreign court was not opposed to the jurisdiction of Chile; (3) the judgment is not by default; (4) the judgment is subject to execution according to the law of the country in which it was rendered.

*Colombia.* Judicial Code, art. 876. In the absence of treaty, foreign

<sup>275</sup> The original reads: "Em case algum é admissivel." K. (*Bemerkungen in Bezug auf die Vollstreckung ausländischer Urteile in Brasilien* 8 *Zeitschrift für internationales Privat- und Strafrecht*, 316-317) Weiss (*op. cit.* vol. 6, 169), and Francke (27 *Zeitschrift für deutschen Civilprozess*, 143) have assumed erroneously the meaning of the above phrase to be that "in every case proof relating to the merits of the case is admissible." That the contrary was intended appears from the Brazilian Gazette of 1905, referred to by Bloch and Frank, *op. cit.*, 400.

<sup>276</sup> Bloch & Frank, *op. cit.*, 410-411; Schischmanov, 2 Leske & Löwenfeld, *op. cit.*, 288, 289.

<sup>277</sup> There is no treaty relating to the enforcement of foreign judgments, nor does reciprocity actually exist with reference to any other state. Schischmanov, 2 Leske & Löwenfeld, *op. cit.*, 289.

<sup>278</sup> Reciprocity is determined in each case by the Minister of Justice. 2 Leske & Löwenfeld, *op. cit.*, 289.

<sup>279</sup> Although the foreign judgment is not enforceable it has such weight as evidence as the courts may give to it. Schischmanov, 2 Leske & Löwenfeld, *op. cit.*, 289.

<sup>280</sup> The enforcement of a Portuguese judgment was denied on the ground that there was no precedent showing reciprocity. Supreme Court of Chile May 10, 1907, Clunet (1910) 255; *Revue de droit international privé* (1909) 970.

judgments will be given the same effect as the judgments of Colombia have in the foreign country.<sup>281</sup>

Art. 877. If the judgments of Colombia are not enforced in the foreign country, no effect will be given to the judgments of such country.

Art. 878. If the judgments of Colombia are enforceable in the foreign country, the following conditions must also exist: (1) The action must be a personal action; (2) the obligation must be lawful according to the law of Colombia; (3) the form of the judgment must satisfy the law of the country in which it was rendered and must be legalized in conformity with art. 337 of the Code of Civil Procedure.

*Costa Rica.* Code of Civil Procedure (1913), art. 1067. Foreign judgments are not enforced: (1) if they are not duly authenticated; (2) if the action is not a personal one; (3) if they are not subject to execution where rendered; (4) if they are not rendered by a court of competent jurisdiction; (5) if the defendant was not duly cited or defaulted; (6) if their enforcement would be contrary to public policy.

*Croatia and Slavonia.* Code of Procedure (1852), sec. 550.<sup>282</sup> Foreign judgments will be enforced: (1) If they were rendered by a court having jurisdiction according to general principles; (2) if they are *res judicata*; (3) if reciprocity exists. In the absence of special reasons for doubt, reciprocity will be presumed.

*Cuba.* Code of Civil Procedure (1913), art. 950. Foreign judgments will be enforced if a treaty to that effect exists.

Art. 951. In the absence of treaty, the same effect will be given to foreign judgments as Cuban judgments have in the foreign country.<sup>283</sup>

Art. 952. If Cuban judgments are not enforced in the foreign country, no effect will be given in Cuba to the judgments of such country.

Art. 953. If the case does not fall within the above provisions the judgment will be enforced: (1) If it was based on a personal action; (2) if the judgment was not by default; (3) if the cause of action was lawful, according to Cuban law; (4) if the judgment was "authentic" according to the law of the country in which it was rendered and entitled to public faith in Cuba.

*Denmark.* There are no statutory provisions relating to the subject. Foreign judgments for the payment of money will be enforced by an

<sup>281</sup> Reciprocity is presumed. Restrepo-Hernandez, *Derecho internacional privado*, 572.

<sup>282</sup> Haeger, *op. cit.*, 225.

<sup>283</sup> According to a decision of the Supreme Court of September 11, 1906, it was held that a French judgment could not be enforced unless it should appear that Cuban judgments were enforced in France. Betancourt, *Ley de enjuiciamiento civil*, 246.

action on the judgment.<sup>284</sup> The foreign court must have had jurisdiction according to Danish law,<sup>285</sup> and its enforcement must not violate the public policy of Denmark. The merits of the case cannot be reviewed;<sup>286</sup> nor is reciprocity required.<sup>287</sup>

A number of writers<sup>288</sup> state that foreign judgments are not enforced in Denmark, but that they are recognized as *res judicata*, provided the above conditions exist. It is possible, however, that these writers use the term "enforced" in the sense of "direct execution." Whatever their meaning, it is clear that there are recent cases enforcing foreign judgments.<sup>289</sup>

*Ecuador.* The law of November 14, 1904,<sup>290</sup> allows the enforcement of foreign judgments: (1) if a treaty to that effect exists; (2) in the absence of treaty, (a) if the foreign judgment is not contrary to any law of Ecuador; (b) if the complaint was duly served; (c) if the foreign judgment was *res judicata* where rendered; (d) if it was rendered in a personal matter.

*Egypt.* Code of Civil and Commercial Procedure (governing mixed courts), art. 468. Foreign judgments will be enforced on principles of reciprocity. By this is meant that foreign judgments will be enforced under the same conditions on which Egyptian judgments are enforced in such country. The court is to inquire: (1) whether the judgment was rendered by a competent judge and in compliance with

<sup>284</sup> Nellesmann (Danish Minister of Justice), 1 *Zeitschrift für internationales Privat- und Strafrecht*, 106; Goos, *De l'exécution des jugements en Danemark*, Clunet (1880) 386; Haeger, *op. cit.*, 229; 2 Leske & Löwenfeld, *op. cit.*, 839.

