39.100 8/30/73

Memorandum 73-65

Subject: Study 39.100 - Enforcement of Sister State Money Judgments

Attached to this memorandum are two copies of the tentative recommendation relating to enforcement of sister state money judgments which was distributed for comment after the July meeting. This memorandum examines the comments we have received; the letters of comment are attached as Exhibits I-V. Please make your editorial suggestions on one copy of the recommendation and give it to the staff at the September meeting. Subject to any revisions the Commission wants to make, we hope that the recommendation can be approved for printing at that time.

Although only five letters were received on this recommendation, two of them contained many detailed criticisms. (See Exhibits I and II.) Two letters are almost unreservedly favorable. (See Exhibits III and IV.)

The comments will be considered section by section.

Preliminary part. Exhibit I was highly critical of the entire recommendation. The writer feels that the recommendation accomplishes little other than to specify in statutory form what can be done in essence now by way of summary judgment. He finds the statement of the advantages of the recommended procedure on page 4 of the preliminary part to be overstated. To remedy this particular criticism, the staff suggests that this paragraph of the preliminary part be rewritten substantially as follows:

> The recommended registration procedure constitutes a complete and orderly statutory scheme for the enforcement of sister state money judgments. The registration system offers savings in time and money to both courts and creditors. The procedure is fair to the judgment debtor since his opportunity to attack the enforcement of the sister state judgment is preserved. The registration system is speedy, efficient, and inexpensive to utilize.

Section 1710.10. Exhibit II suggests that the definition of sister state judgment should not include the concept of full faith and credit since that is one of the issues. He fears that, if the judgment is ultimately found not to be enforceable by reason of not being entitled to full faith and credit, the judgment creditor may be subject to suit for abuse of process (or, perhaps, malicious prosecution). In place of the full faith and credit phrase, he recommends using "final on its face."

We have not previously considered the problem of abuse of process and malicious prosecution in this context. If a creditor knows that the judgment is not entitled to full faith and credit (for example, because it is not final or because the original judgment was barred by the statute of limitations in the sister state), then perhaps he should be subject to suit for abuse of process or malicious prosecution in the event that the judgment is found not to be entitled to enforcement. This could be left to development by the courts under the recommendation; or, if the Commission wishes, a provision concerning "wrongful registration" could be drafted.

Replacing the principle of full faith and credit with "final on its face" is not satisfactory for the reason that finality itself is a concept causing confusion. While "final" could be defined to make clear that it means that no further action by the rendering court is required to resolve the matter litigated, including the word "final" is subject to the further objection that lack of finality is only one of the defenses to the enforcement of sister state judgments. (See the list of common defenses in the Comment to Section 1710.45.) Why should this one aspect of enforceability under the full faith and credit clause be listed to the exclusion of all others? Perhaps the fear that Section 1710.10 might result in unwarranted abuse of process and malicious prosecution cases would be assuaged by the following wording: "As used in this chapter, 'sister state judgment' means that part of any judgment, decree, or order of a court of a state of the United States entitled on its face to full faith and credit in this state which requires the payment of money." This would guard against such actions except where they are clearly warranted.

Without doing grievous violence to Section 1710.10, the words "entitled to full faith and credit in this state" could be deleted. The staff prefers their retention because they state simply what sort of judgments may be filed and ultimately enforced.

The staff recommends that no change be made in the section as it stands. If the Commission thinks that some change is required, the staff recommends either that the words "on its face" be added or that the reference to full faith and credit be deleted. The fourth alternative of replacing "entitled to full faith and credit" with "final on its face" is inappropriate.

Exhibit I considers it a flaw that the recommendation does not cover the enforcement of federal court money judgments in state court. The Commission has previously decided that, because of uncertainties in federal law

regarding finality, problems of supremacy, and other complexities, it is best to leave the registration of federal judgments to the federal procedure.

Mr. Ferdinand Fernandez, Chairman of the Ad Hoc Committee on Attachments of the State Bar, writes that the committee has no objections except perhaps that they wonder why the recommendation is limited to money judgments (Exhibit III, p. 8). The Commission has previously considered this limitation in the definition of "sister state judgment." It follows from the full faith and credit clause which as yet has not been held to require the enforcement of other than money judgments. As a policy matter, it makes no sense to limit a summary procedure to situations where a simple form of relief--such as the payment of a certain amount of money--has been granted, as opposed to some sort of injunctive relief which would be subject to more judicial disagreement and would often require judicial supervision. By making the limitation to money judgments clear in the statute, there is no doubt such as would arise if any judgment entitled to full faith and credit could be enforced by registration.

Section 1710.15. A writer wonders why "judgment debtor" is not defined while "judgment creditor" is (Exhibit I). "Judgment creditor" was defined in order to incorporate the law relating to the enforcement of a judgment where there are several judgment creditors. If the Commission feels that there is any need for a definition of "judgment debtor," something like the following could be added: "As used in this chapter, 'judgment debtor' means the person or persons against whom an action to enforce a sister state judgment could be brought."

Section 1710.20. Exhibit II suggests that the following language be added to Section 1710.20(b)(5)(providing for contents of the application):

> A certificate of the Secretary of State that the judgment debtor is neither a domestic corporation, a foreign corporation qualified to do business in this state, nor a foreign partnership which has filed a statement pursuant to §15700 of the Corporations Code, made within 30 days prior to filing the application, shall be included in the application if such be the case. (See pp. 4-5.)

The tentative recommendation requires the application to be executed under oath and the statement regarding the status of the corporation or partnership may be made on the basis of the judgment creditor's information and belief. Requiring a certificate from the Secretary of State would entail at least some delay. On the other hand, as the writer suggests, some creditors are lacking

in complete candor. The staff has no strong feeling on this point. The Commission should decide whether the danger of unscrupulous creditors necessitates the protection of requiring a certificate from the Secretary of State in those cases where the creditor seeks to have the debtor's assets levied upon before notice of entry.

The same writer suggests that the following provision be added to subdivision (b)(providing for the contents of the application):

> If the name by which the judgment debtor is known at the time of application varies from the name of the judgment debtor as set forth in the sister state judgment, a statement of that fact, which may not be made upon information and belief, and a statement of the means by which the name was changed, which may be made upon information and belief. (See Exhibit II, p.5.)

The Commission may want to include a provision of this nature.

It is suggested that subdivision (c) be worded as follows:

> A copy of the sister state judgment, and a certificate of the clerk of the rendering court that no stay of execution is in effect, each dated within 30 days prior to filing the application, shall be attached to the application. (See Exhibit II, p. 6.)

The Commission has not previously considered requiring the copy of the sister state judgment to be authenticated within a certain time before registration. A draft recommendation considered at the March meeting contained a suggestion that the New York provision requiring authentication within 90 days before filing be adopted. The Commission did not consider the point at that time, and it was dropped. The staff thinks that some time limitation is sensible, whether it be 30 days or 90 days or something else.

The second certificate concerning the stay of execution is unnecessary. The 30-day limitation would be inappropriate since knowledge that a stay was in effect 30 days previously is not sufficient. The intent of the prohibition in Section 1710.60 is that sister state judgments currently subject to a stay of enforcement cannot be registered in California--not merely judgments subject to a stay order issued as much as 30 days previously. The staff sees no particular need for requiring a certificate from the sister state clerk on this matter.

Section 1710.25. Exhibit I disagrees with the policy of Section 1710.25(a)(1), which allows the creditor to file the application in the county in which any judgment debtor resides, on the grounds that the creditor might file the application in the county of a judgment debtor with whom settlement has already been made or who is not the "true" party to the disadvantage of another judgment debtor who resides in some other county. The staff

does not know how serious this type of problem is, but it could be partially remedied by simply defining "judgment debtor" as discussed under Section 1710.15 above. This would solve the problem of a judgment debtor who has fully satisfied the judgment or who has a covenant not to enforce a judgment against him. It seems complicated to attempt a solution as indicated in the letter in terms of the "true" party or the party against whom relief is "really" being sought.

