

## Memorandum 73-23

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Subject: Study 39.70 - Prejudgment Attachment (Enforcement of Foreign Judgments)

At the January 1973 meeting, the Commission directed the staff to prepare provisions which would implement a registration system for enforcing foreign judgments such as that contained in the revised Uniform Enforcement of Foreign Judgments Act of 1964. The staff concludes that the best way to implement a registration system is to enact the Uniform Act of 1964 with certain alterations. Accordingly, the staff has written a tentative recommendation which is attached. We will want to send the recommendation out for comment after the March meeting if possible. Certain questions are raised and discussed in the notes following the Comments to each section.

The full faith and credit clause of Article IV, Section 1, of the United States Constitution requires at the least that states honor the judgments of one another's courts. Traditionally, where money judgments are concerned, this has been accomplished by bringing a separate action to enforce the sister state judgment. Most often, such enforcement actions are commenced by obtaining quasi in rem jurisdiction through the attachment of the assets of the judgment debtor in the state. However, the matter of enforcing sister state money judgments should not involve a question of jurisdiction, but rather it should be a matter of implementing the full faith and credit clause while providing an efficient means of guaranteeing the satisfaction of the creditor's judgment. Traditional enforcement conceptions have required the retention of quasi in rem jurisdiction where personal jurisdiction over the nonresident defendant-debtor was not available. By eliminating that need in the enforcement of sister state money judgments, the Commission will be acting in accordance with its desire to leave the matter of jurisdiction to the courts under Code of Civil Procedure Section 410.10.

In 1948, Congress provided for registration of federal district court judgments in other districts. 28 U.S.C. § 1963 (1970). In 1964, the National Conference of Commissioners in Uniform State Laws and the American Bar Association approved a registration system for enforcement in the states of judgments entitled to full faith and credit.

Support orders are currently enforceable by contempt or execution, but foreign support orders first must be enforced by bringing a separate action to obtain a domestic judgment. See 2 California Family Lawyer §§ 30.1, 30.154-30.157 (Cal. Cont. Ed. Bar 1963). The registration procedure would apply to support orders since they are money judgments; however, the procedures provided by the Revised Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc. § 1650 et seq.) would remain unaffected. Code of Civil Procedure Section 1654 provides that the remedies of the Uniform Reciprocal Enforcement of Support Act are in addition to other remedies.

The revised Uniform Enforcement of Foreign Judgments Act of 1964 is attached as Exhibit I. The 1964 Act has been adopted in slightly modified forms by at least nine states: Arizona, Colorado, Kansas, New York, North Dakota, Oklahoma, Pennsylvania, Wisconsin, and Wyoming. The New York version is attached as Exhibit II, and the Pennsylvania version is Exhibit III. The New York study on the 1948 and 1964 Uniform Acts--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)--is excerpted in Exhibit IV. A list of state statutes where the Uniform Acts have been enacted and useful law review articles is given in Exhibit V.

Respectfully submitted,

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Legal Assistant

EXHIBIT I

UNIFORM ACT OF 1964

**UNIFORM ENFORCEMENT OF FOREIGN  
JUDGMENTS ACT  
(REVISED 1964 ACT)**

**Historical Note**

The Revised Uniform Enforcement of Foreign Judgments Act was approved by the National Conference of Commissioners in Uniform State Laws and the American Bar Association, in 1964. It supplants the original Act approved in 1948, which is set out preceding this Act.

*State Adoptions. As of the date of publication of this volume, no adoptions of this Act had been reported. Subsequent adoptions will be listed in the pocket part supplement. For states which have adopted the original 1948 Act, see page 474, ante.*

**Commissioners' Prefatory Note**

Court congestion is a problem common to all states. Overcrowded dockets, overworked judges and court officials, with attendant delays, inevitably tend to lower standards for the administration of justice. One of the things that contributes to calendar congestion is the Federal necessity of giving full faith and credit to the judgments of courts of other states. U.S. Const. art. IV § 1. While there is no constitutional requirement that a debtor who has had a full due process trial in one state need be given a second full scale trial on the judgment in another state, this is the only course generally available to creditors. The usual practice requires that an action be commenced on the foreign judgment. The full procedural requirements apply to the second action.

In 1948 the National Conference of Commissioners on Uniform State Laws approved the original Uniform Enforcement of Foreign Judgments Act. This act was a distinct advance over the usual method. It provided a summary judgment procedure for actions on foreign judgments. Even this advance, however, fell far short of the method provided by Congress in 1948 for the inter-district enforcement of the judgments of the Federal District Courts. 28 U.S.C., § 1963. Further, widespread adoption by the states of some form of the Federal Rules of Civil Procedure which include regular summary judgment practice made special summary judgment acts superfluous.

## **ENFORCEMENT OF FOREIGN JUDGMENTS**

This 1964 revision of the Uniform Enforcement of Foreign Judgments Act adopts the practice which, in substance, is used in Federal courts. It provides the enacting state with a speedy and economical method of doing that which it is required to do by the Constitution of the United States. It also relieves creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of the foreign judgment. This act offers the states a chance to achieve uniformity in a field where uniformity is highly desirable. Its enactment by the states should forestall Federal legislation in this field.

# UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

(REVISED 1964 ACT)

Sec.

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2. Filing and Status of Foreign Judgments.
3. Notice of Filing.
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10. Taking Effect.

*Be it enacted . . . . .*

§ 1. **Definition.**—In this Act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

§ 2. **Filing and Status of Foreign Judgments.**—A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the Clerk of any [District Court of any city or county] of this state. The Clerk shall treat the foreign judgment in the same manner as a judgment of the [District Court of any city or county] of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a [District Court of any city or county] of this state and may be enforced or satisfied in like manner.

§ 3. **Notice of Filing.**—(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the Clerk of Court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the Clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mail-

## ENFORCEMENT OF FOREIGN JUDGMENTS § 8

ing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the Clerk. Lack of mailing notice of filing by the Clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

[(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until [ ] days after the date the judgment is filed.]

§ 4. Stay.—(a) If the judgment debtor shows the [District Court of any city or county] that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the [District Court of any city or county] any ground upon which enforcement of a judgment of any [District Court of any city or county] of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

§ 5. Fees.—Any person filing a foreign judgment shall pay to the Clerk of Court ——— dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for judgments of the [District Court of any city or county of this state].

§ 6. Optional Procedure.—The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this Act remains unimpaired.

§ 7. Uniformity of Interpretation.—This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 8. Short Title.—This Act may be cited as the Uniform Enforcement of Foreign Judgments Act.

EXHIBIT II

**5401 CIVIL PRACTICE LAW AND RULES**

**§ 5401. Definition**

*Supp. 1972*

In this article "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, except one obtained by default in appearance, or by confession of judgment.  
Added L.1970, c. 982, eff. Sept. 1, 1970.

**Library References**

Judgment ~~§~~ 814, 829(1).  
C.J.S. Judgments §§ 888 et seq. 889,  
901, 903.

**§ 5402. Filing and status of foreign judgments**

(a) Filing. A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed within ninety days of the date of authentication in the office of any county clerk of the state. The judgment creditor shall file with the judgment an affidavit stating that the judgment was not obtained by default in appearance or by confession of judgment, that it is unsatisfied in whole or in part, the amount remaining unpaid, and that its enforcement has not been stayed, and setting forth the name and last known address of the judgment debtor.

(b) Status of foreign judgments. The clerk shall treat the foreign judgment in the same manner as a judgment of the supreme court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the supreme court of this state and may be enforced or satisfied in like manner.

Added L.1970, c. 982, eff. Sept. 1, 1970.

**Library References**

Judgment ~~§~~ 822(1).  
C.J.S. Judgments §§ 889, 891.

**Forms for CPLR**

Affidavit of judgment creditor upon filing of foreign judgment in county clerk's office, see McKinney's CPLR Forms § 8:405.

**§ 5403. Notice of filing**

Within thirty days after filing of the judgment and the affidavit, the judgment creditor shall mail notice of filing of the foreign judgment to the judgment debtor at his last known address. The proceeds of an execution shall not be distributed to the judgment creditor earlier than thirty days after filing of proof of service.

Added L.1970, c. 982, eff. Sept. 1, 1970.

**Library References**

Judgment ~~§~~ 823.  
C.J.S. Judgments §§ 448, 892.

**§ 5404. Stay**

(a) Based upon security in foreign jurisdiction. If the judgment debtor shows the supreme court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) Based upon other grounds. If the judgment debtor shows the supreme court any ground upon which enforcement of a judgment of the supreme court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon

requiring the same security for satisfaction of the judgment which is required in this state.

Added L.1970, c. 982, eff. Sept. 1, 1970.

**Library References**

Judgment § 823.

C.J.S. Judgments §§ 448, 892.

**§ 5405. Fees**

When a foreign judgment is filed pursuant to this article, an index number shall be assigned in accordance with the provisions of subdivision (a) of section 8018 and the fee shall be as prescribed therein.

Added L.1970, c. 982, eff. Sept. 1, 1970.

**§ 5406. Optional procedure**

The right of a judgment creditor to proceed by an action on the judgment or a motion for summary judgment in lieu of complaint, instead of proceeding under this article, remains unimpaired.

Added L.1970, c. 982, eff. Sept. 1, 1970.

**Forms for CPLR**

Affidavit in support of motion for summary judgment in lieu of complaint in action upon foreign money judgment, see McKinney's CPLR Forms § 8:400.

Answer in action upon foreign judgment

Sister state default judgment, see McKinney's CPLR Forms § 8:396.

Sister state money judgment, see McKinney's CPLR Forms § 8:397.

Complaint in action upon foreign judgment

Sister state default judgment, see McKinney's CPLR Forms § 8:394.

Sister state money judgment, see McKinney's CPLR Forms § 8:396.

Order granting summary judgment in lieu of complaint in action upon foreign money judgment, see McKinney's CPLR Forms § 8:401.

Summons and notice of motion for summary judgment in lieu of complaint in action upon foreign money judgment, see McKinney's CPLR Forms § 8:399.

**§ 5407. Uniformity of interpretation**

This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact these provisions.

Added L.1970, c. 982, eff. Sept. 1, 1970.

**Library References**

Judgment § 813.

C.J.S. Judgments §§ 888, 889.

**§ 5408. Citation**

This article may be cited as the "Uniform Enforcement of Foreign Judgments Act."

Added L.1970, c. 982, eff. Sept. 1, 1970.

**Library References**

Judgment § 823.

C.J.S. Judgments §§ 448, 892.



## EXHIBIT III

Penn. Stat., Supp 1972

## 12 § 914 CIVIL AND EQUITABLE REMEDIES

~~Where no execution, bill of discovery, writ peremptory to open judgment, Mar-  
or attachment had been issued on a judgment, Williams, 12 D. & C.2d 579,  
judgment transferred from another county, 22 Beaver 41, 1962,  
county, court was without power to~~

## UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (NEW)

Uniform law, see 9A Uniform Laws Annotated.