<sup>285</sup> Goos, Clunet (1880) 368; Nellesmann, 1 *Zeitschrift für internationales Privat- und Strafrecht*, 106; Commercial Court of Copenhagen, July 19, 1894; Clunet (1896) 665; Möller, *Internationale Rechtsverfolgung*, 114; Beauchet, Clunet (1909) 833.

<sup>286</sup> Goos, Clunet (1880) 369; Haeger, *op. cit.*, 229-230; Nellesmann, 1 *Zeitschrift für internationales Privat- und Strafrecht*, 106; Commercial Court of Copenhagen, Oct. 13, 1905, Clunet (1907) 1178; Feb. 18, 1908, Clunet (1909) 832.

<sup>287</sup> Haeger, *op. cit.*, 230; Nellesmann, 1 *Zeitschrift für internationales Privat- und Strafrecht*, 106.

<sup>288</sup> Möller, *Internationale Rechtsverfolgung*, 114, who states that the foreign judgment is *res judicata*: (1) if the foreign court had jurisdiction; (2) if the defendant had a chance to defend; (3) if the defendant was served according to the law of the foreign state. According to Möller, judgments by default have no effect whatever in Denmark, *op. cit.*, 114. See, however, the decision of the Court of Appeals of Copenhagen, August 8, 1898, Clunet (1899) 1043, which enforced an American judgment by default.

<sup>289</sup> Superior Court of Copenhagen, Oct. 23, 1905; Clunet (1907) 1178; Commercial Court of Copenhagen, Feb. 18, 1908, Clunet (1909) 832. Provided of course that the foreign judgment was subject to immediate execution where rendered. Court of Appeals, Copenhagen, August 8, 1898, Clunet (1899) 1043. And its enforcement is not contrary to the public policy of Denmark. App. Viborg, July 28, 1890, Clunet (1892) 1055; Commercial Court of Copenhagen, 1903, *Revue de droit international privé* (1910) 507.

<sup>290</sup> *Anuario de legislacion ecuatoriana* (1904) 220; *Annuaire de législation étrangère* (1905) 555.

the substantial requirements of the foreign law; (2) whether its enforcement would be contrary to the public policy of Egypt.<sup>291</sup>

Art. 407, Code for Natives. A foreign judgment will be enforced under the same conditions and with the same formalities as are required in analogous cases by the foreign countries with respect to the enforcement of Egyptian judgments.

*Finland.* Foreign judgments are not enforced.<sup>292</sup>

*Germany.* Code of Civil Procedure, sec. 723. A judgment for the execution of a foreign judgment is rendered without a review of the legality of the decision, but only after the judgment of the foreign court has become *res judicata*<sup>293</sup> according to the foreign law. Execution is not permitted if the recognition of the judgment is precluded under sec. 328 of the Code of Civil Procedure.

Sec. 328. The judgment of a foreign court shall not be recognized: (1) If the courts of the state have no jurisdiction according to German law;<sup>294</sup> (2) if the defendant is a German who has not appeared in the action, unless he was personally served in the state in which the judgment was rendered or through German judicial assistance; (3) if the foreign judgment departed, to the prejudice of a German party, from the provisions of art. 13, par. 1, 3; or arts. 17, 18, 22 of the Introductory Law to the Civil Code, or from that portion of art. 27 of the same law referring to art. 13, par. 1, or if in case of art. 9, par. 3 it departed from the provision of art. 13, par. 2, to the prejudice of the wife of a foreigner who has been declared dead;<sup>295</sup> (4) if the recognition of the judgment would be contrary to good morals or to the object of a German law;<sup>296</sup> (5) if reciprocity is not guaranteed.

The want of reciprocity does not prevent the recognition of a foreign judgment, however, if such judgment relates to a non-pecuniary claim and according to German law there is no court in Germany having jurisdiction in the matter.

*Great Britain.*

*England.* A judgment for the payment of money can be enforced by a new action on the foreign judgment and is conclusive with respect to the merits.<sup>297</sup> The following defences are, however, avail-

<sup>291</sup> Mixed Court of Appeal, May 2, 1901, Clunet (1903) 905; Mixed Court of Appeal of Alexandria, Jan. 27, 1898, Clunet (1905) 433.

<sup>292</sup> Francke, 8 *Zeitschrift für deutschen Civilprozess*, 46-47; 27 *Zeitschrift für deutschen Civilprozess*, 144.

<sup>293</sup> I.e., "rechtskräftig," for the meaning of which see 1 Gaupp-Stein, *op. cit.*, 841.

<sup>294</sup> See 1 Gaupp-Stein, *op. cit.*, 841; Hellwig, *Lehrbuch*, 132-133.

<sup>295</sup> See Gaupp-Stein, *op. cit.*, 844-845. In the opinion of Seuffert the rule is probably to be extended to all cases in which the provisions of the conflict of laws of the German Code have been violated to the prejudice of a German. 22 *Zeitschrift für deutschen Civilprozess*, 343.

<sup>296</sup> 1 Gaupp-Stein, *op. cit.*, 845; 1 Hellwig, *Lehrbuch*, 134; 1 Hellwig, *System*, 830-831.

<sup>297</sup> *Godard v. Gray* (1870) L. R. 6 Q. B. 129.

able: (1) that the judgment was not final;<sup>298</sup> (2) that it was not rendered by a court of competent jurisdiction;<sup>299</sup> (3) that it was obtained by fraud.<sup>300</sup> A foreign judgment cannot be impeached for any error either of fact<sup>301</sup> or of law.<sup>302</sup> It may possibly not be enforced, however, if the law of the foreign country refuses to give such recognition to the law of other nations as is required by the principles of private international law;<sup>303</sup> nor can an action be maintained if the judgment was based on a penal cause of action<sup>304</sup> or its enforcement is otherwise contrary to the public policy of England.<sup>305</sup>

*Scotland.* For the enforcement of a foreign judgment for the payment of money a new suit on the judgment is necessary.<sup>306</sup> The more recent cases appear to hold that a judgment of a foreign court of competent jurisdiction is more than *prima facie* evidence.<sup>307</sup> The judgment will not be enforced: (1) if the court was without jurisdiction; (2) if it was pronounced in disregard of the evidence or if material facts were excluded;<sup>308</sup> (3) if it was obtained through concealment or misrepresentation.<sup>309</sup>

*Quebec.* Code of Civil Procedure, art. 210. Any defence which was or might have been set up to the original action may be pleaded to an action brought upon a judgment rendered out of Canada.<sup>310</sup>

<sup>298</sup> A foreign judgment may be final though an appeal is actually pending, provided such an appeal does not operate as a supersedeas. *Scott v. Pilkington* (1862, Q. B.) 2 B. & S. 11.