Section 1710.30. Exhibit I states that Section 1710.30 is ambiguous since it is not clear whether the judgment entered in California is in the full amount of the sister state judgment or only in the amount remaining unpaid. (See p.2.) Section 1710.20(b)(3) requires the judgment creditor to state the amount remaining unpaid under the judgment. The staff recommends that this ambiguity be resolved by rewording the first sentence of Section 1710.30 as follows:

> Upon the filing of the application, the clerk shall enter a judgment based upon the application for the amount shown to be remaining unpaid under the sister state judgment.

Section 1710.40. Exhibit I suggests that there is an ambiguity in Sections 1710.40 and 1710.60(c) and their Comments concerning the prohibition against a sister state judgment serving as the basis for the entry of more than one California judgment. The writer asks

> What about the reduction of a sister state judgment to a California judgment and a new (independent) action on the California judgment just prior to ten years later? Is the second California judgment based upon the sister state judgment, or upon the initial California judgment, such that the second California judgment might not be precluded by the proposed statutes? (See p. 2.)

The staff finds no serious ambiguity in the sections and Comments mentioned. Section 1710.40 clearly makes judgments entered under the filing procedure the same for enforcement purposes as judgments rendered originally in the superior court. As a California judgment, it would certainly be subject to the decisions holding that domestic judgments may be sued upon. Perhaps the ambiguity is thought to arise from the Comment to Section 1710.40 which, as examples, lists provisions concerning liens, execution, and supplemental proceedings and Section 685 allowing execution after 10 years, but does not mention an action on the judgment. To remedy this omission, a sentence like the following could be added to that Comment:

An action may be brought upon a judgment entered pursuant to this chapter as upon a judgment entered originally in California. See Thomas v. Thomas, 14 Cal.2d 355, 358, 94 P.2d 810, ___ (1939); Atkinson v. Adkins, 92 Cal. App. 424, 426, 268 P. 461, ___ (1928).

Section 1710.45. Exhibit II (see p. 6) suggests that the provisions of Code of Civil Procedure Section 473 and 473.5 be made applicable to motions to vacate. (Sections 473 and 473.5 are attached as Exhibit VI.) As the recommendation now stands, the procedure for making motions to vacate and the 30-day period after proof of service is intended to be exclusive, subject only to equitable relief in appropriate circumstances, as the Comment indicates. The writer states that the policy behind the protections of Section 473.5 in cases of substituted service of summons applies to notice under the sister state judgment enforcement procedure which, as Section 1710.35 provides, is to be served in the manner provided for service of summons. The writer also notes correctly that the courts give Sections 473 and 473.5 liberal application.

Presumably the broad grants of power in Section 473 would apply to proceedings under Section 1710.10 et seq. except where specific provisions of the latter are in conflict with Section 473. The staff thinks that this occurs only as concerns the time within which the debtor must make his motion to vacate. Section 1710.45(b) requires him to make his motion within 30 days. Section 473 allows motions for relief from a judgment, order, or other proceeding taken against a person "through his mistake, inadvertence, surprise or excusable neglect" within a reasonable time not exceeding six months. The Commission has previously settled on 30 days. The staff thinks that 30 days is adequate time for the debtor to move to vacate the judgment against him and that there is no obvious reason to extend that time to six months. The 30-day period was selected to coincide with the 30-day period before which execution may issue under Section 1710.50(a) and before which property may be sold or distributed under Section 1710.50(d).

Section 473.5 allows motions to set aside defaults where the party has not received actual notice in time to defend. Such motions have to be made before the earlier of two times: two years after entry of a default judgment or 180 days after service of written notice of entry of a default. The staff is unclear as to whether Section 473.5 would be applicable or not since it refers to a default or a default judgment being entered against the person because of his failure to receive actual notice. Under Section 1710.30, entry

of the judgment is made immediately, subject to a motion to vacate within 30 days after service of notice. In view of the fact that we are dealing with a judgment of a sister state court (albeit a default judgment in some cases) and that the debtor has 30 days after service of notice which must be proved, the staff does not think that there is a substantial need for the sort of relief afforded by Section 473.5. Where a grave injustice does result, equitable relief should be available. If the Commission feels that equitable relief is inadequate here, the staff recommends that a provision be added which would allow a judgment debtor who has not received actual notice to make a motion to vacate for a longer period of time than 30 days--such as two years after entry of judgment or 180 days after service of notice of entry, whichever is earlier, as is provided in Section 473.5.

Exhibit II suggests that, where a motion to vacate is made under Section 1710.45, the cost security provisions of Code of Civil Procedure Section 1030 should be applicable against a nonresident judgment creditor. (Section 1030 is attached as Exhibit VII.) If the Commission wishes to incorporate this feature, it could be accomplished either by amending Section 1030 as suggested by the writer as follows: "As used herein 'plaintiff' includes 'judgment creditor' as defined in Section 1710.15 and 'defendant' includes the moving party in a motion pursuant to Section 1710.45." Or, it could be done by adding a subdivision (c) to Section 1710.45 as follows: "Upon making a motion to vacate, the judgment debtor may require security for costs where the judgment creditor resides out of the state or is a foreign corporation in the manner provided by Section 1030." Both of these alternatives apply to a class of nonresident creditors different from that described in Section 1710.50(b) for nonresident debtors--nonresident individuals, foreign corporations not qualified to do business in the state, and foreign partnerships which have not filed a designation of an agent for service of process. Perhaps it would be best to be consistent in defining nonresidents. The simplest solution to the problem may be to leave it alone. Section 1030 applies to actions or special proceedings. The staff contemplates that the filing procedure is a special proceeding once a motion to vacate is made. The comment in Exhibit II assumes that Section 1030 would not apply. The staff recommends that no change be made on the assumption that Section 1030 will apply anyway. Of course, this will result in the disparity between definitions of nonresidency just mentioned, but that is not viewed as serious.

Section 1710.50. Exhibit I states that "interim, emergency attachment provisions" in the normal context of an independent action to enforce a sister state judgment would as adequately accomplish the aim of preserving assets. This may have been true under the law prior to the enactment of the 1972 amendments, but this is not true under those amendments nor under the Commission's tentative recommendation relating to prejudgment attachment. Under current law, where nonresident individuals are not engaged in a trade or business or where any nonresident is sued in tort, the attachment is released on the appearance of the defendant in the action. (Code Civ. Proc. § 538.5(d).) And, of course, attachment is no longer available in tort actions against residents. (Code Civ. Proc. § 537.1(a).) The same basic situation prevails under the tentative recommendation relating to prejudgment attachment. (See Sections 483.010, 485.010, 492.050.) Hence, unless a sister state tort judgment is a contract, the provisions of Section 1710.50--which allow the issuance and levy of a writ of execution in certain circumstances before notice is given the judgment debtor--are not duplicative of provisions of existing or proposed law.

Exhibit II (see p. 6) suggests that there are constitutional doubts about Section 1710.50(c) which allows the issuance of a writ of execution before notice in cases where great or irreparable injury would result if issuance of the writ were delayed. The writer proposes adding a provision giving the court power to temporarily restrain disposition of the property on ex parte application and to require notice to the judgment debtor according to the court's discretion. The staff does not share the view that there are constitutional doubts about Section 1710.50(c) and so concludes that such a provision is unnecessary.

Exhibit V generally approves of the draft recommendation. However, the writer finds the delay in execution for 30 days under Section 1710.50(a) (except for the cases listed in subdivisions (b) and (c)) to be wholly unreasonable. He thinks that the safeguards of Section 692, which requires 10 or 20 days' notice of sale, and Section 690.50, which provides a period within which to claim exemptions, are adequate. This view was expressed in earlier staff drafts which did not distinguish between residents and nonresidents; however, this proposal was rejected by the Commission in April.