## § 921. Definition

As used in this act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court requiring the payment of money which is entitled to full faith and credit in this State. 1965, Dec. 22, P.L. 1157, § 1.

UNIFORM ENFORCEMENT OF FOREIGN  
JUDGMENTS ACT  
1964 ACT

## Table of Adopting States

State	Laws	Effective Date	Present form of act
Arizona .....	1971, Ch. 80		A.R.S. §§ 13-1701 to 13-1706
Colorado .....	1969, c. 196	7-1-1969	C.R.S. '33, 77-12-1 to 77-12-6
Oklahoma .....	1968, c. 170	4-15-68	12 Okl.St. Ann. 719-926
Pennsylvania .....	1965, Act No. 451		12 P.S. §§ 921-928
Wisconsin .....	1965, c. 379	11-24-1965	W.S.A. § 270.96

## Title of Act:

An Act providing for the filing of certain foreign judgments; establishing procedure and the rights and obligations of creditors and debtors and repealing inconsistent laws. 1965, Dec. 22, P.L. 1157.

## Library references

Judgment § 813.  
C.J.S. Judgments §§ 886, 889.

## 1. Construction and application

There are two ways by which a judgment obtained in a foreign jurisdiction may be transferred and proceeded upon in a sister state. The first is by a suit of assumpsit. The second method is to proceed under the "Uniform Enforcement of Foreign Judgments Act." *Stewart v. Savage*, 58 Del.Co. 534, 1970.

## § 922. Filing and status of foreign judgments

A copy of any foreign judgment including the docket entries incidental thereto authenticated in accordance with the act of Congress or the statutes of this State may be filed in the office of the prothonotary of any court of common pleas of this State. The prothonotary shall treat the foreign judgment in the same manner as a judgment of any court of common pleas of this State. A judgment so filed shall be a lien as of the date of filing and shall have the same effect and be subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of any court of common pleas of this State and may be enforced or satisfied in like manner. 1965, Dec. 22, P.L. 1157, § 2.

## Library references

Judgment § 813.  
C.J.S. Judgments §§ 413, 892

## § 923. Notice of filing

(a) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall make and file with the prothonotary an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor. In addition, such affidavit shall include a statement that the foreign judgment is valid, enforceable and unsatisfied.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the prothonotary shall mail notice of the filing of the foreign judgment

## CIVIL AND EQUITABLE REMEDIES 12 § 932

to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this State. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the prothonotary. Lack of mailing notice of filing by the prothonotary shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. 1965, Dec. 22, P.L. 1157, § 3.

### § 924. Stay

(a) If the judgment debtor shows the court of common pleas that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the State in which it was rendered.

(b) If the judgment debtor shows the court of common pleas any ground upon which enforcement of a judgment of any court of common pleas of this State would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this State. 1965, Dec. 22, P.L. 1157, § 4.

### 1. Construction and application

Where a New Jersey judgment is recorded in this county pursuant to the uniform enforcement of foreign judgments act, and subsequently challenged in the New Jersey courts, the court in

this county will stay any execution on the judgment here until the matter is finally resolved in New Jersey. *Oxford Finance Co. v. Levco Corp.*, 43 D. & C.2d 463, 34 Loh.L.J. 31, 1970.

### § 925. Fees

Fees for filing, docketing, transcription or other enforcement proceedings shall be as provided in the applicable Prothonotaries Fee Bill. 1965, Dec. 22, P.L. 1157, § 5.

### § 926. Optional procedure

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this act remains unimpaired. 1965, Dec. 22, P.L. 1157, § 6.

### § 927. Uniformity of interpretation

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. 1965, Dec. 22, P.L. 1157, § 7.

### § 928. Short title

This act shall be known as and may be cited as the "Uniform Enforcement of Foreign Judgments Act." 1965, Dec. 22, P.L. 1157, § 8.

EXHIBIT IV

STATE OF NEW YORK, JUDICIAL  
CONFERENCE, 13th ANNUAL  
REPORT (1968)

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THE UNIFORM ENFORCEMENT OF  
FOREIGN JUDGMENTS ACT  
AND  
THE UNIFORM ENFORCEMENT OF  
FOREIGN JUDGMENTS ACT  
(Revised 1964 Act)\*

By Barbara Kulzer  
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Introduction

The most obvious weakness in the current American methods of securing full faith and credit to the judicial proceedings of other states and federal districts is the utterly useless requirement that a formal action must be brought upon a judgment or decree for money. Such an action adds nothing to the binding force of the judgment. The courts of the state where the judgment is sued upon cannot escape recognition of its validity, so that the suit is only a procedural device to bring it before the court for execution.<sup>1</sup>

"If such parochial limitations serve any good purpose in modern society, I do not know what they are."

The above quotations are intended not so much as supporting authority for adoption of the Uniform Enforcement of Foreign Judgments Acts which are the subject of this study, but to illustrate the longstanding recognition of the need for reform.<sup>2</sup> The Acts respond, in different ways, to the recognized need for a more efficient and less costly method than that historically offered by the common law. To enforce his judgment in another state (whether a sister state judgment or a foreign country judgment),<sup>3</sup> a judgment creditor must bring a new action on the judgment. Such a suit is a new and independent action, not ancillary to the original suit between the parties. Nor is it merely a proceeding in aid of execution of the judgment rendered in the original action.<sup>4</sup>

Several attempts to streamline the prevailing procedures have been made.<sup>5</sup> Since 1948, judgment creditors in federal actions have had available a registration procedure to enforce

\* *Editor's Note:* This Study was commissioned by the Judicial Conference upon recommendation of the Committee to Advise and Consult with the Judicial Conference on the CPLR.

final judgments "for the recovery of money or property."<sup>7</sup> This succeeded to an abortive proposal to include a similar provision in the Federal Rules of Civil Procedure.<sup>8</sup> The same year, the Uniform Enforcement of Foreign Judgments Act was published.<sup>9</sup> It offers a summary judgment procedure but was revised in 1964 to provide instead a simpler registration procedure similar to, but more detailed than, section 1963.<sup>10</sup> All of these acts are intended to benefit judgment creditors entitled to recover under judgments from courts within the United States. However, the National Commissioners on Uniform State Laws contemplate that their original enforcement act is to be available to judgment creditors holding foreign nation judgments entitled, under the Uniform Foreign Money Judgments Recognition Act, to be recognized.<sup>11</sup>

The emphasis of this report is on the desirability of adoption by New York of one of the Uniform Acts as they would affect all foreign judgments. However the question is here raised, and will be considered,<sup>12</sup> whether the registration procedure of the 1964 Revision, should it be preferred to the 1948 version, is available to foreign country judgments. The Commissioners' Notes are silent on this question, although a new edition of the volume of the Uniform Acts Annotated containing the Uniform Foreign Money Judgments Recognition Act was issued after promulgation of the 1964 Revision of the Enforcement Act.

Originally eight states adopted the 1948 Act.<sup>13</sup> Since the Revision was published, two of these, Wyoming and Wisconsin, have repealed the original Act and enacted the Revision.<sup>14</sup> Pennsylvania also has recently adopted the later version.<sup>15</sup> Oklahoma has been considering adoption of one of the Acts to enhance the effect of the Uniform Foreign Money Judgments Recognition Act.<sup>16</sup>

This report has five parts. The first is a brief review of present practice in New York pertaining to foreign judgment enforcement. The second summarizes the history of the Uniform Acts and the influence of the federal registration procedure for district court judgments. The practical and constitutional considerations that led the Commissioners in 1948 to recommend a summary judgment procedure rather than a registration one, and ultimately to their decision to offer an expanded registration statute in 1964, will be discussed at this point. The next two parts will analyze, respectively, the 1948 and 1964 versions. The last is devoted to recommendations and conclusions.

### I. Enforcement of Foreign Judgments in New York

Under the traditional common law procedure, there is no particular machinery for the enforcement of foreign judgments.<sup>17</sup> Generally, the judgment creditor brings a new action upon his judgment under whatever system of pleading

is provided in the forum.<sup>18</sup> The pleadings will put in issue the validity of the judgment, which is determined by the standards of the second state. If such standards have been codified, the relevant legislation insofar as it is relevant, such as the Uniform Foreign Money Judgments Recognition Act, would be applied. If the action on the foreign judgment terminates favorably to the plaintiff, the judgment rendered is in all respects a judgment of the forum, and whatever modes of execution are available for domestic judgments may then be invoked.<sup>19</sup>

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## II. The Uniform Acts: Background

The original Act was proposed against a background of Congressional inaction. The national legislature had shown no indication of exercising even a portion of its powers under the full faith and credit clause of the constitution.<sup>40</sup> However, it seemed clear to all who were knowledgeable in the field that the Congress could have provided for "some system of registration of judgments, so that the valid judgments of one state might be given full faith and credit at once in other states, without the cumbersome formality of a new suit and a new judgment. . . ."<sup>41</sup> In the early forties, the National Conference of Commissioners on Uniform State Laws took up consideration of a judgment registration statute modeled after similar legislation in other common law countries.<sup>42</sup>

A few years before, a move had been made toward a registration system for federal district court judgments through a proposed rule of the Federal Rules of Civil Procedure. However, when the new Federal Rules were submitted to Congress prior to promulgation, the rule was omitted.<sup>43</sup> Although no official statement has ever explained the omission,<sup>44</sup> conjectures have been offered. It has been assumed that the Supreme Court concluded that the legislature was the more appropriate

body for promulgation of such a rule.<sup>45</sup> Another explanation posits that the rule would have affected substantive rights if the "substantial difference in result" test of *Guaranty Trust Co. v. York*<sup>46</sup> were applied and that the Supreme Court failed to adopt the rule for that reason.<sup>47</sup> Still a third theorizes that there was a question of power.<sup>48</sup> In any event, Congress included the section 1963 registration provision in the 1948 revision of the judicial code:

A judgment in any action for the recovery of money or property entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.