<sup>299</sup> *Vanquelin v. Bouard* (1863) 15 C. B. N. S. 341; *Pemberton v. Hughes* (1899) 1 Ch. 781, 68 L. J. Ch. (N. S.) 281.

<sup>300</sup> *Abouloff v. Oppenheimer* (1882, C. A.) 10 Q. B. D. 295; *Vadala v. Laws* (1890, C. A.) 25 Q. B. D. 310; but see *Cammell v. Sewell* (1858) 27 L. J. Ex. 447; *Crawley v. Isaacs* (1867) 16 L. J. 529; *Bank of Australasia v. Nias* (1851) 20 L. J. Q. B. 24.

<sup>301</sup> *Henderson v. Henderson* (1844) 6 Q. B. 288.

<sup>302</sup> *Castrique v. Imrie* (1870) 4 H. L. 414; *Godard v. Gray* (1870) L. R. 6 Q. B. 139.

<sup>303</sup> *Simpson v. Fogo* (1863) 1 H. & M. 195; Dicey, *op. cit.* rule 94, pp. 402-403; 1 Piggott, *op. cit.*, 117-418. But see Foote, *Private International Jurisprudence* (4th ed.) 242.

<sup>304</sup> *Huntington v. Attrill* (1893) A. C. 150.

<sup>305</sup> Piggott believes that the principle of *Kaufman v. Gerson* (1904) 1 Q. B. 591 would be extended to apply to a foreign judgment, *op. cit.*, 1, 339. Dicey states that under the English law an action cannot be maintained seemingly on a valid foreign judgment if the cause of action in respect of which the judgment was obtained was of such a character that it would not have supported an action in England, *op. cit.*, 414-415.

<sup>306</sup> Gillespie, note to Bar's *Private international law* (2d ed.) 902.

<sup>307</sup> *Case of Gudin* (1886) Ct. of Sess. Repts. 4th ser. XIV, 216; Gillespie, *op. cit.*, 903; cf. *Pattison v. M'Vicar* (1886) Ct. of Sess. Repts. 4th ser. XIII, 555.

<sup>308</sup> Gillespie, *op. cit.*, 903.

<sup>309</sup> *Wilson v. Robertson* (1884) Ct. of Sess. Repts. 4th ser. XI, 893; Gillespie, *op. cit.*, 904.

<sup>310</sup> A foreign judgment will not be enforced unless the foreign court had jurisdiction in an international sense. Lafleur, *The Conflict of Laws in the Province of Quebec*, 239.

*South Africa.* The principles of English law appear to be followed.<sup>311</sup>

*India.* Code of Civil Procedure, sec. 13. A foreign judgment is conclusive as to any matter thereby directly adjudicated upon between the same parties except: (a) where it has not been pronounced by a court of competent jurisdiction;<sup>312</sup> (b) where it has not been given on the merits of the case; (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of British India in cases in which such law is applicable; (d) where the proceedings in which the judgment is obtained are opposed to natural justice; (e) where it has been obtained by fraud; (f) where it sustains a claim founded on a breach of any law in force in British India.

*Greece.* Code of Civil Procedure, art. 859.<sup>313</sup> Foreign judgments will be enforced: (1) without a review of the merits if all the parties are foreigners; (2) after a review of the merits if one of the parties is a Greek.<sup>314</sup>

Art. 860. Execution must be denied under art. 859 (2) if the judgment is contrary to the facts proved or if it is contrary to the prohibitive laws of the state.

Art. 861. If the exequator is refused under art. 860 the foreign judgment is without effect and a new suit on the original cause of action must be brought.

*Guatemala.* Art. 1564 of the Code of Civil Procedure accepts the principle of reciprocity.<sup>315</sup>

*Haiti.* According to Art. 470 of the Code of Civil Procedure foreign judgments will not be enforced unless it is so provided by treaty or by statute. There is actually no legislation nor treaty permitting the enforcement of foreign judgments.<sup>316</sup>

*Holland.* Code of Civil Procedure, art. 431. Foreign judgments are not enforced and a new suit on the original cause of action can be brought.<sup>317</sup> An exception is made with respect to salvage (art. 567, Commercial Code) and maritime collisions (art. 724, Commercial Code).<sup>318</sup>

<sup>311</sup> 4 Nathan, *The Common Law of South Africa*, 2080-2083.

<sup>312</sup> Jurisdiction must have existed according to the general principles of international law. Mulla, *The Code of Civil Procedure of India* (6th ed.) 61.

<sup>313</sup> Politis, *Le droit international privé en Grèce*, Clunet (1908) 12; Streit & Diobouniotis, 2 Leske & Löwenfeld, *op. cit.*, 76.

<sup>314</sup> If the defendant is a Greek all facts in issue must be proved as if the case came up for the first time. App. Athens, 1894, Clunet (1894) 591.

<sup>315</sup> Gobian, Clunet (1913) 92.

<sup>316</sup> There are no political laws concerning the enforcement of foreign judgments. Leske, 1 Leske & Löwenfeld, *op. cit.*, 823; Justin, *De l'effet et de l'exécution des jugements en Haiti* Clunet (1906) 638.