Section 1710.55. Exhibit V further suggests that the judgment debtor should be required to seek to stay enforcement on the grounds of an appeal

in another state within the same time as would be required to stay a judgment originally rendered in California. The writer suggests that debtors will seek review in the sister state for the purpose of delaying enforcement of the judgment in California. The staff disagrees with the writer's proposed remedy for this situation. The staff thinks that subdivision (b) of Section 1710.55 offers the best and most flexible protection which is feasible. Under subdivision (b), the court may require the debtor to give an undertaking as a condition of granting a stay. Furthermore, the court may continue the levy. Hence, if the creditor can show that the review is sought for the purpose of delaying collection, the court can fashion an order which will protect the interests of the creditor. To require the debtor to apply for a stay before the limit on the time for review in the sister state has expired seems unfair and could result in an execution and sale of the debtor's assets in California in cases where the sister state judgment has been vacated.

Section 1710.65. Exhibit II (see p. 7) suggests that, where the filed judgment is vacated under Section 1710.45, the creditor should be able to waive his right to appeal the vacation and, within the time allowed for an appeal, bring an action on the underlying claim by treating the complaint as an amended pleading. He further suggests that, if the sum sued for required it, the action could be transferred to the appropriate inferior court. The staff does not see any particular need for this procedure. Apparently, it is thought that the language of Section 1710.65(b) prevents bringing an action on the sister state judgment where a judgment has previously been entered under the filing provisions even if that judgment is then vacated. Perhaps the words "and not vacated" could be added at the end of subdivision (b) to clear up this ambiguity. However, the staff tends to think it is best to require the creditor who has started using the filing procedure to continue with that procedure. Presumably, the matters decided in a hearing on the motion to vacate would be res judicata in an action on the judgment in any event.

Respectfully submitted,

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Legal Counsel

Memorandum 73-65

EXHIBIT I

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June 26, 1973

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California Law Revision Commission
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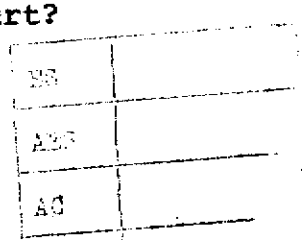
RE: TENTATIVE RECOMMENDATION RELATING TO ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

Dear Sirs:

I have the following comments with respect to the above-entitled TENTATIVE RECOMMENDATION . . . .

My general impression is that the entire statutory scheme proposed is nothing but an unnecessary gloss, and really accomplishes little other than to specify what in a sense could be done by any practitioner using a summary judgment method under the present statutes in an independent action upon a foreign judgment. The notice of entry of judgment against a judgment debtor seems little different from the end result of a summary judgment, but a party still has thirty days to object to the entry of a judgment based upon a sister state judgment. The kinds of objections that can be raised to entering a California judgment are essentially those which could be raised by way of opposition to a motion for summary judgment in an independent action. The filing of a certified and exemplified copy of a sister state judgment would surely be admissible in a summary judgment proceeding. Just what is accomplished by the independent statutory scheme does not seem worth the added special provisions.

Given the Commission's apparent intent to create this separate statutory scheme, one flaw which comes readily to mind is the apparent exclusion of Federal court Judgments. Why require a judgment creditor in a Federal judgment to utilize exclusively the Federal registration provision (if he wants to go to Federal court) or to maintain an independent action (which he presumably can still do) if he wants to come to a California court?



A second problem with the proposal, in my mind, lies in the venue provisions, and particularly in 1710.25(a)(1). Why allow the action in the county of "any" judgment debtor? Why not at least confine venue to the county of any judgment debtor who the judgment creditor is truly pursuing. For example, suppose a judgment debtor has already settled or satisfied a part of a judgment applicable to him, or has a convenant not to enforce a judgment against him, or for some other reason he will not be a "true" party. The judgment debtor against whom relief is "really" being sought would seem to be unnecessarily disadvantaged. Also, it appears to be a slight oversight, but "judgment debtor" is not defined, while "judgment creditor" is.

I think some clarification of Section 1710.30 should be made to make clear whether the judgment to be entered is in the full face amount of the sister-state judgment, or whether the California judgment will be a reduced amount in the event any partial satisfaction has theretofore been made. Since the application for the entry of judgment requires a statement of the amount remaining unpaid (1710.20(b)(3)), the "judgment based upon the application" may be one in a reduced amount. I think this should be clarified.

There is an ambiguity in 1710.40, and 1710.60(c) in light of the comments to those sections which say "the same sister state judgment may not serve as the basis for entry of more than one California judgment" (1710.40 Comment). What about the reduction of a sister state judgment to a California judgment, and a new (independent) action on the California judgment just prior to ten years later? Is the second California judgment based upon the sister state judgment, or upon the initial California judgment, such that the second California judgment might not be precluded by the proposed statutes?

With respect to 1710.50, it does seem that the interim, emergency attachment provisions essentially provide for the same thing and would adequately take care of the problem you are trying to reach, even if you left the independent action method of enforcement in effect.

In conclusion, it seems to me that your statements on page 4 (first full paragraph) about the great advantages of the proposed system are quite presumptuous. Nowhere does it appear evident to me that the proposed statutory scheme does anything that a practitioner could not presently do using the independent action method, coupled with a prompt motion for summary judgment based upon a certified and exemplified copy of the sister state judgment.

Very truly yours,

STEVEN M. KIPPERMAN

SMK/jm

EXHIBIT II

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June 29, 1973

California Law Revision Commission
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Gentlemen:

Re: Tentative Recommendation relating to Enforcement of Sister State Money Judgments

Various facts situations which have arisen in my practice in connection with both the prosecution and defense of actions on sister state judgments, result in my having several comments on the referenced Recommendation. Insofar as possible, I will deal with them in order with respect to the proposed new sections.

Essentially, there are only three issues capable of litigation in a sister state judgment proceeding, to wit: identity of the Defendant/Judgment Debtor; post-judgment payment; and entitlement to full faith and credit. In §1710.10 the definition of a sister state money judgment includes the phrase "entitled to full faith and credit". It is this issue which is most frequently subject to litigation, and some argument could be made that one who uses the new procedure in connection with a sister state judgment which is ultimately found to be not entitled to full faith and credit, had abused process in his execution activities.

I believe this possibility would be completely obviated by changing the definition to read: "As used in this chapter, 'Sister State Judgment' means that part of any judgment, decree, or order of a court of record of a state of the United States, final on its face, which requires the payment of money." Such a change in definition would make it clear that a "fair on its face" approach to entitlement to full faith and credit is intended.

Unfortunately, it is not unheard of for judgment creditor claimants to be lacking in complete candor. The status of the judgment debtor, as a California resident or non-resident, becomes extremely important in the enforcement procedure. The questions

of whether a corporate defendant is a domestic corporation, a foreign corporation qualified under §§6403 et. seq., Corporations Code, or neither; and the question of compliance by foreign partnerships with §15700, Corporations Code, are matters readily ascertainable from public records.

The last sentence of proposed §1710.20(b)(5) permits the statement to be made upon the judgment creditors information and belief. It would not work any great hardship on the judgment creditor to require that a certificate of the Secretary of State, dated within 30 days prior to filing the proceedings, be annexed to the application if it is contended that the defendant is either a foreign partnership not qualified under §15700, or a foreign corporation, not qualified under §§6403 *et seq.* A sentence could be added to the proposed section reading: "Certificate of the Secretary of State that the judgment debtor is neither a domestic corporation, a foreign corporation qualified to do business in this state, nor a foreign partnership which has filed a statement pursuant to §15700 of the Corporations Code, made within 30 days prior to filing the application, shall be included in the application if such be the case."

Corporate parties sometimes change their names by amendment of the Articles of Incorporation, by mergers, etc. Also, in some cases a foreign corporation is required to adopt a new name for its California qualification. Individuals change their names by marriage, court procedure, or informally. The proposed new statute is completely silent on the means by which a judgment creditor could enforce his sister state judgment against Jane Doe or the XYZ Corporation, against Jane Roe or the ZYX Corporation, even though they are the identical persons.

