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LOCAL ENFORCEMENT OF FOREIGN NATIONAL JUDGMENTS—A NEW STANDARD

Defendant, a resident of the District of Columbia, borrowed money from plaintiff, a Canadian resident, and secured the loan with a mortgage on a tract of land located in Ontario. The mortgage was executed in the District of Columbia and contained a clause by which defendant assented to jurisdiction of Ontario courts by substituted service in the event litigation became necessary. Plaintiff, upon defendant's default, sought foreclosure of the mortgage and a judgment in Ontario. Pursuant to Ontario statute,¹ defendant was personally served in the District of Columbia with a writ and notice of the Ontario proceedings. Defendant failed to appear, and the Ontario court entered default judgment. Plaintiff then sued in the District of Columbia to enforce the Ontario judgment. Defendant contended that the Ontario court had lacked jurisdiction to render an in personam judgment. On cross motions for summary judgment, *held*: The personal jurisdiction of a foreign court, which satisfies the law of that nation, will be recognized in the District of Columbia if the facts upon which jurisdiction was based satisfy the minimum requirements of constitutional due process. *Cherun v. Friskman*, 236 F. Supp. 292 (D.D.C. 1964).

No international law exists as to the conditions under which a nation should give effect to the judgment of a foreign court,² nor has the United States a treaty controlling the enforcement of foreign judgments. The Constitution does not expressly refer to disposition of such judgments, although the minimum standards of due process apply to foreign³ as well as domestic⁴ judgments. No District of Columbia

¹ Rule 25 (1) (b) of the Consolidated Rules of Practice of Ontario (1947) provides: "25-(1) Service out of Ontario of a writ of summons or notice of writ may be allowed. . . (b) Where any act, deed, will, contract, obligation or liability affecting land or hereditaments, situate within Ontario, is sought to be construed, rectified, set aside or enforced."

² See Lenhoff, *International Law and Rules on International Jurisdiction*, 50 CORNELL L.Q. 5, 23 (1964): "At present each nation is at liberty to determine not only the limits upon the exercise of jurisdiction by its own courts, but also the range of jurisdiction which it is willing to concede to foreign states." [This article will constitute section 1 of chapter 2 of the author's forthcoming treatise, *Jurisdiction and Judgments: A Comparative Study*, to be published for the Parker School of Foreign and Comparative Law, Columbia University, by Oceana Publications, Inc.] *cf.* Draft of Convention adopted by the Special Commission in the matter of Recognition and Enforcement of Foreign Judgments, Session of Feb. 26, 1963, Hague Conference on Private International Law.

³ *Boivin v. Talcott*, 102 F. Supp. 979 (N.D. Ohio 1951).

⁴ *Griffin v. Griffin*, 327 U.S. 220 (1946).

statute relates to the enforcement of foreign judgments.⁵ The United States Supreme Court, in *Hilton v. Guyot*,⁶ had laid down without discussion a requirement of "jurisdiction" in a "competent [foreign] court"⁷ for the enforcement of a judgment of that foreign court. The only Supreme Court case dealing with the *quality* of the foreign jurisdiction denied enforcement of the judgment,⁸ but recent liberalization of the jurisdictional requirement of due process presented the court in the principal case with a basis for reaching a contrary result.

The court in the principal case considered the only issue to be whether the Ontario court had the personal jurisdiction over the defendant necessary to render an in personam judgment. The court first noted that Ontario law authorized personal jurisdiction over the defendant based upon substituted service outside of Ontario.⁹ The court then stated that it was necessary to determine whether the law of the United States or of Canada should govern the ultimate issue of whether the Ontario court had the requisite personal jurisdiction. Deciding in favor of United States law, the court held the proper jurisdictional standard applicable to a foreign judgment to be the due process standard promulgated by the United States Supreme Court in *International Shoe Co. v. Washington*,¹⁰ *McGee v. International Life Ins. Co.*,¹¹ and *Hanson v. Denckla*.¹² The court considered these cases in detail, and concluded that the defendant had sufficient "contact" with the jurisdiction of the Ontario court to give that court personal jurisdiction over him.¹³

The court's statement that it must determine whether the law of the United States or Canada should govern the ultimate decision is misleading, for the court had already decided that the Ontario court had authority under Ontario law to render the in personam judgment. This preliminary consideration of the *foreign* law indicates that the

⁵ California is the only state which has a statute concerning the enforcement of foreign judgments. CAL. CODE CIV. P. § 1915 states: "A final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as in the country where rendered; and also the same effect as final judgments rendered in this state." No state has yet adopted the *Uniform Foreign Money-Judgments Recognition Act* of the National Conference of Commissioners on Uniform State Laws.

⁶ 159 U.S. 113 (1895).

⁷ *Id.* at 205.

⁸ *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812 (1869).

⁹ Rule 25(1)(b) of the Consolidated Rules of Practice of Ontario, *supra* note 1; *McMahon v. Waskochil*, Ont. Weekly N. 887 (1945).

¹⁰ 326 U.S. 310 (1945).

¹¹ 355 U.S. 220 (1957).

¹² 357 U.S. 235 (1958).