<sup>317</sup> Cass. Jan. 31, 1902, Clunet (1907) 202. A foreign judgment which is not regarded as *res judicata* may have evidentiary value. Cass. April 16, 1908, Clunet (1912) 293. According to most authors judgments relating to status will be recognized. Asser, 1 Leske & Löwenfeld, *op. cit.*, 508.

<sup>318</sup> Whenever a foreign judgment is enforced by way of exception to the



*Honduras.* Code of Procedure (1899), art. 626. Foreign judgments will be enforced if a treaty to that effect exists.

Art. 627. In the absence of treaty, foreign judgments will be given the same effect as the judgments of Honduras have in the foreign country.

Art. 628. If the judgments of Honduras are not enforced in the foreign country, no effect will be given to the judgments of such country.

Art. 629. If the foreign judgment does not fall within the above provisions, it will be enforced if the following conditions exist: (1) The action must have been a personal action; (2) the judgment must not have been by default; (3) the obligation must be legal according to the law of Honduras; (4) the judgment must be "authentic" according to the law of the country where it was rendered and be entitled to public faith in Honduras.

*Hungary.* Code of Civil Procedure (1914), sec. 414. Judgments will not be enforced: (1) if, according to the laws of Hungary, no court of the country in which the judgment was rendered had jurisdiction,<sup>319</sup> or if the jurisdiction assumed was based on a ground which, according to such foreign law, cannot be applied with respect to a subject of such country;<sup>320</sup> (2) if the defendant was a Hungarian subject who was not served in person or by means of Hungarian judicial assistance; (3) if the defendant was a Hungarian subject who, owing to some irregularity in the proceeding, was prevented from making a proper defence;<sup>321</sup> (4) if the judgment related to the status of a Hungarian subject; (5) if the recognition would be contrary to a Hungarian judgment, to public policy, good morals, or the object of Hungarian law; (6) if reciprocity does not exist, unless the suit relates to a non-pecuniary claim with respect to which the Hungarian courts have no jurisdiction.

A declaration of the Minister of Justice regarding the existence of reciprocity is binding.

*Italy.* Decree of July 30, 1919, art. 1, modifying art. 941 of the Code of Civil Procedure, sec. 1.<sup>322</sup> Foreign judgments will be enforced if the following conditions exist: (1) if the judgment is pronounced by judicial authority which is competent to hear the case according to the

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general rule its merits are not reviewed. Asser, 1 Leske & Löwenfeld, *op. cit.*, 508.

<sup>319</sup> According to Gottl, the particular court must have had jurisdiction (*ratione territorii*) in accordance with Hungarian law. *Ungarische Zivilprozessordnung*, 307.

<sup>320</sup> The last part of this section sanctions the principle of retortion. It refers to the case where the foreign law applies rules of jurisdiction with respect to Hungarian subjects which it does not apply to its own subjects. Gottl, *op. cit.*, 307.

<sup>321</sup> According to Gottl this subdivision has reference not only to irregularities or the want of proper service but also to the conduct of the trial itself, *op. cit.*, 308.

<sup>322</sup> *Gazzetta ufficiale*, July 30, 1919, no. 181, Decree no. 1572.

general principles of international law, and with special regard to the provisions of the preliminary title of the civil code if the judgment is pronounced against an Italian subject; (2) if the judicial authority was competent to decide the dispute according to the legislation of the place where the judgment was rendered; (3) if the citation was made in conformity to the law of the place where the judgment was rendered and if the defendant was notified in time sufficient to enable him to appear in the proceedings; (4) if the judgment was validly rendered according to the foreign law or the default was pronounced in conformity with such law; (5) if the judgment has become irrevocable and has actually full executory force according to the law of the place where it was rendered; (6) if it is not contrary to a judgment rendered by an Italian court; (7) if at the time execution is sought no action is pending in Italy between the same parties with reference to the same subject-matter.

Sec. 2. At defendant's request the merits of the case will be re-examined if the judgment is by default or if the defendant relies upon the provisions contained in nos. 1-4 of art. 494.

In these cases the court renders a decision on the merits or permits the execution of the foreign judgment.

Sec. 3. If the judgment is by default and the defendant does not appear before the Italian tribunal the foreign judgment will not be enforced if the defendant was not personally served.

A foreign judgment will not be enforced if it contains anything contrary to the public policy or internal public law of Italy.

Art. 494 of the Code of Civil Procedure, sub-division 2, permits a judgment to be set aside under the following circumstances: (1) if the judgment has been obtained through the plaintiff's fraud; (2) where the judgment is based upon legal documents which have been recognized or pronounced to be forgeries since the judgment was rendered, or prior to that time if the defendant was ignorant of such fact; (3) where a document of a conclusive character has been found subsequent to the trial which could not be produced at that time owing to the plaintiff's conduct; (4) where the judgment was rendered under a mistake of fact resulting from the records and documents of the case. Such an error is deemed to exist if the decision was based upon the supposition of a fact, the falsity of which is beyond a doubt, or if the non-existence of a fact was assumed, the existence of which has been positively established, provided that in either case the fact was not a point in issue and thus determined in the case.

*Japan.* Japanese Code of Civil Procedure, art. 514. A foreign judgment may be executed when the validity of such judgment has been declared by the Japanese court of that jurisdiction to which the defendant belongs.

Art. 515. The execution of a foreign judgment shall be ordered without considering its merits, but the application shall be rejected: (1) where the finality of the foreign judgment is not proved; (2) where the foreign judgment calls for a remedy which is not permis-

sible under the law of Japan; (3) where by the law of Japan the foreign court which rendered the judgment had no jurisdiction; (4) where the defendant being a Japanese, did not answer the suit, no summons or order of the foreign court having been served on him in the foreign jurisdiction, or in Japan through such process of judicial assistance as prevails between Japan and the country of the foreign jurisdiction; (5) where no reciprocal treaty arrangement for the execution of foreign judgments exists between Japan and the country of the foreign jurisdiction.