I believe the rights of judgment creditors would be substantially improved, without detriment to judgment debtors, by changing subdivision 6 of §1710.20(b) to subdivision 7, and adding a new subdivision 6 reading as follows: "If the name by which the judgment debtor is known at the time of application varies from the name of the judgment debtor as set forth in the sister state judgment, a statement of that fact, which may not be made upon information and belief, and a statement of the means by which the name was changed, which may be made upon information and belief."

The notification to the judgment debtor which must preceed any execution in the great majority of cases is to be served as a

summons (§1710.35). However, §473.5 Code of Civil Procedure refers in terms to actions commenced by summons, and §1710.45(b) and the comments thereto can be construed to be an exception from the provisions of §473, Code of Civil Procedure, for sister state judgment enforcement. The same considerations of substituted service of summons which made §473.5 an appropriate addition to the code upon the adoption of the expanded service of process statute apply, with at least equal force in a sister state judgment enforcement proceeding. Traditionally, §473 has been given the widest possible application. To insure the applicability of both of these procedures to sister state judgment enforcement I would strongly urge the addition of §1710.45(c) reading as follows: "The provisions of §§473 and 473.5 Code of Civil Procedure apply to all motions for vacation of judgments entered pursuant to this chapter."

In many respects pre-notification execution under §1710.50(c) more closely resembles attachment than execution. It is carefully drawn, and in most cases would probably be sustainable as our attachment under recent constitutional decisions; but its constitutional validity could be substantially enhanced by adding a second sentence to the section reading: "In lieu of *ex parte* issuance of writ of execution, the court may require such notice as it deems appropriate to be given to the judgment debtor of the *ex parte* application, and in such cases shall temporarily restrain any disposition of property subject to levy of execution. Such restraining order shall expire upon denial of the application, or upon the expiration of five days after grant of the application."

To strengthen the enforceability of §1710.60(a), without substantial burden to the judgment creditor, a further amendment to §1710.20(c) seems appropriate. That subsection could read: "A copy of the sister state judgment, and a certificate of the clerk of the rendering court that no stay of execution is in effect, each dated within 30 days prior to filing the application, shall be attached to the application."

The provision for security for costs by a non-resident plaintiff in §1030 Code of Civil Procedure would not on its face appear to apply to a proceeding for enforcement of a sister state money judgment. In an action brought to enforce a sister state judgment under present law, or as an option under the proposed new law, the resident defendant is, and would be, able to avail himself

of the cost security provisions of §1030.

I believe that when a motion to vacate a "registration" judgment is made, thereby effectively converting the proceeding into an action on the sister state judgment, that security provision should also be available. This could be accomplished by adding to the first paragraph of §1030 the following sentence: "As used herein 'plaintiff' includes 'judgment creditor' as defined in §1710.15 and 'defendant' includes the moving party in a motion pursuant to §1710.45."

A matter closely related to the proposed statute, but as to which the proposed statute is completely silent, is the fact situation in which a foreign judgment has been entered which is determined to be unenforceable as a sister state judgment, but *nevertheless* the judgment creditor's claim against the judgment debtor is a valid one, not barred by statute of limitations. Would it not, therefore, be appropriate to add further provisions to the proposed act, providing in substance that if upon hearing of a motion under §1710.45 the judgment is vacated the creditor may, within the time allowed for appeal, waive his right to appeal from the order of vacation by filing a complaint on the underlying claim, which could be served as though an amended pleading (e.g. mail service upon the attorney of record, etc.).

If the complaint were for a sum within the jurisdiction of an inferior court, it could be required that the complaint be accompanied by a declaration of venue for an action on the sister state judgment, and tender of the fees for transfer to the appropriate inferior court.

I appreciate the opportunity to submit these comments and suggestions, and the consideration I am sure they will receive.

Yours very truly,

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RCZ:sk/so

EXHIBIT III

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July 17, 1973

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Dear Mr. DeMoully:

In an earlier letter I mentioned that I expected the Ad Hoc Committee on Attachments to meet in the middle of July. Unfortunately, because of numerous conflicts, that meeting has been cancelled. However, I did want to at least send you my impressions regarding the questions in your letters of June 19, 1973.

First, with regard to the sister state money judgment recommendation, I believe that the Ad Hoc Committee has no objections whatever. As you know, the Commission has cleared up the question of giving a notice of rights to the judgment debtor, and I believe that was the main comment that we had made in the past, aside from the question of why the bill should be limited to money judgments only. The money judgment matter was strictly a question, and I cannot imagine that the Ad Hoc Committee would oppose the bill on that ground. I recognize the fact that the Commission has already considered the Ad Hoc Committee's comments on all of the above Sections, as well as many others, but I thought I should mention these items to you at this time for whatever that information is worth.

Very truly yours,

Ferdinand F. Fernandez
Chairman
Ad Hoc Committee on Attachments

FFF:kig

cc: Arnold M. Quittner
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OUR FILE NUMBER

July 30, 1973

Mr. John D. Miller
Chairman
California Law Revision
Commission
Stanford University
Stanford, California 94305

Re: Enforcement of Sister State
Money Judgments

Dear John:

I have reviewed with interest the Commission's recommendation relating to enforcement of sister state money judgments. It appears to me to be a well thought out proposal. In fact, my sole reason for writing you is to state my own belief that the proposal will simplify and expedite in a very desirable fashion the enforcement of sister state judgments which, in the past, has required an unduly combersome procedure.

With kindest regards.

Sincerely,

Richard H. Wolford

Richard H. Wolford

RHW:ndb

ES	
AES	
AC	
AA	

EXHIBIT 7

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August 15, 1973

California Law Revision Commission
School of Law
Stanford, California 94305

Gentlemen:

I have reviewed with great interest your tentative recommendations relating to the enforcement of Sister State Money Judgments. On several occasions during recent years I have represented creditors holding judgments in Sister States who were seeking to establish such judgments within the State of California in order to enforce the judgment against the debtor's property within the State.

Your proposed amendments to the Code of Civil Procedure, if enacted into law, will fill a void in California Statutory Law relating to the enforcement of Sister State Money Judgments dating back to the repeal of the Uniform Foreign Money Judgments Recognition Act in 1931. The enactment of such laws will come as a welcome relief to the general practitioner who may not be called upon to enforce Sister State Money Judgments with any regularity and who must review California case law on the subject in order to properly establish and enforce the judgment.

From the creditor's point of view the additional legal steps required to enforce a Sister State Money Judgment seem complex and appear to duplicate the legal steps which were required to obtain the judgment in the first place, in many instances only after protracted litigation. In order to be effective from the creditor's standpoint the procedure to be followed within the State of California must be simple, speedy and certain. The tentative procedures which you outlined in your draft generally seemed to satisfy these requirements.

However, I do note one delay which appears to be without substantial reason. The proposed Code of Civil Procedure Section 1710.50 relating to the issuance of writs of execution provides, with certain exceptions, that such writs may not issue until at least thirty (30) days after the judgment creditor serves notice of entry of the judgment upon the judgment debtor. From the standpoint of the judgment creditor such delay appears to be wholly unreasonable. My recommendation is that the statutes relating to

the issuance of writ of execution be precisely the same as those relating to California Money Judgments. The safeguards provided by the present Code of Civil Procedure Section 692 (requiring ten (10) days' notice to the judgment debtor before the sale of personal property and twenty (20) days' notice before the sale of real property) and Code of Civil Procedure Section 690.50 (which provides a ten (10) day period during which the judgment debtor may claim exemptions from execution) are adequate. By the time the judgment creditor has taken steps to establish the judgment in California the debtor will have been thoroughly acquainted with the underlying action or presumably will have already waived his rights by default.

My experience has been that California attorneys who represent a Sister State Judgment Debtor will attempt to open the proceeding in the Sister State through some type of review in order to delay the establishment, and thus the enforcement, of such judgment within the State of California. If, after the establishment of such a judgment within the State of California, such judgment debtor should still attempt to stay the enforcement of the judgment, let him do so within the same time as would be required to stay enforcement of the judgment had such judgment originated within the State of California.