Judge Clark of the court of appeals has remarked, with respect to section 1963 that: "To my observation this statute has worked well and has facilitated the unimpeded enforcement of federal judgments throughout the vast and important federal judicial establishment. [A] commentator . . . remarks on the comparatively few cases which seem to have arisen under the statute, but that may well be an indicia of its smooth operation. Blessed is that country whose history is brief or legal device whose exegesis is limited!"<sup>49</sup>

The first Uniform Act was published the same year as the federal registration statute but it took the form of a summary judgment procedure, rather than the registration device at first proposed. The reasons for the Commissioners' collective change of heart have been authoritatively summarized:

The question of constitutionality of such an enactment [of a registration statute] by the states was raised, under the federal due process clause, but the consensus of those considering the matter was that the proposed procedure would involve no taking of property without due process of law. The theory of validity was that due process requires notice and opportunity for a fair hearing only one time, and not a succession of times. The judgment debtor has had his notice and opportunity for hearing in the first state; traditional practice has never permitted him to litigate anew defenses that were available to him all along. These are foreclosed. The only defenses still available to the judgment debtor are satisfaction of the judgment, absence of jurisdiction in the court rendering the judgment and possibly certain types of fraud in the procurement of the judgment. So long as it remains possible for him to present these defenses in some manner and at some stage in the proceedings before final enforcement of the judgment against him, his interests are adequately protected. The procedure of a new suit brought against him would be merely one method, but by no means the only method, whereby he could be given ample opportunity to present these defenses if they in fact exist. If they do not exist, the debtor loses nothing. . . . The only important thing is that he be given a fair chance to present defenses that actually exist. The essence of this theory is that due process need not be satisfied separately in

each state that has anything to do with the rendition or enforcement of a judgment; that it is enough that due process be satisfied in one state, after which the action of another state in furtherance of the already valid judgment is essentially administrative in character, with no new notice and hearing necessary.

In all the discussion of the proposed act among the Commissioners, little if any doubt was ultimately cast on the soundness of the analysis just stated. It was generally agreed that a judgment registration statute could be drafted for state enactment in a form that would almost surely withstand any attack upon its constitutionality which might reach the Supreme Court of the United States. Whether the highest courts of all the states would arrive at the same result was of course a more uncertain matter and the fact that some lawyer-legislators might have doubts as to the act's constitutionality, even though the Commissioners did not, was a fact not to be overlooked.

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The alternative solution which naturally suggested itself was a summary judgment procedure. A few states had already made such a procedure available for suits on foreign judgments, in connection with comprehensive summary judgment enactments, but a number of states which had set up summary judgment procedures for some purpose had not specifically included actions on foreign judgments among the causes of action for which the summary procedure was provided."

Sixteen years of experience with the federal registration statute seem to have laid to rest any lingering fears as to the constitutionality or feasibility of a registration procedure. In 1964 the Commissioners offered the Revised Uniform Enforcement of Foreign Judgments Act, adopting "the practice which, in substance, is used in Federal courts."<sup>51</sup> The Commissioners assert that there is no constitutional requirement that a debtor who has had a full due process trial in one state need be given a second full scale trial on the judgment in another.<sup>52</sup> The advantages of a registration procedure over a summary judgment one may be realized in state courts as well as in the federal system. There was a third impetus to the 1964 Revision: "... widespread adoption by the states of some form of the Federal Rules of Civil Procedure which include regular summary judgment practice made special summary judgment acts superfluous."<sup>53</sup>

Whether the availability of accelerated judgment processes in New York would make adoption of the 1948 version a superfluity is one of the questions to be considered in this paper. Although the motion for summary judgment in lieu of a complaint has been little utilized for judgments (at least in the reported cases), regular summary judgment motions in actions on foreign judgments are quite commonplace.<sup>54</sup> The original Uniform Act, however, offers several features, among them some of the advantages of a direct registration procedure,<sup>55</sup> absent from present New York motion practice. The modern practice suggests the question, however, whether it might be advisable to combine its provisions with some of the features of the first Uniform Act, or to enact the first Act in

toto, or to adopt the 1964 Revision, which is not a variation on a summary judgment theme, but an altogether new practice. Selection of an alternative, if to be made at all, will be suggested after an examination of the Uniform Acts.

### III. The Uniform Enforcement of Foreign Judgments Act— 1948

Before undertaking a section by section examination of the Act, a brief description of its overall effect will help to unify the following discussion.

The Act covers any extrastate judgment entitled to full faith and credit in the enacting state without distinction as to the remedy awarded or declaration of right, duty or status of any character. The initial step toward enforcement is an application for the registration of the judgment. The law of the state in which registration is requested governs such matters as the time within which the application must be made, the person entitled to bring an action on the judgment, and which court has jurisdiction. Other procedural steps for the application are set forth in the Act which, however, prescribes no new methods for authentication of the foreign judgment. The application must include a copy of the judgment along with the record of any subsequent entries affecting it, such as levies of execution or payments in partial satisfaction. The clerk of the registering court must then notify the clerk of the court of rendition that an application for registration has been made and request him to file that information with the judgment. Registration then is a matter of course, though enforcement awaits further procedural steps.<sup>54</sup>

After registration, the judgment creditor is entitled to have a summons served upon the judgment debtor "as in an action brought upon the foreign judgment in any manner authorized by the law of this state for obtaining jurisdiction of the person."<sup>55</sup> If personal jurisdiction cannot be obtained, a notice designating the foreign judgment and reciting the fact of registration, the court where registered and the time allowed for pleading shall be sent to the last known address of the judgment debtor. If personal jurisdiction is obtained, the judgment debtor has sixty days to set up his available defenses. If he does not answer, or if he does not prevail on his defenses, the registered judgment becomes a final personal judgment of the court in which it is registered. If the judgment debtor does prevail and the registration is set aside, this constitutes a final judgment in favor of the judgment debtor.

If personal jurisdiction was not obtained, but a notice sent, the notice assures fairness to the judgment debtor by making it reasonably certain that he will learn about the course of the original judgment against him and gives him an opportunity to set aside the registration. And, "it lays a foundation upon which a new judgment quasi in rem can validly be entered



against the property of the judgment debtor levied upon in the registering state."<sup>158</sup> The levy upon any of the judgment debtor's property located in the state can be had—regardless of whether personal jurisdiction is secured—at any time after registration whether or not the foreign judgment has become a final judgment in the state of registration. In this way, a judgment creditor may obtain a type of relief almost as efficient "as would be the case if execution could be issued directly on the foreign judgment."<sup>158</sup> Thus the registered judgment can become a final judgment quasi in rem of the court in which it is registered, binding upon the judgment debtor's interest in property levied upon. Sale under the levy may be had at any time after final judgment has been rendered, whether personal or quasi in rem.

The Act includes provisions for staying the registration proceeding and setting aside the levy pending appeal from the original judgment. Partial or complete satisfaction of the original judgment or a judgment entered on it in any other state operates to the same extent as satisfaction of the judgment in the rendering state. Provision is made for interest and costs, as well as appeal. Finally, the Act is not exclusive so as to bar other procedures for action on foreign judgments and the judgment creditor has in effect a choice.

\* \* \* \* \*

#### **Tentative Conclusion on Adoption of the Uniform Enforcement of Foreign Judgments Act of 1948**

Although the section 3213 motion for summary judgment in lieu of complaint provides an expeditious method of enforcing a foreign judgment, whether extranational or entitled to full faith and credit, it is believed that the Act offers advantages over any of the provisions of the CPLR. Perhaps most notable is the right of the judgment creditor to a levy on property of the judgment debtor within the enacting state. Another is the provision for quasi in rem jurisdiction and judgment. Although this means of obtaining satisfaction was suggested as early as 1935,<sup>160</sup> in 1957 it could still be said that, "Obtaining the new judgment [on the foreign judgment] will require personal jurisdiction over the defendant."<sup>161</sup> And it has been with respect to actions of domestic judgments under CPLR 5014 that in personam jurisdiction over the defendant is necessary to bring an action on the judgment within the state.<sup>162</sup>

Thus even with the accelerated judgment procedures now available, the Act presents a considerable advance. But it "is not so simple and inexpensive as the federal registration procedure. It lacks some substantive advantages as well."<sup>163</sup> Indeed, this was quite evident to the National Conference of Commissioners on Uniform State Laws who revised the Act in 1964 to adopt, in substance, the practice used in the federal courts.<sup>164</sup> Still another reason for the revision, especially pertinent in New York in view of section 3213 of the CPLR is the widespread adoption by the states of some form of a regular summary judgment practice, which made special summary judgment acts superfluous.<sup>165</sup>

It is to the Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act) that the greater part of the balance of this report is devoted.

#### **IV. The Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act)**

Although the revised Act provides for all judgments entitled to full faith and credit substantially the same procedure

as the federal registration statute created for district court money judgments, it is considerably longer. Indeed, the greater detail of the 1964 Act will avoid many of the questions which have arisen with respect to the federal statute, as to which a student commentator has written:

Although there was an undeniable need for some change, it would appear that this statute is somewhat less than ideal. Primarily, it is too brief. Unfortunately, in what seems to be a commendable attempt to achieve simplicity, the framers of the section may have detracted from the beneficial effect that it was designed to achieve.<sup>156</sup>

The burden of his note is devoted to the statute's lack of explicit provision for defenses capable of barring registration. But there have been other questions as well, such as those listed by the court of appeals in *Stanford v. Utley*.<sup>157</sup>

We note by way of caveat that §1963 presents much to be answered in the future. Does the statute's "same effect" language apply for all purposes and embrace no exception? Does the registration court have power, under Rule 60, F.R. Civ. P., to correct the registered judgment? " \* \* " Is a registered judgment itself subject to registration elsewhere? May a registered judgment be revived by a later reregistration? Is a registered judgment subject to every attack which could be raised in an action on that judgment, such as fraud, lack of jurisdiction, and the like? Is §1963 the equivalent of the Uniform Enforcement of Foreign Judgments Act even though the latter is much more detailed in its provisions? Must full faith and credit be given to a registered judgment? The presence of these and other questions prompts us to emphasize that the conclusion we reach here is one having application to the fact situation of this case. We do not now go so far as to say that registration effects a new judgment in the registration court for every conceivable purpose; neither do we say that it fails to do so for any particular purpose.<sup>158</sup>

*Stanford* held that a judgment creditor is entitled to enforcement when his judgment is registered in a sister state within the judgment state's limitation period, but enforcement is sought later, at a time within the registration state's limitation period, but after the expiration of the judgment state's.<sup>159</sup> For this purpose, at least, registration is more than a ministerial act, and provides the equivalent of a new judgment in the registration court:

If registration is to "have the same effect as a judgment", it must, for our present enforcement purposes, mean just that and not something else. To restrict registration to a procedural collection device for the foreign judgment itself, and to have it expire with the foreign judgment would . . . make registration something far inferior to a judgment on a judgment.<sup>160</sup>

The uniform Act, like the federal statute, provides that a filed (registered) judgment is to have the same effect as a judgment of the registering state, and may be enforced in like manner.<sup>161</sup> Thus it is to be treated as if reduced to a domestic judgment in the second forum. The implications of this proce-

ture under the due process and full faith and credit clauses of the constitution are among the matters to be discussed, as well as some of the questions posed by the *Stanford* court.