*Lichtenstein.* Law of December 16, 1891, art. 1.<sup>323</sup> Foreign judgments are enforced if there is no doubt concerning: (1) The jurisdiction of the foreign court; (2) the fact that the judgment is *res judicata* in the foreign country; (3) the existence of reciprocity.

*Luxemburg.* Foreign judgments will be enforced only after a re-examination of their merits.<sup>324</sup>

*Mexico.* Code of Civil Procedure, art. 780. Foreign judgments will be enforced within the federal territory if there is a treaty to that effect.

Art. 781. In the absence of a treaty foreign judgments will have the same effect as Mexican judgments have in the foreign country.<sup>325</sup>

Art. 782. If Mexican judgments are not enforced in the foreign country, the judgments of such country will have no effect in Mexico.

Art. 785. Judgments within art. 781 are enforced only if the following conditions are satisfied: (1) The action must have been a personal action; (2) the judgment must not be by default; (3) the obligation must be valid according to Mexican law; (4) the judgment must be subject to execution according to the foreign law; (5) the judgment must be "authentic" according to Mexican law.

*Monaco.* Code of Civil Procedure (1894), art. 473.<sup>326</sup> If reciprocity exists, the merits of the foreign judgment will not be reviewed. The courts are to examine only: (1) Whether the foreign judgment is regular in form; (2) whether the foreign court was competent, according to the local law, and without being contrary to the law of Monaco; (3) whether the defendant has been regularly cited and enabled to defend; (4) whether the foreign judgment is *res judicata* and subject to execution where rendered; (5) whether its enforcement would be contrary to public policy.

Art. 474. In the absence of reciprocity, the merits of the foreign

<sup>323</sup> Bloch & Frank, *op. cit.*, 693; Jettel, *Handbuch des internationalen Privat- und Strafrechts*, 193-194.

<sup>324</sup> Cass. June 19, 1908, *Revue de droit international privé* (1912) 504; Tribunal de Luxembourg, March 30, 1887, *Clunet* (1888) 558; Schmit, 1 Leske & Löwenfeld, *op. cit.*, 521.

<sup>325</sup> The question who has the burden of proving the existence of reciprocity is in doubt. Zavala, *Compendio de derecho internacional privado* (3d ed.) 229.

<sup>326</sup> Rolland, *Projet de Code de procedure civile*; Schauffler, 1 Leske & Löwenfeld, *op. cit.*, 246.

judgment will be reviewed. Such review may extend to the whole case or to part.<sup>327</sup>

*Montenegro.* Code of Civil Procedure, art. 796.<sup>328</sup> Foreign judgments will not be enforced: (1) If the defendant had no opportunity to defend; (2) if the foreign law did not sufficiently respect the law of Montenegro relating to the disposition of property and the consequences arising therefrom;<sup>329</sup> (3) if the judgment calls for something which cannot be enforced according to the law of Montenegro, or obligates the defendant to pay damages or a penalty for acts to which the law of Montenegro attaches no such consequences.

Art. 797. Foreign judgments will not be enforced if reciprocity does not exist.

*Norway.* There are no statutory provisions relating to the enforcement of foreign judgments. Concerning the question whether foreign judgments will be enforced in the absence of treaty authorizing it, there is doubt.<sup>330</sup> The highest court of Norway does not appear to have passed upon the question.<sup>331</sup> The leading writers would enforce foreign judgments if the foreign courts had jurisdiction according to the rules of the Norwegian law and their enforcement is not contrary to the public policy of Norway.<sup>332</sup> The draft of the new code of civil procedure adds to these requirements, that of reciprocity.<sup>333</sup>

*Panama.* Judicial Code, art. 581. Foreign judgments will be enforced if a treaty to that effect exists.

Art. 582. In the absence of treaty, foreign judgments will be given the same effect as the judgments of Panama have in the foreign country.

Art. 583. If the judgments of Panama are not enforced in the foreign country, the judgments of such country will not be enforced in Panama.

Art. 584. If a case does not fall within the above provisions, foreign judgments will be enforced if the following conditions exist:

<sup>327</sup> See Superior Court, June 8, 1900, *Clunet* (1902) 394; Nov. 4, 1902, *Clunet* (1905) 1147.

<sup>328</sup> Löwenfeld, 2 *Leske & Löwenfeld, op. cit.*, 339-340.

<sup>329</sup> In Montenegro the system of family property still prevails. Title to the property is in the family as such. As long as the property remains undivided it belongs to the family as a corporation. The power of disposition rests with the head of the family and an individual member of the family cannot dispose of his share in the property until after its division. Löwenfeld, *Leske & Löwenfeld, op. cit.*, 330.

<sup>330</sup> According to Daguin the foreign judgment is not even *res judicata*. *Op. cit.*, 295. It seems, however, that most of the Norwegian authors and courts regard foreign judgments as *res judicata*, provided: (1) they were rendered by courts having jurisdiction according to Norwegian law; (2) the judgments were final; (3) their enforcement is not contrary to prohibitive laws of Norway. Fliflet, *Des effets des jugements étrangers en Norvège*, 34 *Clunet*, 924, 932; see also Synnestvedt, *op. cit.*, 304-305.

<sup>331</sup> See Sup. Ct. of Christiania, March 12, 1898, *Clunet* (1899) 1048.

<sup>332</sup> Fliflet states that the courts take a similar view. 34 *Clunet*, 932.

<sup>333</sup> Heiberg, *Internationale Rechtsverfolgung*, 117.

(1) The action must have been a personal action, excepting successions opened in foreign countries; (2) the judgment must not have been by default; (3) the obligation must be legal according to the law of Panama; (4) the judgment must be "authentic" according to the law of the country in which it was rendered and entitled to public faith in Panama.