Sincerely yours,

FITZGERALD, ABBOTT & BEARDSLEY

By Llewellyn E. Thompson II
Llewellyn E. Thompson, II

LET:ckd

EXHIBIT VI

CODE OF CIVIL PROCEDURE SECTIONS 473 AND 473.5

§ 473. Amendments permitted by court; enlargement of time to answer or demur; continuance, costs; relief from judgment, etc., taken by mistake, inadvertence, surprise, or excusable neglect; clerical mistakes in judgment or order; vacating void judgment or order

Allowable amendments. The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

Continuance. When it appears to the satisfaction of the court that such amendment renders it necessary, the court may postpone the trial, and may, when such postponement will by the amendment be rendered necessary, require, as a condition to the amendment, the payment to the adverse party of such costs as may be just.

Relief from judgment or order taken by mistake, etc. The court may, upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. Application for such relief must be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and must be made within a reasonable time, in no case exceeding six months, after such judgment, order or proceeding was taken; provided, however, that, in the case of a judgment, order or other proceeding determining the ownership or right to possession of real or personal property, without extending said six months period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, order or other proceeding has been taken, and upon his attorney of record, if any, notifying said party and his attorney of record, if any, that such order, judgment or other proceeding was taken against him and that any rights said party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of said notice, then such application must be made within 90 days after service of such notice upon the defaulting party or his attorney of record, if any, whichever service shall be later.

Clerical mistakes; vacating void judgment or order. The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

§ 473.5 **Motion to set aside default and for leave to defend action**

(a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him in such action, he may serve and file a notice of motion to set aside such default or default judgment and for leave to defend the action. Such notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him; or (ii) 180 days after service on him of a written notice that such default or default judgment has been entered.

(b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date not less than 10 nor more than 20 days after filing of such notice, and it shall be accompanied by an affidavit showing under oath that such party's lack of actual notice in time to defend the action was not caused by his avoidance of service or inexcusable neglect. The party shall serve and file with such notice a copy of the answer, motion, or other pleading proposed to be filed in the action.

(c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his lack of actual notice in time to defend the action was not caused by his avoidance of service or inexcusable neglect, it may set aside the default or default judgment on such terms as may be just and allow such party to defend the action. (Added by Stats.1969, c. 1610, p. 3373, § 22, operative July 1, 1970.)

EXHIBIT VII

CODE OF CIVIL PROCEDURE § 1030

§ 1030. Security for costs; plaintiff a nonresident or foreign corporation

When the plaintiff in an action or special proceeding resides out of the State, or is a foreign corporation, security for the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action or special proceedings must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, or with the judge if there be no clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or special proceeding, not exceeding the sum of three hundred dollars ($300). A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action or special proceeding stayed until such new or additional undertaking is executed and filed. Any stay of proceedings granted under the provisions of this section shall extend to a period 10 days after service upon the defendant of written notice of the filing of the required undertaking.

After the lapse of 30 days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge, may order the action or special proceeding to be dismissed.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

T E N T A T I V E

RECOMMENDATION

relating to

ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

June 1973

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments should be sent to the Commission not later than August 20, 1973.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature.

This tentative recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

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#39.100 5/18/73

TENTATIVE

RECOMMENDATION OF THE CALIFORNIA

LAW REVISION COMMISSION

relating to

ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

BACKGROUND

The full faith and credit clause of Article IV, Section 1, of the United States Constitution requires states to enforce[1] the valid money judgments[2] of the courts of sister states subject to certain defenses.[3]

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1. "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." U.S. Const., Art. IV, § 1 (in part). The manner of enforcing sister state money judgments is not specified by the federal Constitution or statutes but rather is determined by the law of the forum state. Restatement (Second) of Conflict of Laws § 99 (1971).

2. Restatement (Second) of Conflict of Laws § 100 & Introductory Note §§ 99-102 (1971); Milwaukee County v. M.E. White Co., 296 U.S. 268 (1935). The United States Supreme Court has not yet decided whether or not judgments ordering the performance of an act other than the payment of money--e.g., orders to convey land--are required by the full faith and credit clause to be enforced. Restatement (Second) of Conflict of Laws § 102, Comment c (1971). California courts have allowed the enforcement of sister state decrees to convey land. Rozan v. Rozan, 49 Cal.2d 322, 317 P.2d 11 (1957)(dictum); Spalding v. Spalding, 75 Cal. App. 569, 243 P. 445 (1925); Redwood Inv. Co. v. Exley, 64 Cal. App. 455, 221 P. 973 (1923). Restatement (Second) of Conflict of Laws § 102, Reporter's Notes to Comments c and d (1971). This recommendation is limited to consideration of a procedure for enforcing money judgments entitled to full faith and credit.

3. Defenses to enforcement include the following: the judgment is not final and unconditional; the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; misconduct of the plaintiff; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 103-121 (1971).

In California, the exclusive way to enforce a sister state money judgment is to bring an action on the judgment in a California court; when a California judgment is obtained, then execution may issue.[4] This traditional manner of enforcing judgments of sister states requires all the normal trappings of an original action. The judgment creditor must file a complaint. There must be judicial jurisdiction. The creditor may want to seek a writ of attachment, if available, until such time as the judgment has been established. A trial (however summary) must be held in order to establish the sister state judgment at which time the judgment debtor may raise any defenses to the validity of the judgment that he may have. Only after the entry of the California judgment may the judgment creditor seek execution on the debtor's assets in this state.

The formal, traditional process of enforcing sister state judgments understandably has been the subject of criticism.[5] A simpler and more efficient method of enforcing sister state judgments is offered by a registration system similar to the procedure enacted by Congress in 1948 for the enforcement of federal district court judgments in other districts[6] and the

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4. 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548 (2d ed. 1971); Restatement (Second) of Conflict of Laws § 99, Comment b; § 100, Comment b (1971); cf. Code Civ. Proc. §§ 337.5(3), 1913.

5. See, e.g., Kulzer, The Uniform Enforcement of Foreign Judgments Act and The Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act), State of New York Judicial Conference, 13th Annual Report 248 (1968); Report of the Standing Committee on Jurisprudence and Law Reform, 52 A.B.A. Report 292 (1927); Jackson, Full Faith and Credit--The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1 (1945); Paulsen, Enforcing the Money Judgment of a Sister State, 42 Iowa L. Rev. 202 (1957).

6. 28 U.S.C. § 1963 (1970); see Stanford v. Utley, 341 F.2d 265 (8th Cir. 1965); Juneau Spruce Co. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 697 (D. Hawaii 1955); Matanuska Valley Lines, Inc. v. Molitor, 365 F.2d 358 (1966), cert. denied, 386 U.S. 914 (1967). Registration systems have long been used successfully in other countries with federated states, e.g., Australia. See Yntema, The Enforcement of Foreign Judgments in Anglo-American Law, 33 Mich. L. Rev. 1129 (1935); Leflar, The New Uniform Foreign Judgments Act, 24 N.Y.U. L.Q. Rev. 336, 343-345 (1949); Morison, Extra-Territorial Enforcement of Judgments Within the Commonwealth of Australia, 21 Aust. L.J. 298 (1947).

revised Uniform Enforcement of Foreign Judgments Act of 1964.[7] The registration system of the Uniform Act has been adopted in the major commercial states of New York and Pennsylvania and also in Arizona, Colorado, Kansas, North Dakota, Oklahoma, Wisconsin, and Wyoming.[8]

RECOMMENDATION

The Law Revision Commission recommends that a registration system for the enforcement of sister state judgments be enacted in California. Under the recommended system, the judgment creditor files an application in a California superior court for the entry of a California judgment based on the sister state judgment. The application is accompanied by an authenticated copy of the sister state judgment. The clerk enters the judgment as he would a judgment of the superior court.

The judgment creditor is required to promptly serve notice of entry of the judgment in the manner provided for service of summons. The judgment debtor, upon noticed motion made not later than 30 days after service by the creditor of the notice of entry of the judgment, may have the judgment vacated on any ground that would be a defense to an action in California to enforce the sister state judgment.