¹³ It should be noted that defendant's assent in the terms of the mortgage contract to substituted service gave the court an alternative ground for the decision.

court in the principal case must have considered it essential that the jurisdiction of the judgment court be valid according to the applicable foreign law. The correct statement of the issue as seen by the court, then, was whether the jurisdiction must satisfy United States as well as foreign jurisdictional standards.

Although the Supreme Court decision in *Hilton v. Guyot* is primarily noted and criticized for its reciprocity requirement,¹⁴ the case is recognized as a landmark for its prescription of the general conditions under which a foreign judgment should be given conclusive effect:

When an action is brought in a court of this country, by a citizen of a foreign country against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is *prima facie* evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that, by the principles of international law, and by the comity of our own country, it should not be given full credit and effect.¹⁵

The only case in which the Court examined the basis of the jurisdiction of a foreign court was handed down in 1869,¹⁶ and the then current common law standards for in personam jurisdiction were not satisfied by the extra-territorial personal service which occurred in that case. Extensive research has failed to uncover a decision in which any court in the United States has enforced a judgment of a court of a foreign nation based upon jurisdiction acquired by extra-territorial service.

The principal case is the first to weigh the effect of the minimum contacts test on the recognition of foreign judgments. Since the due process clause of the Constitution establishes only a minimum jurisdictional standard, courts of the various jurisdictions within the United States are free to apply any jurisdictional standard which does not violate due process. Relying upon the minimum contacts test, some jurisdictions have extended the scope of their jurisdiction

¹⁴ See Reese, *The Status in this Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783 (1950); Student Analysis, *The Enforceability of Foreign Judgments in American Courts*, 37 NOTRE DAME LAW. 88 (1961).

¹⁵ 159 U.S. 113, 205-06 (1895)

¹⁶ *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812 (1869).

by statute.¹⁷ Other courts, without the aid of statute, have extended their jurisdiction to the "limits of due process."¹⁸ Finally, some jurisdictions, including the District of Columbia, still retain the "physical power" concept of *Pennoyer v. Neff*.¹⁹

The applicable District of Columbia statute provides that an action may not be brought in the District against a person who is not a resident of nor found within the District.²⁰ Therefore, if the situation in the principal case were reversed, the District court would not have had jurisdiction over the absentee mortgagor. With such a restrictive local law, the court in the principal case could be expected to apply the local jurisdictional standard of the District of Columbia. But the court did not consider the jurisdictional standard of the District. In effect, the court decided that the local standard was irrelevant; the only relevant standard was the minimum standard of constitutional due process. The choice of due process was the most liberal position available to the court.²¹

The decision of the court in the principal case increases the possibility of recovery of judgments of foreign nations. With the modern development of rapid communications and international trade and travel, the law must improve the effectiveness of legal efforts to settle controversies arising from international transactions. If a stricter standard than minimum constitutional due process is required for the jurisdiction of foreign courts, the effectiveness of those legal efforts will be impaired, particularly when the evidence would be located abroad or the law to be applied would be that of the foreign nation. By improving the opportunity for effective international relief, the decision in the principal case promotes international trade.

Adoption by the court in the principal case of the minimum constitutional standard for determining enforceability of foreign judgments is also desirable for its value as precedent. This decision could be the

¹⁷ See, e.g., ILL. REV. STAT. ch. 110, § 17 (1963); WASH. REV. CODE §§ 4.28.180-185 (1959).

¹⁸ See, e.g., *Northern Supply, Inc. v. Curtiss-Wright Corp.*, 397 P.2d 1013 (Alaska 1965); *Twinco Sales, Inc. v. Superior Court of Calif.*, 40 Cal. Rptr. 833, 230 Cal. App. 2d 348 (1964).

¹⁹ 95 U.S. (5 Otto) 714 (1877).

²⁰ D.C. CODE § 11-521 (Supp. III, 1964).

²¹ Cf. *Courts of the British Commonwealth enforce foreign judgments on a basis of obligation instead of a basis of comity*. As a result, even though the various units of the Commonwealth have extended the jurisdiction of their own courts by statute, each unit judges judgements from foreign countries and from other units of the Commonwealth by the strict common law standards. See CHESHIRE, *PRIVATE INTERNATIONAL LAW*, 627-53 (6th ed. 1961); READ, *RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE COMMON LAW UNITS OF THE BRITISH COMMONWEALTH*, (1938).

first step in establishing a uniform national standard for enforcement of foreign judgments.²² Such uniformity is desirable, as the present system (by which *local* jurisdictional standards are determinative) means that the enforceability of a foreign judgment in the United States varies with the location of each defendant.²³ The decision in the principal case is of only persuasive force outside the District of Columbia, as each state may choose a standard stricter than minimum contacts for application to foreign judgments without violating due process. The present condition of diversity also suggests the desirability of a treaty or series of treaties dealing with the enforceability of foreign judgments. Besides achieving uniformity in the United States, such treaties would improve the rights of United States citizens with local judgments against foreign nationals.²⁴

²² See note 5 *supra*.

²³ See discussion in Campbell, *Jurisdiction over Absent Defendants in English and United States Law*, 38 TUL. L. REV. 317 (1964).

²⁴ See Nadelman, *Reprisals Against American Judgments*, 65 HARV. L. REV. 1184, 1194 (1952).