§ 1. Definition.—In this Act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

*Comment.* Like the 1948 Act, the accelerated procedure is intended for all judgments entitled to full faith and credit, whether or not a sum of money is awarded.<sup>182</sup> The comment on the corresponding section of that Act is, therefore, relevant here.<sup>183</sup> It has already been noted that the drafters of the Uniform Money-Judgments Recognition Act intend that qualifying foreign money judgments may be enforced by means of the 1948 summary judgment act. But they are silent on the applicability of the 1964 Revision. There is no obvious reason why a foreign country judgment could not be enforced through registration. The British Foreign Judgments (Reciprocal Enforcement) Act of 1933 creates a registration procedure, and the drafters of the International Law Association Model Act Respecting the Recognition and Enforcement of Foreign Money-Judgments contemplate that enforcement shall be by registration of qualifying judgments.<sup>184</sup> So long as the opportunity exists for the judgment debtor to attack enforceability of the judgment in the second state, he loses nothing if enforcement is predicated upon registration rather than a new judgment.

In view of these considerations, a specific reference to foreign country judgments in this section is recommended. Although the recognition Act provides that judgments meeting its specifications shall be enforced in the same manner as those entitled to full faith and credit, even impeccable foreign country judgments do not come within the constitutional mandate.<sup>185</sup>

*Conclusion.* An amended section 1 could read:

§ 1. Definition.—In this Act "foreign judgment" means (1) any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state; or (2) any judgment of a foreign state which is entitled to recognition under the Uniform Foreign Money-Judgments Recognition Act.

§ 2. Filing and Status of Foreign Judgments.—A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the Clerk of any [District Court of any city or county] of this state. The Clerk shall treat the foreign judgment in the same manner as a judgment of the [District Court of any city or county] of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a [District Court of any city or county] of this state and may be enforced or satisfied in like manner.

*Comment.* The effect and status of the foreign judgment under this provision are quite different from the 1948 Act.

There, registration of the judgment permits the judgment creditor to obtain a levy upon the judgment debtor's property and jurisdiction over such property or over the debtor's person. It is the beginning move in the enforcement procedure, and ultimate satisfaction awaits a new judgment.

Under the 1964 version, filing has the immediate effect of entitling a qualifying foreign judgment to the same treatment as a domestic one. The second state's satisfaction procedures may at once be used by the judgment creditor unless the debtor is entitled to relief under the last sentence of section 2 or to a section 4 stay of enforcement.

The Act does not state how the judgment debtor is to present a defense based upon the invalidity of the foreign judgment.<sup>166</sup> Typically, allowable defenses to a sister state judgment are limited to lack of jurisdiction or competence in the first court, certain kinds of fraud, and satisfaction of the judgment.<sup>167</sup> Foreign country judgments may be denied enforcement on these and other grounds.<sup>168</sup> Full faith and credit for sister state judgments is subject to very few and narrowly defined exceptions.<sup>169</sup> However, if a judgment is not entitled to full faith and credit, or to recognition as a foreign country judgment, it is not a "foreign judgment" as defined by section 1 of the Act and the accelerated procedure would not be available to it. If a fatal defect does not appear on the face of the judgment, therefore, the Act must be taken to imply that the burden is upon the judgment debtor, as to whom provision is made for notice,<sup>170</sup> to come forward with any defenses he may have.<sup>171</sup>

That burden may, and probably should, be lifted a little. Since the judgment creditor registers the properly authenticated foreign judgment in the first place, it does not seem unduly onerous to require him to provide as well any subsequent entries affecting it. Section 3 of the original uniform Act requires him to do so, and Pennsylvania has slightly amended section 2 of the 1964 Act to include a similar requirement.<sup>172</sup> If there has been any satisfaction of the judgment, for example, and this appears in the records of the first court, the second court would receive immediate notice of that fact and could act accordingly.

The more detailed language of this section does not resolve, for an enacting state, all of the questions raised regarding the federal statute by the *Stanford* court.<sup>173</sup> One such question was whether rule 60 of the Federal Rules of Civil Procedure applied to registered judgments. Rule 60(b) relief is obtained by motion in the court which rendered the judgment. Is it possible to make a motion in the registering court to invoke the rule without prior recourse to the original court, or must relief first be sought in the first court and then made known to any courts having registered the judgment?<sup>174</sup> A suggested answer is premised on the underlying purpose of the federal registra-

tion statute:<sup>176</sup> to facilitate the enforcement of federal district court money judgments. To this end, the registering court has the power to determine matters germane to registration and enforcement when appropriately raised, such as whether the judgment is registrable or is dormant in the first state. But it may not determine whether the first court made a correct adjudication. However, it is argued, the registering court should have the power to grant 60(b) relief when the rendering court is no more familiar with the situation than the registering court. Thus, if the issue raised by a 60(b) motion could be raised in an independent action to enjoin enforcement, it can be disposed of on the motion. And the "judgment creditor can hardly contend that the court of registration is an inconvenient forum for disposition of a 60(b) motion . . ."<sup>176</sup> Similarly, if the defense is one which could be made in an action on a foreign judgment, the same result should follow where the judgment creditor registers the judgment and the debtor moves to have it vacated, for example, as void under 60(b)(4). There may, however, be circumstances in which only the rendering court should dispose of a 60(b) motion, as where relief is sought on the ground of newly discovered evidence. The first court, because of its familiarity with the proceedings, and often the participants, is the preferable forum.

If the 1964 Act is adopted in New York, an analogous problem is presented by rule 5015 of the CPLR. Like federal rule 60(b), 5015 creates a form of relief that may be had by a motion in the court which rendered the judgment. Is it applicable to a registered judgment? Where a sister state judgment is involved, the effect of the full faith and credit clause must be taken into account. The "local law of the state of rendition will be applied to determine whether equitable relief can be obtained against the judgment. On the other hand, the local law of the state where recognition or enforcement . . . is sought determines the procedure for obtaining such relief."<sup>176a</sup> Conversely, a judgment will not be enforced in a second state where equitable relief could be obtained against it in the state of rendition. However, according to the Restatement, this general rule does not apply to relief which "could be obtained in the state of rendition only in the proceeding itself, either in the trial court, as by a motion to have the judgment set aside on the ground of newly discovered evidence, or on appeal."<sup>177</sup> Unless section 2 works a substantive change in the law, it would seem that the party opposing enforcement has the burden of establishing in the second state that the relief he asks could be obtained in the state of rendition.<sup>177a</sup> Although the initial question is similar to that posed by rule 60(b), different factors influence its resolution because the courts of the various states, unlike the federal district courts, are governed by many different procedural systems. It would not seem advisable to attempt to draft a statute in terms that

would anticipate all of the possible questions that might arise under the full faith and credit clause, or even under general conflict of laws principles. Application of the Act's provisions in specific instances can best be left to judicial interpretation. Like its federal counterpart, however, it should be read in the context of its underlying purpose: to facilitate the policies the full faith and credit clause was designed to effectuate.<sup>177b</sup>

To conclude, section 2 provides important improvements over the federal model. It specifies, as the prototype does not, the availability of defenses and the procedures by which they are presented. Unless the judgment debtor takes steps to prevent it, enforcement will follow as a matter of course after registration. The process is simpler and faster than that of the 1948 version.

There remains the matter of the court in which registration is to be made. The drafters suggest the county and city district courts. The functions of these courts in this state are governed by the Uniform District Court Act and the New York City Civil Court Act. These statutes place monetary limitations on jurisdiction which presumably would not be applicable to registration proceedings. Beyond these observations, however, this report expresses no opinion as to the appropriate court for registration.

**Conclusion.** The "same effect as a judgment of the... court... where registered" language of the federal statute is echoed in the 1964 Act. Although section 2 is more explicit in its terms, it nevertheless carries a similar penumbra of uncertainty. However, it must be read against the background of the full faith and credit standards enunciated by the United States Supreme Court. It is believed unadvisable to incorporate its pronouncements into a procedural statute. If this Act is adopted, the only suggested change is one requiring the judgment creditor to provide any subsequent entries in the court of rendition affecting the judgment he wishes to register.

§ 2. Filing and Status of Foreign Judgments.—A copy of any foreign judgment including the docket entries incidental thereto authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the Clerk of any District Court of any city or county of this state. The Clerk shall treat the foreign judgment in the same manner as a judgment of the District Court of any city or county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a District Court of any city or county of this state and may be enforced or satisfied in like manner.

§ 3. Notice of Filing.—(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the Clerk of Court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the Clerk shall mail notice of the filing of the foreign judgment.

ment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the Clerk. Lack of mailing notice of filing by the Clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

[(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until[ ] days after the date of the judgment is filed.]

*Comment.* This provision details the procedure to be followed for notifying the judgment debtor. The federal registration statute is silent on both notice to and defenses of the judgment debtor except that it provides for registration by him of any satisfaction. Both statutes, however, eliminate the necessity of obtaining jurisdiction over the judgment debtor or his property. The notice of filing serves only to alert him to what is being done with the judgment rendered against him.

The elimination of the necessity for jurisdiction has been explained on the ground that registration is, for this purpose at least, a "ministerial act" rather than a proceeding.<sup>178</sup> Other descriptive phrases have been employed, often depending upon the object of the suit in which they are used.<sup>179</sup> However registration is characterized, obstacles to enforcement are not, it is said, "a part of the judgment and do not affect the rights of the litigants as determined thereby. Nor do rules which remove such obstacles vary the terms of the judgment. They only facilitate its use. They are clearly procedural."<sup>180</sup>

Calling registration something other than a proceeding does not really answer constitutional questions of due process raised by notification which does not result in jurisdiction for purposes of judgment enforcement. The questions have, however, been examined and the resulting answers have been deemed to support the constitutionality of a registration statute.<sup>181</sup> The Commissioners' views and a summary of their conclusions on the due process aspects of a registration procedure have been included in an earlier part of this report.<sup>182</sup> Here they will be expanded a little with direct reference to the statute at hand.

Procedural due process has not been interpreted as requiring more than notice and one complete and final hearing before a competent tribunal.<sup>183</sup> The judgment debtor has had such a hearing in the first state and the full faith and credit clause prevents him from raising in a sister state any defenses that are foreclosed in the rendering state.<sup>184</sup> Under section 1, the Act applies only to judgments entitled to full faith and credit (or to qualifying foreign country judgments) so it is implicit in the Act that other judgments cannot be registered and that the judgment debtor can challenge registration on

the ground the judgment against him is not entitled to recognition.<sup>185</sup>

Substantive due process implies the necessity of acquiring jurisdiction over a party prior to affecting his property. An early Supreme Court case had declared that a judgment was without force in sister states until reduced to a new judgment there.<sup>186</sup> This and subsequent statements caused the draftsmen of the 1948 Act to reject a registration statute at that time, not because they believed such an Act would be struck down on the basis of such statements, but because state legislators might have doubts militating against adoption.<sup>187</sup>

The damaging pronouncements in the Supreme Court opinions have been characterized as dicta, at least on the due process point.<sup>188</sup> Insofar as full faith and credit is concerned, they are considered as doing no more than stating the minimal requirements of the constitutional clause,<sup>189</sup> rather than announcing limits beyond which the states may not go.