*Paraguay.* Code of Civil and Commercial Procedure, art. 493. A foreign judgment will be enforced: (1) if it is based on a personal action; (2) if the cause of action is valid according to the law of Paraguay; (3) if the judgment is "executory" by the law of the country in which it was rendered and entitled to public faith in Paraguay; (4) if it is not a judgment by default.

*Peru.* Code of Civil Procedure (1912), art. 1155. Foreign judgments will be enforced if a treaty to that effect exists.

Art. 1156. In the absence of treaty, foreign judgments will be given the same effect as the judgments of Peru have in such foreign country.

Art. 1157. Foreign judgments will have no force whatever if the judgments in Peru are not enforced in the foreign country, or if their merits are reviewed.

Art. 1158. No effect will be given to a foreign judgment if it relates to the status of a subject of Peru or to that of a foreigner who is domiciled in Peru.

Art. 1159. Foreign judgments will not be enforced if: (1) jurisdiction belongs to the courts of Peru according to the next article; (2) if the enforcement of the foreign judgment would be contrary to morals, good custom, or prohibitory laws; (3) if the foreign judgment is not subject to execution according to the foreign law; (4) if the defendant was not cited in conformity with the foreign law.

Art. 1160. The courts of Peru have exclusive jurisdiction with respect to: (1) real property situated in Peru; (2) vessels carrying the Peruvian flag; (3) torts committed in Peru; (4) the succession of a Peruvian or of a foreigner domiciled in Peru, provided the heirs (Peruvians or foreigners) are domiciled in Peru, or the property goes to "charity" or to the state.<sup>334</sup>

*Portugal.* Code of Civil Procedure, art. 1088.<sup>335</sup> A foreign judgment will not be enforced: (1) if there is doubt concerning its authenticity or the extent of the obligation created thereby; (2) if the judgment is not *res judicata*; (3) if the foreign court had no jurisdiction;<sup>336</sup> (4) if the defendant was not properly cited or defaulted;

<sup>334</sup>According to art. 833 of the Civil Code, the Charity (Beneficencia) of the place where the decedent was domiciled in Peru at the time of his death will get the property in the absence of regular heirs, and the state (*fiscus*) will receive it if the decedent had no domicile in Peru.

<sup>335</sup>José Ferreira Marnoco e Souza, *Execução extraterritorial das sentenças cíveis e comerciais*; Tavares de Medeiros, 1 Leske & Löwenfeld, *op. cit.*, 659.

<sup>336</sup>Marnoco e Souza is of the opinion that the jurisdiction of the foreign court is to be determined in accordance with the law of such foreign country. *Op. cit.*, 219.

(5) if the enforcement would be contrary to public policy or to Portuguese public law; (6) if the judgment was rendered against a Portuguese subject in violation of the principles of the Portuguese Civil Code, according to which the suit should have been determined.<sup>337</sup>

*Rumania.* Code of Civil Procedure, art. 374.<sup>338</sup> Foreign judgments can be enforced only: (1) if the foreign court had jurisdiction;<sup>339</sup> (2) if the foreign judgment was not subject to any recourse; (3) if its enforcement would not be contrary to public policy; (4) if reciprocity exists.<sup>340</sup>

*Russia.* Foreign judgments are not enforced except by way of treaty. The following articles of the Code of Civil Procedure have only a theoretical value.<sup>341</sup>

Art. 1274. Unless otherwise provided by treaty, foreign judgments shall be enforced only if an *exequatur* has been obtained from a Russian court.

Art. 1279. The merits of the foreign judgment shall not be reviewed. The judge shall inquire only whether the enforcement of a foreign judgment will be contrary to public policy or to the law of the empire.

Art. 1281. No effect shall be given to the foreign judgment if it relates to realty in Russia.

In the Baltic Provinces, foreign judgments are enforced on the condition of reciprocity.<sup>342</sup>

In Poland the French system of procedure formerly prevailed, but it has been supplanted by the Russian Code of Civil Procedure, so that foreign judgments are not actually enforced.<sup>343</sup>

*Santo Domingo.* Foreign judgments are enforced only if diplomatic reciprocity exists.<sup>344</sup>

*San Marino.* A judge before permitting the execution of a foreign judgment must inquire: (1) whether the defendant was regularly cited or defaulted; (2) whether the foreign judgment was final; (3)

<sup>337</sup> The question whether Portuguese law is applicable should be determined, in the opinion of Marnoco e Souza, according to the principles of international law of the foreign country. *Op. cit.*, 238.

<sup>338</sup> Bloch & Frank, *op. cit.*, 777.

<sup>339</sup> The jurisdiction has been determined in accordance with the law of Rumania, *ratione loci*. Cass. Oct. 29, 1880, cited by Flaischlen, 2 Leske & Löwenfeld, *op. cit.*, 162, note 2.

<sup>340</sup> The Rumanian courts apparently do not inquire into the merits of the case today. The practice of the court of Cassation was formerly not uniform. Suliotis, Clunet (1887) 568, and cases there discussed.

<sup>341</sup> Engelmann, 2 Leske & Löwenfeld, *op. cit.*, 688, 689; *Die Zwangsvollstreckung auswärtiger richterlicher Urteile in Russland*, 47; Bloch & Frank, *Normen über die internationalen Rechtsbeziehungen*, 809; 1 Klibanski, *op. cit.*, 470-472. Martens has expressed the opinion that the provisions of Articles 1273 *et seq.* were applicable in the absence of international treaty. *De l'exécution des jugements étrangers en Russie*, Clunet (1878) 140.

<sup>342</sup> Engelmann, *op. cit.*, 47; 1 Gaupp-Stein, *op. cit.*, 850.

<sup>343</sup> Francke, 27 *Zeitschrift für deutschen Civilprozess*, 145.