The judgment creditor may obtain a writ of execution and have it levied prior to notice of entry of judgment where "great or irreparable injury" would otherwise result or where the judgment debtor is a nonresident (a nonresident individual, a corporation which has not qualified to do business in California, or a partnership which has not designated an agent for

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7. 9A Uniform Laws Ann. 488 (1965).

8. In addition, an earlier act--the Uniform Enforcement of Foreign Judgments Act of 1948--which provides a summary judgment procedure, has been adopted in Arkansas, Illinois, Missouri, Nebraska, Oregon, and Washington. 9A Uniform Laws Ann. 475 (1965); National Conference of Commissioners on Uniform State Laws, Handbook (1970).

service of process in California). However, in such cases, assets levied upon may not be sold (except where the property is perishable) or distributed to the creditor until at least 20 days after the creditor serves notice of entry of the judgment on the judgment debtor. In all other cases, the judgment creditor may not obtain a writ of execution until 10 days after he serves the judgment debtor with notice of entry of judgment.

The recommended registration procedure offers several distinct advantages over the traditional enforcement process. The registration system is speedy, efficient, and inexpensive to utilize. It offers savings in time and money to both courts and creditors. The procedure is fair to the judgment debtor since his opportunity to attack the enforcement of the sister state judgment is preserved. The registration procedure avoids the necessity under current law of obtaining a writ of attachment in order to preserve assets during the time suit is brought to establish the sister state judgment.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Sections 674, 1713.1, and 1713.3 of, to amend the heading of Title 11 of Part 3 of, to add Chapter 1 (commencing with Section 1710.10) to Title 11 of Part 3 of, and to repeal Section 1915 of, the Code of Civil Procedure, relating to enforcement of judgments.

The people of the State of California do enact as follows:

Section 1. Section 674 of the Code of Civil Procedure is amended to read:

674. An abstract of the judgment or decree of any court of this State, including a judgment entered pursuant to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, or a judgment of any court sitting as a small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal, certified by the clerk, judge or justice of the court where such judgment or decree was rendered, may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned shall contain the following: title of the court and cause and number of the action; date of entry of the judgment or decree; names of the judgment debtor and of the judgment creditor; amount of the judgment or decree, and where entered in judgment book, minutes or docket in the justice court.

Comment. Section 674 is amended to make clear that a judgment entered pursuant to Section 1710.10 et seq. may be recorded and become a lien pursuant to Section 674. See Section 1710.10 et seq. and Comments.

Sec. 2. Section 1713.1 of the Code of Civil Procedure is amended to read:

1713.1. As used in this chapter:

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, ~~or the Ryukyu Islands~~;

(2) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

Comment. Section 1713.1(1) is amended to reflect the return to Japan of administrative rights over the Ryukyu Islands effective May 15, 1972. See Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands, June 17, 1971, art. I, para. 1, art. V, paras. 1 & 2 (effective May 15, 1972).

Sec. 3. Section 1713.3 of the Code of Civil Procedure is amended to read:

1713.3. Except as provided in Section 1713.4, a foreign judgment meeting the requirements of Section 1713.2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit. , except that it may not be enforced pursuant to the provisions of Chapter 1 (commencing with Section 1710.10).

Comment. The amendment of Section 1713.3 makes clear that the procedure for filing sister state judgments provided by Chapter 1 (commencing with Section 1710.10) is not available for the enforcement of foreign nation money judgments. See Section 1710.10 and Comment.

Sec. 4. Section 1915 of the Code of Civil Procedure is repealed.

~~1915.--Except-as-provided-in-Chapter-2-(commencing-with-Section-1713) of-Title-11-of-Part-3-of-this-code,-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.~~

Comment. Section 1915 is repealed because it has been largely ignored by the courts and has served no useful purpose. See A. Ehrenzweig, Conflict of Laws § 45 at 163, n.25 (1962)("Being much too sweeping in its language . . . . this provision has remained ineffective."). See also Ryder v. Ryder, 2 Cal. App.2d 426, 37 P.2d 1069 (1935); DeYoung v. DeYoung, 27 Cal.2d 521, 165 P.2d 457 (1946); Harlan v. Harlan, 70 Cal. App.2d 657, 161 P.2d 490 (1945); Sohnlein v. Winchell, 230 Cal. App.2d 508, 41 Cal. Rptr. 145 (1964).

Section 1915 apparently was enacted in nearly its present form in 1907 with an eye to the doctrine of reciprocity to assure the foreign execution of judgments entered in California against insurance companies in foreign nations, primarily Germany, involving claims arising out of the 1906 earthquake and fire. However, the section failed to achieve its basic historical purpose when in 1909 the imperial court of Germany refused to permit the execution of California judgments rendered by default against German insurance companies. See Lorenzen, The Enforcement of American Judgments Abroad, 29 Yale L.J. 188,

202-205 (1919). Since that time, the meaning and effect of Section 1915 have been a source of confusion. See, e.g., Scott v. Scott, 51 Cal.2d 249, 254, 331 P.2d 641, ___ (1958)(Traynor, J., concurring); Ryder v. Ryder, supra; Comment, Recognition of Foreign Country Divorces: Is Domicile Really Necessary?, 40 Cal. L. Rev. 93 (1952). Section 1915 became of even less possible use with the enactment of the Uniform Foreign Money-Judgments Recognition Act (Sections 1713-1713.8) in 1967, which removed foreign nation money judgments entitled to recognition under that act from the effect of Section 1915. With the repeal of Section 1915, the enforcement of foreign nation judgments is a matter of other statutory provisions and decisions of the courts under principles of the common law and private international law. See Sections 1713-1713.8; Scott v. Scott, supra (Traynor, J., concurring); Restatement (Second) of Conflict of Laws § 98, Comment b (1971); Smit, International Res Judicata and Collateral Estoppel in the United States, 9 U.C.L.A. L. Rev. 44 (1962).

Sec. 5. The heading of Title 11 of Part 3 of the Code of Civil Procedure is amended to read:

TITLE 11. ~~OF PROCEEDINGS IN PROBATE COURTS~~

SISTER STATE AND FOREIGN MONEY JUDGMENTS

Sec. 6. Chapter 1 (commencing with Section 1710.10) is added to Title 11 of Part 3 of the Code of Civil Procedure, to read:

Chapter 1. Sister State Money Judgments

§ 1710.10. "Sister state judgment"

1710.10. As used in this chapter, "sister state judgment" means that part of any judgment, decree, or order of a court of a state of the United States requiring the payment of money which is entitled to full faith and credit in this state.

Comment. Section 1710.10 is based on Section 1 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). However, unlike the Uniform Act which applies to all state and federal judgments entitled to full faith and credit, Section 1710.10 is limited to sister state judgments which require the payment of money. It should be noted that "sister state judgment" is defined as a judgment or part of a judgment requiring the payment of money. Hence, if a judgment of a sister state requires both the payment of money and the performance of some other act, only the part requiring the payment of money is considered a "sister state judgment" under this chapter and is thereby enforceable by its filing provisions. See Section 1710.20.

Section 1710.60(b) prevents the filing of a "sister state judgment" pursuant to this chapter if an action has been brought or judgment previously rendered in California (in either federal or state court) based on the "sister state judgment." In view of the definition of "sister state judgment" to include part of a judgment requiring the payment of money, if a judgment creditor has brought an action on the part of the judgment of the sister state which requires performance of an act other than the payment

of money but has not brought an action on the part of the judgment for money damages, then the judgment creditor is not precluded by subdivision (b) of Section 1710.60 from filing under this chapter in order to enforce the part of the judgment for the payment of money (that is, the "sister state judgment"). Similarly, if the creditor has filed a "sister state judgment" as defined in this section, he is not precluded by subdivision (b) of Section 1710.65 from bringing an action in this state on the nonmoney damages part of his judgment.

Section 1710.10 also requires that the sister state money judgment be one that is "entitled to full faith and credit in this state," a matter determined by the decisions interpreting the full faith and credit clause of the United States Constitution. See U.S. Const., Art. IV, § 1. See also 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 100, 102, Comment c and Reporter's Note (1971).