"Due process requires that the court which assumes to determine the rights of the parties shall have jurisdiction,"<sup>190</sup> but in the cases to which the uniform Act would apply, the rights of the parties will already have been determined. The only question is how to give effect to that determination. "It seems more appropriate, then, for due process purposes, to liken registration to an execution proceeding initiated after judgment."<sup>191</sup> Such proceedings do not require new service.<sup>192</sup>

Nor does due process require a judicial proceeding in every case:

To learn what the procedure must be in a particular situation, in order to constitute due process, we turn necessarily to the decisions of our Court. These decisions tell us that due process does not require that a decision made by an appropriate tribunal shall be reviewable by another. \* \* \* They tell us that due process is not necessarily judicial process. \* \* \* And they draw distinctions when due process requires judicial process and when it does not.

The first distinction is between issues of law and issues of fact. When dealing with constitutional rights... there must be the opportunity of presenting in an appropriate proceeding, at some time, to some court, every question of law raised. ... The second distinction is between the right to liberty of person and other constitutional rights. \* \* \* But a multitude of decisions tells us that when dealing with property a much more liberal rule applies. They show that due process of law does not always entitle an owner to have the correctness of findings of fact reviewed by a court. ...<sup>193</sup>

In the particular situation with which the registration statute is concerned, the judgment debtor has had his day in court, and any further defenses are narrowly circumscribed by the full faith and credit clause.<sup>194</sup> Thus the opinion of the drafters that the registration Act could withstand a constitutional attack on due process grounds seems well founded.

There remains the objection that a judgment is only a judgment in the state of rendition, and is merely a cause of action



elsewhere.<sup>106</sup> But there is nothing to prevent a second state from adopting by its own authority the act of the first court without a new action on the judgment.<sup>106</sup> The federal district courts do this under the federal registration statute, and there is longstanding precedent for such a practice in other common law countries.<sup>107</sup>

This rather summary treatment of the constitutional and conceptual issues which have in the past impeded development of an efficient enforcement method can do no more than indicate what the questions have been and how they may be resolved. The balance of this comment is devoted to the more practical aspects of section 3 notice.

Since the mailing of notice is not a jurisdictional act, it is not necessary to reconcile this provision with the CPLR. It is only noted that if the judgment creditor elects to mail notice himself, use of certified or registered mail would be prudent since he must file proof of mailing with the clerk. The requirement that notice be promptly sent diminishes the possibility of any such unknown detriment to the judgment debtor as may result from the federal act's lack of any notice provision.<sup>108</sup> The method chosen by the drafters has, of course, been held to be a reasonable means of notification for due process purposes.<sup>109</sup>

Implicit in the section is that unless notice has been mailed to the judgment debtor (who need not actually receive it)<sup>110</sup> the creditor may not proceed to enforcement. Such a construction seems necessary if the judgment debtor is to have a fair opportunity to present any defenses he has.

Subsection (c) is optional. It is presumably intended to protect the judgment debtor during the interval between filing and receipt of notice. In the absence of any specific provision for notice to a judgment debtor prior to execution in enforcement of a money judgment under CPLR Article 52, incorporation of subsection (c) would afford a measure of security to a judgment debtor who may not anticipate the foreign execution as would a debtor on a domestic judgment.

*Conclusion.* Section 3 should be enacted as written if the Act is approved. It is recommended that the last subsection be included. In specifying a reasonable waiting period, the possible detriment to the judgment creditor, at least where personal property is involved, should be taken into account. Section 5202 of the CPLR gives limited priority to a judgment creditor's rights in personal property where execution has been delivered to the sheriff. As to real property, however, section 5203 grants priority and lien upon docketing of the judgment. A period of from five to a maximum of fifteen days is sufficient for notice to reach the judgment debtor and for him to make his reply, if any.

§ 4. Stay.—(a) If the judgment debtor shows the [District Court of any city or county] that an appeal from the foreign judg-

ment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the [District Court of any city or county] any ground upon which enforcement of a judgment of any [District Court of any city or county] of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

*Comment.* This section assures that the judgment debtor will be able to present any grounds for a stay of execution that he may have. It does not provide for the effect, if any, to be given a stay of execution granted in a second registering state.

Subsection (a) requires a result consistent with, but not required by, the full faith and credit clause. If appellate proceedings in the first state do not vacate the judgment, suit to enforce it may be brought in another state. Although not required to do so, the second state will generally stay judgment or execution pending determination of the appeal.<sup>200</sup> But since an appealed judgment may be accorded full faith and credit, it would not be precluded from registration by the section 1 definition of foreign judgments.<sup>201</sup> The mandatory stay under section 4(a) will avoid the embarrassing possibility of a judgment reversed in one state after having been enforced in another.

Subsection (b) requires a stay of enforcement in circumstances where a domestic judgment would be stayed.

The wording of section 4 indicates that the judgment debtor must take some action before the court is required to order a stay. If section 2 is amended as suggested, however, to require that subsequent entries affecting the judgment be included by the judgment creditor in the registration in this state, the result may be different. If the registered judgment shows that an appeal has been taken, the registering court would presumably have discretion whether or not to stay execution if the judgment debtor makes no showing.

*Conclusion.* No change is recommended for section 4 which, if the Act is adopted, should be included as written.

§ 5. Fees.—Any person filing a foreign judgment shall pay to the Clerk of Court \_\_\_\_\_ dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for judgments of the [District Court of any city or county] of this state.

*Comment.* Article 80 of the CPLR governs fees. There is, of course, no proceeding analogous to that provided by the Act.

*Conclusion.* Whether to charge a flat fee in addition to fees for specific functions performed by the clerk involves considerations which, it is believed, are somewhat beyond the scope

of this report. However, it might be added that a flat charge might discourage indiscriminate or harrassing registration of questionable judgments.

§ 6. Optional Procedure.—The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this Act remains unimpaired.

*Comment.* This is the counterpart of section 16 of the 1948 Act. There is no reason to deny a creditor the choice of proceeding under the common law method if he so desires.

*Conclusion.* In the event of adoption, this section should be included without change.

§ 7. Uniformity of Interpretation.—This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

*Comment.* The availability of a single method of enforcement uniformly applied has obvious advantages for judgment debtors as well as creditors. Both parties are spared the necessity of a prolonged and expensive action on a judgment; each is aware that the procedure is, wherever adopted, similar and can plan accordingly.

*Conclusion.* In the event of enactment, this section should be included without change.

§ 8. Short Title.—This Act may be cited as the Uniform Enforcement of Foreign Judgments Act.

*Comment.* Until all states having adopted the 1948 Act repeal it in favor of the 1964 Revision, the identical titles may cause some confusion, but hardly enough to warrant change.

*Conclusion.* There seems to be no serious reason justifying alteration of this section.

§ 9. Repeal.—The following Acts and parts of Acts are repealed:

- (1)
- (2)
- (3)

*Comment.* No provisions of the CPLR create a procedure inconsistent with that set up by this Act. The several alternative methods by which enforcement of foreign judgments may be had should not be affected by this Act.

*Conclusion.* This section should be omitted.

§ 10. Taking Effect.—The Act takes effect on \_\_\_\_\_.

*Comment.* None.

*Conclusion.* None.

## V. Conclusions

Except in the area of judgment enforcement, state boundaries impose no substantial obstacles to convenient and expeditious commerce. Since there is no real justification for this

state of affairs, it would seem that the issue is not whether to improve it, but how.

The two uniform Acts which have been the subject of this report offer alternative methods. The summary judgment procedure of the 1948 Act offers some innovations, based upon a summary judgment practice that has been well established in many states, including this one. The 1964 Revision is a clear departure from traditional methods, although on the federal level there has been considerable experience with the registration device.

The availability in New York of summary judgment procedures applicable to foreign judgments raises questions as to the extent of the improvement the 1948 Act would provide. Its advantages over current practice—the judgment creditor's right to levy at any time after registration, for example—are considerable, but in some respects it merely continues some of the disadvantages. The most important of these is the necessity of obtaining jurisdiction over the judgment debtor. The case law seems poised at the point of making important progress in this regard, but it is uncertain how far it will be developed. Quasi in rem jurisdiction, specifically provided for in the Act, has probably been available in this state, but there is little indication of the extent of its use. The Act, however, clearly authorizes it.

Beyond this, the first act cannot be said to depart significantly from present summary judgment motion practice, especially the accelerated one of CPLR section 3213. However, it must be added that from the viewpoint of foreign countries, its enactment may be much more significant than the actual improvements it makes would seem to warrant. In the accompanying report it was pointed out that the absence of a clearly delineated enforcement procedure has been a cause for complaint abroad, and has probably worked to the detriment of American judgments when their enforcement was sought there. From the viewpoint of the judgment creditor, it may be asked whether the Act creates a significantly faster process than those he uses now. From the viewpoint of the courts, would the summary judgment procedure noticeably lighten their burden.

If the 1948 Act is preferred over its successor, whether to retain it in its present form or to incorporate it into the relevant sections of the CPLR, perhaps deleting some of its provisions in favor of existing ones, may be necessary to decide.

Clearly, however, the 1964 Act is a faster, more efficient, less expensive enforcement method than its predecessor, and this is true from the viewpoint of all concerned. It seems to have worked very well, in different forms, in the federal sphere and in various other common law countries. Its acceptance is hampered primarily by traditional notions of the effective range of judgments and, more importantly, by due

process. The Act, however, is scrupulously fair to the judgment debtor who is provided with notice and an opportunity to be heard.

The fairness of such a system to the judgment debtor is attested by the number of countries with ideals and systems similar to our own which have such a process. None of these are bothered by the notion that a judgment must be converted into a domestic judgment before enforcement can issue.

It is recommended that some legislation be enacted to provide specifically for foreign judgment enforcement. It is urged that this take the form of the 1964 revised uniform Act. As indicated by the actions of Wyoming and Wisconsin, many states presently having the original Act may repeal it in favor of its successor. It approximates the methods used now in most western countries, and a registration process is generally specified in multilateral proposals for judgment recognition and enforcement. It would more fully realize the policies sought to be effectuated by the full faith and credit clause, and would be of significant advantage both to judgment creditors and courts. The only detriment to the judgment debtor is the loss of opportunity to delay or avoid altogether satisfaction of the judgment against him.

In all likelihood, if the Act is adopted questions will arise that have not been, and perhaps could not have been, anticipated in this report. But this is an inevitable effect of new legislation, whose interpretation and construction in specific instances can in most cases best be left to the courts.