<sup>344</sup> Gobian, Clunet (1913) 100.

whether the enforcement of the foreign judgment would be contrary to good morals or to the public policy of San Marino.<sup>345</sup>

*Servia.* Foreign judgments are enforced only if reciprocity by treaty exists.<sup>346</sup>

*Spain.* Code of Civil Procedure, art. 952. Foreign judgments will be given the same effect as is given to Spanish judgments in the foreign country.<sup>347</sup>

Art. 953. If Spanish judgments are not enforced in the foreign country, no effect will be given to the judgments of such country.

Art. 954. If it is not possible to ascertain whether reciprocity exists, the foreign judgment will be enforced if the following conditions exist: (1) If the action is a personal action; (2) if the judgment is not by default; (3) if the obligation is lawful according to Spanish law; (4) if the judgment is authentic according to the foreign law and entitled to public faith in Spain.

Foreign judgments are not examined as to their merits.<sup>348</sup>

*Sweden.* Foreign judgments are not enforced in the absence of treaty.<sup>349</sup>

*Switzerland.* There is no federal law governing the enforcement of foreign judgments. In the absence of treaties the law of the different cantons controls.<sup>350</sup> The following represents a summary of their law:

*Aargau.* Code of Civil Procedure, sec. 378.<sup>351</sup> Foreign judgments are enforced only if the judgments of Aargau are executed "forthwith" in the foreign country.

*Appenzell (Inner Rhodes).* There are no statutory provisions. According to Roguin,<sup>352</sup> the enforcement of foreign judgments is in the hands of a state commission, which permits their execution if they are regular in form.

<sup>345</sup> Giannini, *La république de San Marino*, Clunet (1899) 309.

<sup>346</sup> Georgevitch, 2 Leske & Löwenfeld, *op. cit.*, 221.

<sup>347</sup> French judgments are not enforced. Gestosa y Acosta, *Nuevo tratado de derecho procesal, civil, mercantil y penal internacional*, 361; Medina y Marañón, *op. cit.*, art. 951, note, who states that effect is denied also to the judgments of Belgium, England, Portugal and Uruguay because the law of these countries does not enforce foreign judgments unconditionally but subjects them to some sort of revision. *Ibid.*, art. 952, note.

<sup>348</sup> Beauchet, 1 Leske & Löwenfeld, *op. cit.*, 647.

<sup>349</sup> Reuterskiöld, Clunet (1906) 581; Synnestvedt, *op. cit.*, 300; Uppström, 2 Leske & Löwenfeld, *op. cit.*, 483; Francke, 8 *Zeitschrift für deutschen Civilprozess*, 46, 71; 27 *Zeitschrift für deutschen Civilprozess*, 146. The fact that Swedish judgments are enforced by the foreign country is of no consequence. High Court of Stockholm, Feb. 27, 1894, Clunet (1896) 435; Synnestvedt, *op. cit.*, 300.

<sup>350</sup> Roguin, 23 Clunet 113; Meili, *op. cit.*, 494; Gombeaux, Clunet (1908) 85; Grebler, *Die Vollstreckung ausländischer Civilurteile in der Schweiz*, 1906.

<sup>351</sup> 6 *Gesetzessammlung für den eidgenössischen Canton Aargau*, 317.

<sup>352</sup> 10 Clunet, 125.

*Appenzell* (Outer Rhodes). Code of Civil Procedure, sec. 117. In the absence of treaty foreign judgments will be enforced: (1) if they are *res judicata*; (2) if reciprocity exists.

*Basel-City*. Sec. 258 of the Code of Civil Procedure provides that the merits of the judgment shall not be inquired into. A foreign judgment will be enforced: (1) if the foreign court had jurisdiction; (2) if it was *res judicata* and "authentic"; (3) if the nature and extent of execution, especially as regards costs, do not go beyond the cantonal law.

*Basel-Country*. Sec. 286 of the Code of Civil Procedure (1905) refers only to the enforcement of foreign judgments by treaty.

*Berne*. Sec. 388 of the Code of Civil Procedure leaves the matter of the enforcement of foreign judgments to the Court of Appeals and Cassation.

*Freiburg*. Art. 653 of the Code of Civil Procedure provides only that the enforcement of foreign judgments is to be determined by the cantonal tribunal. The French system appears to be followed in practice.<sup>353</sup>

*Geneva*. Art. 479 of the Law concerning Civil Procedure provides only that the enforcement of foreign judgments is to be determined by the cantonal tribunal. The French system appears to be followed in practice.<sup>354</sup>

*Glarus*. There are no statutory provisions. According to Roguin the state commission or the government passes upon the question. As a rule there is no review of the merits. Execution will not be granted if the foreign court had no jurisdiction or if the enforcement would violate recognized principles of cantonal or federal law.<sup>355</sup>

*Grisons*. Art. 306 of the law concerning procedure provides that foreign judgments shall be enforced: (1) if they are *res judicata*; (2) if reciprocity exists. In all other cases they are to have evidentiary value.

*Lucerne*. Sec. 325 of the law concerning procedure (1913)<sup>356</sup> provides that foreign judgments shall be enforced in the absence of treaty, if reciprocity exists.

*Neuchâtel*. Art. 867 of the Code of Civil Procedure provides that the Court of Appeal may authorize the execution of the judgments of those foreign countries with whom Switzerland has concluded treaties concerning the execution of judgments. It can refuse to do so only in the following cases: (a) if the judgment was not rendered by a court of competent jurisdiction; (b) if the defendant was not duly cited or defaulted; (c) if the rules of public law and the cantonal public policy are opposed to the enforcement of the foreign judgment.

*Saint Gall*. Code of Civil Procedure, art. 339. Foreign judgments

<sup>353</sup> Meili, *op. cit.*, 506-507.

<sup>354</sup> Meili, *op. cit.*, 506-507.

<sup>355</sup> 10 Clunet, 125.

<sup>356</sup> 25 *Zeitschrift für internationales Privat- und Strafrecht*, 295.



will be enforced if reciprocity exists, and treaty provisions do not oppose. The Council of State may make declarations concerning the existence of reciprocity.