Federal money judgments may be registered in California federal district courts pursuant to federal procedures. 28 U.S.C. § 1963 (1970).

Nothing in this chapter affects the right of a judgment creditor to bring an action in California to enforce a sister state, federal, or foreign nation money judgment except that enforcement of a "sister state judgment" may not be had both by an action and under this chapter. See Sections 1710.20(b)(4), 1710.60(b), and 1710.65.

§ 1710.15. "Judgment creditor"

1710.15. As used in this chapter, "judgment creditor" means the person or persons who could bring an action to enforce a sister state judgment.

Comment. Section 1710.15 incorporates the law relating to which judgment holders may enforce the judgment where there are multiple judgment creditors. See Code Civ. Proc. §§ 378, 389, and 578. See also Code Civ. Proc. § 17 (singular includes the plural).

§ 1710.20. Application for entry of judgment

1710.20. (a) A judgment creditor may apply for the entry of a judgment based on a sister state judgment by filing an application with the superior court for the county designated by Section 1710.25.

(b) The application shall be executed under oath and shall include all of the following:

(1) A statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations.

(2) A statement, based on the applicant's knowledge and belief, that no stay of enforcement of the sister state judgment has been granted and currently is in effect in the sister state.

(3) A statement of the amount remaining unpaid under the judgment.

(4) A statement that no action based on the sister state judgment is currently pending in any court in this state and that no judgment based on such sister state judgment has previously been entered in any proceeding in this state.

(5) Where the judgment debtor is an individual, a statement setting forth the name and last known residence address of the judgment debtor. Where the judgment debtor is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code. Where the judgment debtor is a partnership, a statement of the partnership's name, place of domicile, and whether the partnership, if foreign, has filed a designation pursuant to Section 15700 of the Corporations Code. A statement required by this paragraph may be made on the basis of the judgment creditor's information and belief.

(6) A statement setting forth the name and address of the judgment creditor.

(c) A properly authenticated copy of the sister state judgment shall be attached to the application.

Comment. Section 1710.20 requires that the application be filed with a superior court. See also Section 1710.25. Use of the procedure provided by this chapter should not be so frequent as to be burdensome, and the consolidation of all such proceedings in the superior court should promote efficient and uniform operation. Although normally claims of not more than $1,000 are heard in justice court (Code Civ. Proc. § 112) and claims of not more than $5,000 are heard in municipal court (Code Civ. Proc. § 89), proceedings under this chapter take place in superior court regardless of amount.

Paragraph (1) of subdivision (b) adopts the statute of limitations applicable to bringing an action in this state on the sister state judgment. The limitations period is determined by Title 2 of Part 2 of this code. Subdivision 3 of Section 337.5 prescribes a basic 10-year period for commencement of an action upon a sister state judgment. The 10-year period is tolled while the judgment debtor is absent from the state. See Code Civ. Proc. § 351; Cvecich v. Giardino, 37 Cal. App.2d 394, 99 P.2d 573 (1940). A lesser period may be applicable under the borrowing provision of Section 361. Biewind v. Biewind, 17 Cal.2d 108, 109 P.2d 701 (1941); Parhm v. Parhm, 2 Cal. App.3d 311, 82 Cal. Rptr. 570 (1969); Weir v. Corbett, 229 Cal. App.2d 290, 40 Cal. Rptr. 161 (1964); Stewart v. Spaulding, 72 Cal. 264, 13 P. 661 (1887). But cf. Mark v. Safren, 227 Cal. App.2d 151, 38 Cal. Rptr. 500 (1964). For a good discussion of the problems of applying a borrowing statute like Section 361, see Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union, 128 F. Supp. 697 (D. Hawaii 1955). If the judgment is made payable in installments, the statute of limitations for each installment runs from the time each payment falls due. Biewind v. Biewind, supra; DeUprey v. DeUprey, 23 Cal. 352 (1863); Mark v. Safren, supra. It should be noted that the bar of the statute of limitations is also a defense to enforcement of a sister state judgment. See Section 1710.45 and Comment.

Subdivision (b)(2) reflects the substantive requirement of subdivision (a) of Section 1710.60. See also Section 1710.55(a)(2). Subdivision (b)(3) is designed to prevent double recovery. Subdivision (b)(4) reflects the substantive requirement of subdivision (b) of Section 1710.60.

The statement required by paragraph (5) of subdivision (b) permits an initial check as to proper venue. See Section 1710.25 and Comment. It also provides information necessary to determine whether a writ of execution may issue before notice of entry is given the judgment debtor. See Section 1710.55(b) and Comment.

Subdivision (c) requires that a properly authenticated copy of the sister state judgment be attached to the application. Section 1738 of Title 28 of the United States Code requires that full faith and credit be given to judgments authenticated in the manner there set forth and thereby provides certain maximum restrictions. For California provisions relating to authentication of judgments, see, e.g., Evid. Code §§ 1452, 1453, 1530(a).

§ 1710.25. Venue

1710.25. Subject to the power of the court to transfer the proceeding pursuant to Title 4 (commencing with Section 392) of Part 2, the application shall be filed in the office of the clerk of the superior court for:

(a) The county in which any judgment debtor resides; or

(b) If no judgment debtor is a resident, any county in this state.

Comment. Section 1710.25 states the venue requirements for proceedings under this chapter. Where a judgment creditor errs in his application, the judgment debtor may request a transfer of the proceeding. A transfer will not, however, affect the validity of actions already taken.

§ 1710.30. Entry of judgment

1710.30. Upon the filing of the application, the clerk shall enter a judgment based upon the application. Entry shall be made in the same manner as entry of a judgment of the superior court.

Comment. Section 1710.30 is similar to Section 2 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). Section 2 requires the clerk to file a sister state judgment and treat it in the same manner as a judgment of his state. Section 1710.30 accomplishes the same end by requiring entry of a judgment on the basis of the judgment creditor's application (attached to which is an authenticated copy of the sister state judgment).

§ 1710.35. Notice of entry of judgment

1710.35. Notice of entry of judgment shall be served promptly by the judgment creditor upon the judgment debtor in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

Comment. Section 1710.35 requires the judgment creditor to promptly serve notice of entry of judgment. In proceedings under this chapter, the court clerk does not send notice of entry of judgment as provided in Section 664.5.

Ordinarily, service of notice of entry of judgment must be made at least 10 days before a writ of execution may issue. See Section 1710.50(a) and Comment. In certain circumstances, the judgment creditor may obtain a writ of execution before he serves notice of entry of judgment. See Section 1710.50(b), (c), and Comment. In these latter cases, the judgment debtor may receive notice of the judgment creditor's enforcement activities before notice of entry of judgment is served since the levying officer is required to serve a copy of the writ of execution on the judgment debtor at the time of levy or to mail a copy to him after levy. See Code Civ. Proc. § 682.1.

§ 1710.40. Effect of judgment; enforcement

1710.40. Except as otherwise provided in this chapter, a judgment entered pursuant to this chapter shall have the same effect as a money judgment of a superior court of this state and may be enforced or satisfied in like manner.

Comment. Section 1710.40 provides that a judgment entered pursuant to this chapter is to be treated as a judgment of the superior court for purposes of enforcement. Hence, for example, Code of Civil Procedure provisions regarding judgment liens (Section 674), execution (Section 681 et seq.), and supplemental proceedings (Section 714 et seq.) all apply to the judgment. However, some variations exist between the enforcement procedures of this chapter and those generally applicable. See, e.g., Section 1710.50. The judgment may be renewed for purposes of execution or other enforcement after 10 years as provided by Section 685. However, the same sister state judgment may not serve as the basis for entry of more than one California judgment. See Sections 1710.60(b) and 1710.65 and Comments.

§ 1710.45. Vacation of judgment

1710.45. (a) A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment.

(b) Not later than 30 days after service of notice of entry of judgment pursuant to Section 1710.35, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2, the judgment debtor may, on written notice to the judgment creditor make a motion to vacate the judgment under this section.