#### FOOTNOTES

1. Report of the Standing Committee on Jurisprudence and Law Reform, 52 A.B.A. Rep. 292 (1927).
2. Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution*, 45 Colum. L. Rev. 1, 21 (1945), quoted in Leflar, *The New Uniform Foreign Judgments Act*, 24 N.Y.U.L.Q. 336, 343 (1949).
3. In respect of enforcement of foreign judgments, it has been said that this country is far behind other countries with federations of states similar to the United States. Leflar, *supra* note 2, at 343-45. For a comparison of enforcement techniques in English and American law, with a history of each country's law on the subject and an analysis of the [British] Foreign Judgments (Reciprocal Enforcement) Act of 1933, see Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 Mich. L. Rev. 1129 (1935).
4. "Foreign judgments," as used in this report, encompasses all judgments entitled to full faith and credit, and foreign country judgments meeting domestic standards for recognition.
5. 2 Moore, *Federal Practice*, ¶ 1.04[2] (1965).
6. Unless otherwise noted, the following discussion is derived from Leflar, *supra* note 2.
7. 28 U.S.C. § 1963 (1964), hereinafter referred to as "section 1963."
8. Discussions of the background of the federal registration procedure may be found in 1 Barron & Holtzoff, *Federal Practice and Procedure* § 5 (Wright ed., 1960); 2 Moore, *Federal Practice* ¶ 1.04[2] (1965); and Note, *Registration of Federal Judgments*, 42 Iowa L. Rev. 285 (1957).

9. 9A U.L.A. 474 (1965).
10. *Id.* at 486.
11. 9B U.L.A. 63, 67 (1966).
12. See *infra*, Part IV.
13. Arkansas, Illinois, Missouri, Nebraska, Oregon, Washington, Wisconsin and Wyoming. See 9A U.L.A. 474.
14. Wisconsin's act is found at W.S.A. § 270.96; Wyoming's is at 2 W.S.A. § 1-477.1 (1965 Cum. Supp.).
15. 9A U.L.A. 53 (1967 Supp.); Pa. P.L. —, No. 451 (Dec. 22, 1965).
16. See Merrill, *Oklahoma and the National Conference of Commissioners on Uniform State Laws*, 1965, 36 Okla. B.J. 2205, 2210 (1965).
17. Yntema, *supra* note 3, at 1136.
18. *Ibid.*
19. *Ibid.* On modes of execution, see Reisenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 Iowa L. Rev. 155 (1957).
40. See generally Leflar, *supra* note 2, at 336-38.
41. *Id.* at 337. See also Note, *Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, 36 N.Y.U.L. Rev. 488 (1961).
42. *Id.* at 338.
43. *Id.* at 342; Note, *Registration of Federal Judgments*, 42 Iowa L. Rev. 285, 287, 289 (1957).
44. Leflar, *supra* note 2, at 342.
45. *Ibid.*
46. 326 U.S. 90 (1945).
47. Note, *Registration of Federal Judgments*, *supra* note 43, at 297 n. 61.
48. Clark, *Forward*, 42 Iowa L. Rev. 151, 153 (1957).
49. *Id.* at 154.
50. Leflar, *supra* note 2, at 346-349.
51. Commissioners' Prefatory Note, 9 A U.L.A. 486, 487 (1965).
52. *Id.* at 486. For an analysis of procedural and substantive due process in this context, see Note, *Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, 36 N.Y.U.L. Rev. 488, 490-95 (1961).
53. Commissioners' Prefatory Note, *supra* note 51, at 486.
54. See, e.g., as to foreign country judgments, *Plugmay Ltd. v. National Dynamics Corp.*, 48 Misc.2d 213, 266 N.Y.S.2d 240 (N.Y. City Civ. Ct. 1966), *rev'd* 278 N.Y.S.2d 906 (Sup. St. 1967).
55. Leflar, *supra* note 2, at 349.
56. *Id.* at 351.
57. Uniform Enforcement of Foreign Judgments Act § 4.
58. Leflar, *supra* note 2, at 352.
59. Commissioners' Note to § 6, 9 A U.L.A. 480.
150. Yntema, *supra* note 138.
151. Paulsen, *supra* note 114, at 202.
152. 5 Weinstein, Korn & Miller, *New York Civil Practice* ¶ 5014.17 (1966).
153. Paulsen, *supra* note 114, at 220.
154. Commissioners' Prefatory Note to Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act) 9A U.L.A. 486, 487 (1965).
155. *Id.* at 486.
156. Note, *The New Federal Judgment Enforcement Procedure*, 50 Colum. L. Rev. 971, 973-74 (1950).
157. 341 F.2d 265 (1965).
158. *Id.* at 271.
- James Blackstone Mem. Ass'n v. Gulf, Mobile & O. R.R. Co., 28 F.R.D. 385 (D.Conn. 1961), cited by the court, involved an Illinois judgment registered under section 1963 in Connecticut. Execution against the judgment debtor's property had issued. The petitioner asked for relief on the ground that the judgment failed to indicate whether it was joint or joint and several, and sought a ruling that it be considered merely joint. The court said, in denying relief:  
The threshold question is whether this court has jurisdiction. While 28 U.S.C.A. § 1963 permits registration of foreign judgments, and provides that, upon registration, the judgment shall have the same effect as a judgment of this court, it does not follow that this court has full power over this judgment for all purposes and, more specifically, for the purpose of proceeding under Rule 60. This question has not been resolved, nor is it necessary to resolve it here, since this motion may be disposed of on other grounds.  
*Cf. Vaughan v. Petroleum Conversion Corp.*, 120 F.Supp. 175 (D. Conn. 1953).
159. Compare *Mantanuska Valley Lines Inc. v. Moliter*, 365 F.2d 358 (1966). A high proportion of cases arising under the federal statute have presented limitations questions as to which the statute, like the uniform Acts, makes no provision. See, e.g., *Juneau Spruce Corp. v. I.L.W.U.*, 128 F.Supp. 715 (N.D.Cal. 1955); *Juneau Spruce Corp. v. I.L.W.U.*, 128 F.Supp. 697 (D.Hawaii 1955).

160. *Stanford v. Utley*, *supra* note 157, at 270.
161. Section 2, Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act).
162. 28 U.S.C. § 1963 (1964) applies only to money judgments. See, e.g., *Stiller v. Hardman*, 324 F.2d 626 (1963).
163. See *supra*, text accompanying notes 60-63.
164. On the British Foreign Judgments [Reciprocal Enforcement] Act of 1933, 23 & 24 Geo. 5, c. 13, see, e.g., Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 Mich. L.Rev. 1129, 1150-63 (1935). The International Law Association Model Act is found in International Law Ass'n, Report of the Fifty-First (Tokyo) Conference xvii (1964). It provides for alternate enforcement methods: registration or exequatur, the latter being a civil law device. *Id.*, at xxi-xxiii. See also *infra*, note 197.
165. Restatement (Second), Conflict of Laws, Introductory Note to Ch. 6 (Proposed Official Draft, 1967).
166. The lack of provision for defenses capable of barring registration of a federal judgment under 28 U.S.C. § 1963 (1964) is discussed in Note, *The New Federal Judgment Enforcement Procedure*, 50 Colum. L.Rev. 971 (1960). Compare the British Administration of Justice Act, 1920, 10 & 11 Geo. 5, c. 81, summarized in Yntema, *supra* note 164, at 1157-60.
167. See, e.g., listing the defenses in the context of enforcement of judgments, Leflar, *The New Uniform Foreign Judgments Act*, 24 N.Y.U.L. Rev. 336, 346 (1959); Paulsen, *Enforcing the Money Judgment of a Sister State*, 42 Iowa L. Rev. 202, 204 (1957) (lack of jurisdiction, lack of finality, the running of the statute of limitations, and payment or discharge in bankruptcy; fraud in obtaining the judgment is included because it is a ground for attacking a local judgment in every state); Note, *The New Federal Judgment Enforcement Procedure*, *supra* note 166, at 974. See generally Restatement (Second), Conflict of Laws, Ch. 6 (Proposed Official Draft, 1967).
168. See the Uniform Foreign Money-Judgments Recognition Act, 9B U.L.A. 64, 67 (1966).
169. See generally Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 Colum. L. Rev. 153 (1949); Restatement (Second), Conflict of Laws § 103 (Proposed Official Draft, 1967).
170. Section 3, Uniform Enforcement of Foreign Judgments Act (Revised 1964 Act).
171. The Federal statute has been criticized on the ground that the only manner in which registration of an invalid judgment can be prevented is by a separate action to enjoin registration. Note, *The New Federal Judgment Enforcement Procedure*, *supra* note 166, at 976-77. And it makes no specific provision as to notice.  
Section 4 of the British Foreign Judgments [Reciprocal Enforcement] Act, *supra* note 164, states that on application duly made by a party against whom a registered judgment may be enforced, registration shall be set aside on any of the listed grounds, if present.
172. Uniform Enforcement of Foreign Judgments Act, Pa., 1965, Dec. 22, P.L. —, No. 451, § 2.
173. See *supra*, text at note 158.
174. Compare James Blackstone Mem. Ass'n, *supra* note 158, with *Hadden v. Rumsey Products*, 196 F.2d 92 (1952), in which the judgment creditor registered, under section 1963, a judgment by confession on a cognovit note. The debtor instituted, in the registering court, a proceeding to enjoin enforcement on the ground of fraud and duress in procuring execution of the note. This was treated as an independent action in equity which need not be brought in the rendering court, so it was not necessary to reach a rule 60(b) question.
175. The following discussion is digested from 7 Moore, *Federal Practice* § 60.28[1] (1955).
176. *Ibid.*
- 176 a. Restatement (Second), Conflict of Laws § 115, comment b (Proposed Official Draft, 1967).
177. *Id.*, at comment a. See Paulsen, *supra* note 167, at 205-206, for an examination of the question whether grounds for reexamination in the first state are in all cases available in an action on the judgment in a second state.

It is possible to construe section 2 so as to avoid the rule 5015 problem just discussed, although the interpretation may be a bit tenuous, resting as it does upon the use of articles. When referring to the clerk's treatment of the foreign judgment upon filing, section 2 requires that he treat it as a judgment of the district court, presumably the one in which it is filed. When speaking of the status of the foreign judgment, the section states that it has the same effect and is subject to the same procedures as a judgment of a district court, possibly

meaning some court other than that in which it is filed. A 5015 motion can be made only in the court which rendered the judgment.