*Schaffhausen.* Sec. 345 of the Code of Civil Procedure provides for the enforcement of foreign judgments: (1) If they are *res judicata*; (2) if the particular court had jurisdiction according to the laws of Schaffhausen. A decree of February 19, 1862 has, according to Roguin,<sup>357</sup> added the requirement of reciprocity.

*Schwiz.* Sec. 307 of the Code of Civil Procedure provides that foreign judgments may be declared executory by the Judicial Commission, if a treaty providing for the enforcement of foreign judgments or reciprocity exists.

*Solothurn.* There are no statutory provisions and nothing definite can be said.<sup>358</sup>

*Tessin.* Art. 528 of the Code of Civil Procedure follows the Italian system.<sup>359</sup>

*Thurgau.* Sec. 292 of the Code of Civil Procedure leaves the question of the enforcement of foreign judgments to the Superior Court, which appears to apply the principle of reciprocity.<sup>360</sup>

*Unterwalden (Nidwalden).* Sec. 173 of the Code of Civil Procedure requires reciprocity in the absence of treaty.

*Unterwalden (Obwalden).* Art. 246 of the Code of Civil Procedure refers only to the enforcement of foreign judgments by treaty.

*Uri.* There are no statutory provisions and nothing definite can be said.<sup>361</sup>

*Vaud.* Art. 586 of the Code of Civil Procedure (1912)<sup>362</sup> confers the power to enforce foreign judgments on the Council of State, to which it leaves, in the absence of treaty, the determination of the grounds of defence.

*Valais.* There are no statutory provisions. According to Roguin<sup>363</sup> the enforcement of foreign judgments may, in the absence of treaty, be authorized by the Council of State: (1) if reciprocity exists; (2) if the foreign court had jurisdiction; (3) if the judgment is regular in form; (4) if the judgment is final.

*Zug.* Art. 158 of the Code of Civil Procedure<sup>364</sup> requires reciprocity.

*Zurich.* The Code of Civil Procedure (1913), art. 107.<sup>365</sup> Foreign judgments will be regarded as *res judicata*: (1) if they are final and not subject to any recourse under the law of the foreign country; (2) if the foreign court had jurisdiction according to its own rules

<sup>357</sup> 10 Clunet, 123.

<sup>358</sup> Meili, *op. cit.*, 494-495.

<sup>359</sup> See Roguin, 10 Clunet, 126.

<sup>360</sup> 25 *Zeitschrift für internationales Privat-und Strafrecht*, 294.

<sup>361</sup> 10 Clunet, 126.

<sup>362</sup> 25 *Zeitschrift für internationales Privat-und Strafrecht*, 294-295.

<sup>363</sup> Meili, *op. cit.*, 505.

<sup>364</sup> Meili, *op. cit.*, 503.

<sup>365</sup> Meili, *op. cit.*, 497.

and the law of Zurich; (3) if such recognition will not conflict with the public law of Zurich.

Art. 377. Foreign judgments with respect to which no recourse is open under the foreign law will be enforced if reciprocity exists.

*Turkey.*<sup>366</sup> Before the recent war, foreigners were subject to the jurisdiction of the consuls of their respective countries. A judgment rendered in a foreign country against a subject of such country,<sup>367</sup> could be enforced in Turkey directly by a consul of such country. Such a judgment could not be levied upon real estate, however, except with the co-operation of the Ottoman authorities.<sup>368</sup> A judgment rendered in a foreign country against a non-subject other than a Turk, could be enforced only through the consul of the country to which the defendant belonged, who would apply the rules of his country governing the enforcement of foreign judgments.<sup>369</sup> Foreign judgments against an Ottoman subject could not be enforced.<sup>370</sup>

*Uruguay.* Code of Civil Procedure, art. 511. Foreign judgments will be enforced if a treaty to that effect exists.

Art. 512. In the absence of treaty, foreign judgments will be given the same effect as is given in the foreign country to the judgments of Uruguay.

Art. 513. If the judgments of Uruguay are not enforced in the foreign country, no effect will be given to the judgments of such country.

Art. 514. If the judgment does not fall within the above provisions it will be enforced, provided: (1) The foreign court had jurisdiction;<sup>371</sup> (2) the defendant was legally cited or defaulted, and if the judgment is by default, notice of the judgment was given to the defendant.

Art. 515. Foreign judgments will not be enforced if such enforcement would be contrary to public policy, morality or to the constitution or laws of Uruguay.

*Venezuela.* Code of Civil Procedure (1916), art. 747. Foreign judgments will be enforced only if the courts of the foreign state do not examine the merits of Venezuelan judgments.

<sup>366</sup> Salem, Clunet (1888) 603; 2 Leske & Löwenfeld, *op. cit.*, 407.

<sup>367</sup> Plaintiff's nationality was immaterial. The plaintiff might be a subject of a third state or even a Turk. Salem, Clunet (1888) 605.

<sup>368</sup> Salem, 2 Leske & Löwenfeld, *op. cit.*, 408.

<sup>369</sup> Salem, 2 Leske & Löwenfeld, *op. cit.*, 408.

<sup>370</sup> The proceeding for an *exequatur* would have to be brought in this case before the Mixed Commercial Tribunal which would not pronounce judgment against the defendant without a re-examination of the case. Clunet (1888) 613-615.

<sup>371</sup> A foreign judgment will not be enforced if, according to the laws of Uruguay, the case should have been tried by the courts of Uruguay. Carrio, *op. cit.*, 401.

Art. 748. Foreign judgments must also satisfy the following conditions: (1) They must not relate to immovable property in Venezuela; (2) the foreign court must have had jurisdiction in an international sense, and such jurisdiction must not have belonged to Venezuela according to the principles of international law; (3) the defendant must have been cited according to the laws of the foreign country and of the state in which the citation was made, within a sufficient time to allow him to defend; (4) the obligation must be lawful according to the law of Venezuela, and the judgment must not be contrary to the public policy, the internal public law, or a decision of the Venezuelan courts.