Comment. Section 1710.45 allows the judgment debtor to make a noticed motion to vacate the entry of judgment on any ground which in an action would be a defense to granting full faith and credit to a sister state judgment in California. Common defenses to enforcement of sister state judgments include the following: the judgment is not final and unconditional (finality here means no further action by the court rendering the judgment is necessary to resolve the matter litigated); the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; misconduct of the plaintiff; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought. 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971); Restatement (Second) of Conflict of Laws §§ 103-121 (1971).

Where it appears that a writ of execution may be issued or levied before the 10-day notice of motion period specified in Section 1005 has run, the court may either shorten the time of notice under Section 1005 or grant a stay of enforcement under Section 1710.55 in order to prevent execution before the judgment debtor's motion can be heard. The right of the judgment debtor to make a motion to vacate the judgment under this section ceases after the 30-day period provided has expired. However, equitable relief from the judgment may be available in certain circumstances thereafter. See 5 B. Witkin, California Procedure Attack on Judgment in Trial Court § 175 at 3744-3745 (2d ed. 1971); Restatement of Judgments § 112 et seq. (1942).

§ 1710.50. Issuance of writ of execution

1710.50. (a) Except as otherwise provided in this section, a writ of execution on a judgment entered pursuant to this chapter shall not issue until at least 10 days after the judgment creditor serves notice of entry of the judgment upon the judgment debtor, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2.

(b) A writ of execution may be issued before service of the notice of entry of judgment if the judgment debtor is any of the following:

(1) An individual who does not reside in this state.

(2) A foreign corporation not qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code.

(3) A foreign partnership which has not filed a designation pursuant to Section 15700 of the Corporations Code.

(c) The court may order that a writ of execution be issued before service of the notice of entry of judgment if the court finds upon an ex parte showing that great or irreparable injury would result to the judgment creditor if issuance of the writ were delayed as provided in subdivision (a).

(d) Property levied upon pursuant to a writ issued under subdivision (b) or (c) shall not be sold or distributed before 20 days after the judgment creditor serves notice of entry of the judgment upon the judgment debtor, proof of which has been made in the manner provided by Article 5 (commencing with Section 417.110) of Chapter 4 of Title 5 of Part 2. However, if property levied upon is perishable, it may be sold in order to prevent its destruction or loss of value, but the proceeds of the sale shall not be distributed to the judgment creditor before the date sale is permissible for nonperishable property.

Comment. The exceptions to subdivision (a) of Section 1710.50, which requires service of the notice of entry of judgment at least 10 days before a writ of execution may be issued, are stated in subdivisions (b) and (c). A writ of execution may not be issued under subdivision (a) unless proof of service has been filed which shows that the 10-day requirement has been satisfied.

Subdivision (b) permits the issuance and levy of a writ of execution before notice against the assets of three types of nonresident debtors. Subdivision (c) permits issuance of a writ upon an ex parte showing that great or irreparable injury would result if the judgment creditor were required to give notice before obtaining a writ of execution. Although the clerk may issue writs of execution against the debtors described in subdivision (b), the creditor must obtain a court order before a writ of execution may issue under subdivision (c). The clerk should have no trouble making the factual determinations required by subdivision (b) since the necessary information is required in the creditor's application. See Section 1710.20(b)(5). However, the determination required by subdivision (c) is a judicial function.

The 20-day period provided in subdivision (d) gives the judgment debtor an opportunity to make a motion to vacate the judgment before his property is sold or distributed. See Section 1710.45.

It should be noted that Section 692 provides for notice to the debtor 10 days before sale of personal property, and 20 days before sale of real

property, and that Section 690.50 provides for a 10-day period during which the judgment debtor may claim exemptions. Section 1710.50 does not affect these requirements, but the delays in sale and distribution provided by Sections 690.50 and 692 run concurrently with the delay provided by subdivision (d) if the other requirements of Sections 690.50 and 692 are met.

§ 1710.55. Stay of enforcement

1710.55. (a) The court shall grant a stay of enforcement where:

(1) An appeal from the sister state judgment is pending or will be taken in the state which originally rendered the judgment. Under this paragraph, enforcement shall be stayed until the appeal is concluded or the time for appeal has expired.

(2) A stay of enforcement of the sister state judgment has been granted in the sister state. Under this paragraph, enforcement shall be stayed until the sister state stay of enforcement expires or is vacated.

(3) The judgment debtor has made a motion to vacate pursuant to Section 1710.45. Under this paragraph, enforcement shall be stayed until the judgment debtor's motion to vacate is determined.

(4) Any other circumstance exists where the interests of justice require a stay of enforcement.

(b) The court shall grant a stay of enforcement under this section on such terms and conditions as are just. The court may grant a stay on its own motion, on ex parte motion, or on noticed motion. The court may require an undertaking in an amount it thinks just, but the amount of the undertaking shall not exceed double the amount of the judgment creditor's claim. If a writ of execution has been issued, the court may order that it remain in effect. If property of the judgment debtor has been levied upon under a writ of execution, the court may order the levying officer to re-

tain possession of the property capable of physical possession and to maintain the levy on other property.

Comment. Section 1710.55 gives broad discretion to the court to grant stays of enforcement in the interests of justice. Where the court has adequate information, it may grant the stay on its own motion. Otherwise, it is up to the judgment debtor to show a need for the stay on ex parte or noticed motion. Subdivision (b) gives the court broad discretion in fashioning the terms of the stay in order to adequately protect the interests of both the judgment creditor and the judgment debtor. The matter of undertakings is left up to the court which may consider factors such as the probability of a successful defense, the propensity of the debtor to conceal or transfer his assets, that the debtor has already given a bond on appeal in the sister state, or that the debtor prefers having his property held subject to levy rather than giving an undertaking.

§ 1710.60. Limitations on entry of judgment

1710.60. No judgment based on a sister state judgment may be entered pursuant to this chapter if:

(a) A stay of enforcement of the sister state judgment has been granted and is currently in effect in the sister state; or

(b) An action based on such judgment is currently pending in any court in this state or if a judgment based on such judgment has previously been entered in any proceeding in this state.

Comment. Subdivision (a) of Section 1710.60 prevents the judgment creditor from using the procedures of this chapter to obtain the entry of a judgment based on a sister state judgment where enforcement has been stayed in the sister state. See Section 1710.20(a)(2). If entry of judgment is obtained in this state before the stay of enforcement of the sister state judgment is granted in the sister state, the judgment debtor may seek to stay enforcement of the California judgment under subdivision (a)(2) of Section 1710.55.

Subdivision (b) of Section 1710.60, together with subdivision (b) of Section 1710.65, precludes a judgment creditor from using his sister state judgment as the basis for more than one California judgment. See Section 1710.10 and Comment. The creditor may either secure enforcement pursuant to this chapter or bring a separate action to enforce his sister state judgment in California, but he may not do both, nor may he apply more than once under this chapter on the same sister state judgment. See Section 1710.10 and Comment. The judgment creditor may, of course, renew the California judgment pursuant to Section 685.

§ 1710.65. Optional procedure

1710.65. (a) Except as provided in subdivision (b), nothing in this chapter affects any right a judgment creditor may have to bring an action to enforce a sister state judgment.

(b) No action to enforce a sister state judgment may be brought where a judgment based on such sister state judgment has previously been entered pursuant to this chapter.

Comment. Subdivision (a) of Section 1710.65 is similar to Section 6 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488, 489 (1965). The enactment of this chapter is not intended to restrict the traditional means of enforcing sister state money judgments which require the judgment creditor to bring an independent action in this state. See 5 B. Witkin, California Procedure Enforcement of Judgment § 193 at 3548-3549 (2d ed. 1970); Restatement (Second) of Conflict of Laws §§ 99, 100, Comment b (1971); Restatement of Judgments § 47, Comment e (1942). However, subdivision (b) makes clear that the judgment creditor must choose between the methods of enforcement offered. He may not obtain two judgments in this state based on one sister state judgment as defined in Section 1710.10 by using the two different procedures. See Sections 1710.10 and 1710.60(b) and Comments.