- 177a. Restatement (Second), *op. cit. supra* note 178a. Any cases in which rule 5015 would be called into question will probably be limited to those grounds which are not available in an action on a sister state judgment. As to the others, the only question would be whether the motion is the appropriate procedure. This is a question distinctly within the competence of the second state.
- 177b. Speaking of the British registration statutes, and comparing the practice created by them with prevailing American methods, Professor Yntema described the latter as "a somewhat singular phenomenon of retarded legal development.... The situation in the United States is not less singular in that the Full Faith and Credit Clause, literally construed, appears to invite a construction which the more practically minded British genius has now apparently achieved without such suggestion." Yntema, *supra* note 164, at 1165.
178. Gullet v. Gullet, 188 F.2d 719 (1951); but see Stanford v. Utley, 341 F.2d 265 (1965).
179. See authorities cited in Stanford v. Utley, *supra* note 178, at 270 for characterizations of the effect of a section 1963 registration.
180. 2 Moore, Federal Practice ¶ 1.04 (1966).
181. Leflar, *supra* note 167, at 347-49; Note, *Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, 36 N.Y.U.L. Rev. 488 (1961).
182. *Supra*, text as notes 50-53.
183. Leflar, *supra* note 167, at 346. See, e.g., Standard Oil Co. v. Missouri ex rel. Hadley, 224 U.S. 270, 286-87 (1912), stating that a right of appeal is not essential to due process of law. Subject to the requirements of notice and opportunity for a hearing, state laws regulating procedure, evidence and methods of trial have generally been upheld. Twining v. New Jersey, 211 U.S. 78, 110 (1908).
184. See Fauntleroy v. Lum, 210 U.S. 230, 236 (1908).
185. Lack of jurisdiction of the judgment-rendering court is clearly such a ground. This does not constitute an exception to full faith and credit, but prevents its effect altogether, since the judgment is void in the first state. See Reese & Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 Colum. L. Rev. 153, 170 (1949).
186. McElmoyle v. Cohen, 13 Pet. 312, 324-25 (U.S. 1839); Reese & Johnson, *supra* note 185, at 155; Note, *The Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, *supra* note 181, at 194.
187. See *supra*, text at note 50.
188. Leflar, *supra* note 167, at 348.
189. Note, *The Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, *supra* note 181, at 492.
- That it is necessary to reduce a foreign judgment to a domestic one before execution can issue was clearly stated by Story, *Commentaries on the Conflict of Laws* 1005 (3rd ed. 1846). This position is based upon the principle of territoriality, of late increasingly criticized. See, e.g., Yntema, *supra* note 164, at 1166-67.
190. Twining v. New Jersey, 211 U.S. 78, 110 (1908).
191. Note, *The Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, *supra* note 181, at 492.
192. *Ibid.* and authorities there cited.
193. St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 76-77 (1936).
194. See authorities cited *supra*, note 169.
195. See Story, *op. cit. supra* note 189; Leflar, *supra* note 167, at 348; Yntema, *supra* note 164, at 1149, 1164-65.
196. Note, *The Constitutionality of a Uniform Reciprocal Registration of Judgments Statute*, *supra* note 181, at 493. See also Yntema, *supra* note 164, at 1166, emphasizing the character of a foreign judgment as a judgment.
197. On the various statutes of the countries of the British Commonwealth, see, e.g., Yntema, *supra* note 164, at 1150-58. A more recent, and very brief, summary is found in Note, *The New Federal Judgment Enforcement Procedure*, 50 Colum. L. Rev. 971-72 (1960).
- The exequatur of the civil law is a writ which renders a foreign judgment executory without the necessity of a new judgment. See Katz & Brewster, *Cases in International Transactions and Relations* 442 (1960); Delaume, *American-French Private International Law* 160 (2d ed. 1961).
198. Compare Note, *The New Federal Judgment Enforcement Procedure*, *supra* note 197, at 977.
- 198a. See Restatement (Second), Conflict of Laws § 25, comment d (Proposed Official Draft, 1967).
199. *Ibid.* and comment e.
200. *Ibid.*, § 112, comment b.
201. *Ibid.*



EXHIBIT V

States which have enacted the Revised Uniform Enforcement of Foreign Judgments Act of 1964:

Arizona: Ariz. Rev. Stat. §§ 12-1701 to 12-1708 (Supp. 1972)

Colorado: Colo. Rev. Stat. Ann. §§ 77-13-1 to 77-13-8 (1969 Perm. Cum. Supp.)

Kansas: §§ 60-3001 to 60-3008 (Supp. 1971)

New York: N.Y. C.P.L.R. §§ 5401-5408 (Supp. 1972)

North Dakota: 28 N.D. Century Code §§ 20.1-01 to 20.1-08 (Supp. 1971)

Oklahoma: 12 Okla. Stat. Ann. §§ 719-726 (Supp. 1972)

Pennsylvania: 12 Penn. Stat. Ann. §§ 921-928 (Supp. 1972)

Wisconsin: Wisc. Stat. Ann. § 270.96 (Supp. 1972)

Wyoming: Wyo. Stat. §§ 1-477.1 to 1-477.8 (Supp. 1971)

Law Review Articles:

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 Ann. Rep. 248 (1968)

Leflar, The New Uniform Foreign Judgments Act, 24 N.Y. U.L.Q. Rev. 336 (1949)(discusses 1948 Act)

Light, The Uniform Enforcement of Foreign Judgments Act, 37 Chi. Bar Rec. 247 (1956)(1948 Act)

Paulsen, Enforcing the Money Judgment of a Sister State, 42 Iowa L. Rev. 202 (1957)

Riesenfeld, Collection of Money Judgments in American Law--A Historical Inventory and a Prospectus, 42 Iowa L. Rev. 155 (1957)

Riesenfeld, Creditors' Remedies and the Conflict of Laws--Part One: Individual Collection of Claims, 60 Colum. L. Rev. 658 (1960)

Yntema, The Enforcement of Foreign Judgments in Anglo American Law, 33 Mich. L. Rev. 1129 (1935)

Note, The New Federal Judgment Enforcement Procedure, 50 Colum. L. Rev. 971 (1950)

Law Review Articles (cont.):

Note, Registration of Federal Judgments, 42 Iowa L. Rev. 285 (1957)

Note, Constitutionality of a Uniform Reciprocal Registration of Judgments Statute, 36 N.Y. U.L.Q. Rev. 488 (1961)

TENTATIVE

RECOMMENDATION OF THE CALIFORNIA  
LAW REVISION COMMISSION

relating to

ENFORCEMENT OF FOREIGN JUDGMENTS

The full faith and credit clause of Article IV, Section 1, of the United States Constitution requires that states respect the valid judgments of sister state and federal courts.<sup>1</sup> Subject to certain defenses,<sup>2</sup> any valid judgment of a sister state or United States court is entitled to recognition; that is, it is to be given "the same conclusive effect that it has in the state of rendition with respect to the persons, the subject matter of the action and the issues involved."<sup>3</sup> However, valid money judgments are required by the Constitution to be enforced; that is, the state must give the person the relief he is entitled to under the judgment.<sup>4</sup> The manner of enforcing sister state and federal money judgments is

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1. Although not mentioned in the full faith and credit clause, courts have ruled that federal judgments are entitled to full faith and credit in the states. *Hancock Nat'l Bank v. Farnum*, 176 U.S. 640, 645 (1900); *In re Ballieux*, 47 Cal.2d 258, 260-261, 302 P.2d 801, (1956), cert. denied, 353 U.S. 957 (1957).
  2. 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; 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).
  3. *Restatement (Second) of Conflict of Laws* § 93, Comment b (1971).
  4. *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 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

not specified by the federal Constitution or statutes but rather is determined by the forum state.<sup>5</sup> In California, the exclusive way in which to

enforce such judgments is to bring an action on the judgment in California courts; when a domestic judgment is obtained, then execution may issue.<sup>6</sup>

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 probably will want to seek a writ of attachment until such time as the judgment has been established. A trial (however summary) must be held in order to establish the sister state or federal 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 domestic judgment may the judgment creditor seek execution on the debtor's assets in the state. The formal, traditional process of enforcing foreign judgments has understandably been the subject of criticism.<sup>7</sup> A more efficient and simpler method of enforcing

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credit clause to be enforced. Restatement (Second) of Conflict of Laws § 102, Comment c (1971). Although 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)), they are not required to do so by the U.S. Constitution. 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.

5. Restatement (Second) of Conflict of Laws § 99 (1971).

6. 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.

7. 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).

foreign money judgments is offered by the revised Uniform Enforcement of Foreign Judgments Act of 1964.<sup>8</sup> The revised Uniform Act provides a registration system similar to the method enacted by Congress in 1948 for the enforcement of federal district court judgments in other districts.<sup>9</sup> Under the version of the revised Uniform Act of 1964, which the Commission recommends for adoption in California, the judgment creditor merely files his authenticated judgment in a California trial court where it is treated for all purposes as if it had been reduced to a domestic judgment. Notice of the filing is sent to the judgment debtor so that he may raise any defenses to the enforcement of the foreign judgment. The judgment creditor may obtain a writ of execution at the time he files the foreign judgment, but assets levied upon may not be sold (except in the case of perishables) or distributed to the creditor until 30 days after the creditor files proof of service on the judgment debtor of notice of filing of the foreign judgment.

The revised Uniform Enforcement of Foreign Judgments Act of 1964 has been adopted in the major commercial states of New York and Pennsylvania, and as well in Wisconsin, Arizona, Colorado, Kansas, Oklahoma, North Dakota, and Wyoming. The recommended registration procedure offers several distinct advantages over the traditional enforcement process. The registration system of the revised Uniform Act of 1964 is speedy, efficient, and inexpensive

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8. 9A Uniform Laws Ann. 486 (1965).

9. 28 U.S.C. § 1963 (1970). 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).

to utilize.<sup>10</sup> 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 foreign judgment is preserved.<sup>11</sup> The registration procedure avoids the necessity of obtaining a writ of attachment during the time suit is brought to establish the foreign judgment under existing law.

The Commission recommends the enactment of the revised Uniform Enforcement of Foreign Judgments Act of 1964 with certain minor changes. The Commission believes that the registration procedure provided by the Uniform Act would be a significant improvement in the process of enforcing sister state and federal money judgments.

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10. Commissioners' Prefatory Note, 9A Uniform Laws Ann. 486 (1965); Kulzer, supra, at 290. The Commissioners of Uniform State Laws found that the revised Uniform Act of 1964 "provides the enacting state with a speedy and economical method of doing that which it is required to do by the Constitution of the United States. It also relieves creditors and debtors of the additional cost and harassment of further litigation which would otherwise be incident to the enforcement of the foreign judgment. This act offers the states a chance to achieve uniformity in a field where uniformity is highly desirable." Commissioners' Prefatory Note, 9A Uniform Laws Ann. 487 (1965).

11. Kulzer, supra, at 290-291.

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

An act to amend Section 337.5 of, to amend the heading of Title 11 of Part 3 of, and to add Chapter 1 (commencing with Section 1710.10) to Title 11 of Part 3 of, the Code of Civil Procedure, relating to enforcement of foreign judgments.

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

Section 1. Section 337.5 of the Code of Civil Procedure is amended to read:

337.5. Within 10 years:

1. An action upon any bonds or coupons issued by the State of California.

2. An action upon any general obligation bonds or coupons, not secured in whole or in part by a lien on real property, issued by any county, city and county, municipal corporation, district (including school districts), or other political subdivision of the State of California.

3. An action or a special proceeding upon a judgment or decree of any court of the United States or of any state within the United States.

Sec. 2. 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~~

FOREIGN JUDGMENTS

Note. Chapter 2 of Title 11 is the Uniform Foreign Money-Judgments Recognition Act. The heading of Title 11 is all that remains of probate provisions. Chapter 1 is blank.



Sec. 3. 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. Enforcement of Foreign Judgments

§ 1710.10. Uniform Enforcement of Foreign Judgments Act

1710.10. This chapter shall be known and may be cited as the  
Uniform Enforcement of Foreign Judgments Act.

Note. This is basically the same as Section 8 of the 1964 Act, with the addition of "shall be known" as in the Colorado statute. Colo. Rev. Stat. Ann. of 1963 § 77-13-1 (1969 Perm. Cum. Supp.). As Kulzer notes, the titles of the 1948 and 1964 acts are identical and, hence, confusing since the acts are quite different. However, Kulzer did not think the confusion warranted any change. Kulzer, supra, at 289 (see Exhibit IV).

§ 1710.20. Definition

1710.20. In this chapter, "foreign judgment" means any judgment, decree, or order of a court of the United States, of a state or territory of the United States, or of any other court, requiring the payment of money, which is entitled to full faith and credit in this state.

Comment. Section 1710.20, which defines "foreign judgment" for the purposes of Chapter 1, is based on Section 1 of the revised Uniform Enforcement of Foreign Judgments Act of 1964, 9A Uniform Laws Ann. 488 (1965). However, in variation from the revised Uniform Act, the procedures of this chapter have been explicitly limited to foreign judgments requiring the payment of money. Hence, for example, a sister state decree ordering the performance of some act other than the payment of money, such as the conveyance of land in California, may not be enforced by this procedure. Whether a money judgment is entitled to enforcement by the procedure of this chapter is a matter to be determined by the courts under the full faith and credit clause of Article IV, Section 1, of the United States Constitution and the decisions interpreting it. In the case of money judgments, this chapter provides a means of doing what the state is required to do by the full faith and credit clause of the United States Constitution.

Notes. (A) The limitation to money judgments follows the Pennsylvania statute. 12 Pa. Stat. Ann. § 921 (Supp. 1972). (See Exhibit III.) Both the 1948 and 1964 Uniform Acts were broader in allowing enforcement of any judgment entitled to full faith and credit. However, thus far it has not been determined by the United States Supreme Court whether any sorts of

judgments other than money judgments are required to be enforced, rather than merely recognized, by sister states under the full faith and credit clause. Restatement (Second) of Conflict of Laws §§ 100, 102; Comment c. and Reporter's Note (1971); 5 B. Witkin, California Procedure Enforcement of Judgment § 194 at 3549-3550 (2d ed. 1971). California has allowed 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)), but this is not required by the Constitution. The Commission may prefer not to limit the procedure to money judgments, but it makes some sense to so limit it. The Uniform Act speaks of judgment creditors and debtors, most cases will involve money judgments, and jurisdictional attachment is not involved with the enforcement of equity decrees or orders to convey land.

(B) At the January meeting, Professor Riesenfeld raised the problem of the enforcement of federal judgments in state courts under the Uniform Act of 1964 and suggested that the staff look at Knapp v. McFarland, 426 F.2d 935 (2d Cir. 1972). In Knapp, it was decided that, in New York, the Uniform Enforcement of Foreign Judgments Act applied only to money judgments of a sister state and not to federal money judgments. This case may be explained by the fact that New York already had a registration procedure for the enforcement of federal judgments which was in conflict with the Uniform Act. The court, therefore, upheld the actions of the creditor and the sheriff which were performed in accordance with the separate statutory procedure for enforcing federal judgments. However, the authority of this opinion does not really extend outside New York, for as a general proposition its conclusions concerning the Uniform Act are incorrect. It is true that the

language of Section 1 of the 1964 Act is not a model of clarity: "In this Act 'foreign judgment' means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." The similar provision in the 1948 Act spoke of "any State or Territory" instead of "any other court." The 1964 language probably indicates a change in style rather than in substance; the words "court of the United States" still should mean federal courts in 1964 as in 1948. See Leflar, The New Uniform Foreign Judgments Act, 24 N.Y.U. L.Q. Rev. 336, 350 n.41 (1949), concerning meaning of 1948 Act language. In addition, the Commissioners' Prefatory Note to the 1964 Act states that the act "provides the enacting state with a speedy and economical method of doing that which it is required to do by the Constitution of the United States." 9A Uniform Laws Ann. 487 (1965). Although federal courts are not mentioned in the full faith and credit clause of Article IV, Section 1, of the United States Constitution, it has been held that federal judgments are entitled to full faith and credit in state courts and that state judgments are entitled to full faith and credit in federal courts. Hancock Nat'l Bank v. Farnum, 176 U.S. 640, 645 (1900); Stoll v. Gottlieb, 305 U.S. 165 (1938); In re Ballieux, 47 Cal.2d 258, 260-261, 302 P.2d 801, \_\_\_\_ (1956), cert. denied, 353 U.S. 957 (1957); Mueller v. Elba Oil Co., 21 Cal.2d 188, 205, 130 P.2d 961, \_\_\_\_ (1942). Hence, the language of the 1964 Act should be sufficient to indicate that both state and federal courts are covered. But the Commission may prefer to clarify the statutory language. Any doubt that federal judgments are included within the registration procedures should be dispelled by the proposed wording although that wording is now a bit more ponderous.

(C) New York restricts judgments enforceable by the Uniform Act to exclude those "obtained by default in appearance, or by confession of judgment." N.Y. C.P.L.R. § 5401 (Supp. 1972). (See Exhibit II.) However, this language should not be adopted. It is the policy of the act to allow enforcement of any money judgment entitled to full faith and credit. The courts should be allowed to decide the exceptions to full faith and credit and where the requirement is inapplicable. Judgments will not have to be enforced or recognized where to do so "would involve an improper interference with important interests" of a state. Restatement (Second) of Conflict of Laws § 103 (1971). However, the fact that a valid judgment is against the strong public policy of the state is not sufficient to avoid the requirements of full faith and credit. Restatement (Second) of Conflict of Laws § 117 (1971). To specify certain types of money judgments which are not to be enforced by this procedure would impair the desirable principle of unified treatment of all money judgments entitled to full faith and credit.

(D) California has adopted the Uniform Foreign Money-Judgments Recognition Act (Code Civ. Proc. § 1713 et seq.), which provides that money judgments of foreign countries are to be "enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit." Code Civ. Proc. § 1713.3. Kulzer finds no reason why foreign nation judgments should not be enforceable through the 1964 Uniform Act's registration procedure as well as through the 1948 Act's summary judgment procedure. Kulzer, supra, at 281 (see Exhibit IV). Kulzer recommends that the definition of judgment include the following language:

or (2) any judgment of a foreign state which is entitled to recognition under the Uniform Foreign Money-Judgments Recognition Act.

New York did not adopt Kulzer's suggestion and, in view of Code of Civil Procedure Section 1713.3, it is not really needed. However, the added language would make the relationship of the statutes clearer.

§ 1710.30. Filing and statutes of foreign judgments

1710.30. (a) A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of the proper superior court, municipal court, or justice court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a superior court, a municipal court, or a justice court of this state.

(b) A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a superior court, a municipal court, or a justice court of this state and may be enforced or satisfied in like manner.

Comment. Section 1710.30 is almost identical to Section 2 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965). Subdivision (a) provides for the filing of a judgment in the office of the proper clerk of court. The proper court is determined by statutory jurisdictional amounts. Code Civ. Proc. §§ 89, 112. The superior court in a county does not have jurisdiction when a municipal or justice court of the county has jurisdiction. Cal. Const., Art. VI, § 10; Cambra v. Justice's Court, 4 Cal.2d 445, 49 P.2d 1121 (1935). The county clerk is clerk of superior court. Cal. Const., Art. VI, § 4; Govt. Code § 26800. The municipal court clerk and justice court clerk are designated by the judges of the courts. Govt. Code §§ 71181, 72702. If a justice court has no clerk, the judge performs the duties required by this chapter. Cf. Govt. Code §§ 71221, 71611, 71612, 71614.5, 71661. The act of Congress concerning authentication of judgments is 28 U.S.C. § 1738 (1970). Cf. Code

Civ. Proc. § 674 (certification by clerk or judge of abstract of judgment for purposes of filing with recorder of any county in order to create judgment lien on debtor's real property).

Subdivision (b) provides that, when filed, the foreign judgment shall be treated in all respects as a judgment of the court where it is filed.

Notes. (A) Section 1710.30 preserves the jurisdictional amount distinctions between superior, municipal, and justice courts. Small claims courts are left out of the enforcement process since they serve a different purpose and have no exclusive jurisdiction. Of course, it is possible to give the entire enforcement procedure under this chapter to the superior courts, but that would mean that they would be handling cases involving amounts under \$5,000 where municipal or justice courts could be doing it.

(B) The statement in the Comment regarding judges of justice courts performing the duties when there is no clerk could be put in the statute but is left out here just because it is desirable to tamper with the uniformity of the basic act as little as is possible.

(C) New York requires the filing within 90 days of the authentication. N.Y. C.P.L.R. § 5402(a) (Supp. 1972). (See Exhibit II.) This may be a useful provision.



§ 1710.40. Notice of filing

1710.40. (a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, the ~~name~~ and post office address of the judgment creditor, and stating that the judgment is unsatisfied in whole or in part, the amount remaining unpaid, and that the enforcement of the judgment has not been stayed.

(b) Within 30 days after the filing of the foreign judgment and the affidavit, the judgment creditor or his lawyer shall send by registered or certified mail or personally serve notice of the filing of the foreign judgment to the judgment debtor at his last known address. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state.

(c) Property seized under a writ of execution may not be sold earlier than 30 days after the judgment creditor files proof of service of notice of filing of the foreign judgment with the clerk of court. If property is perishable and must be sold in order to prevent its destruction or loss of value, the proceeds of the sale may not be distributed to the judgment creditor earlier than 30 days after the judgment creditor files proof of service with the clerk of court.

Comment. Section 1710.40 is based on Section 3 of the revised Uniform Enforcement of Foreign Judgments Act of 1964 and on the New York version. N.Y. C.P.L.R. §§ 5402(a), 5403 (Supp. 1972).

Subdivision (a) provides for the contents of the judgment creditor's affidavit which is to be filed with the clerk of court. The statements that the judgment is unsatisfied in whole or in part, the amount remaining unpaid, and that the enforcement of the judgment has not been stayed are not required by the Uniform Act but are based on the New York version. N.Y. C.P.L.R. § 5402(a)(Supp. 1972). These additional requirements are intended to prevent double recovery and show clearly that the foreign judgment is final to the knowledge of the judgment creditor.

Subdivision (b) provides for the manner and contents of notice to the judgment debtor. The procedure is based on the simpler New York procedure instead of that specified in the Uniform Act. N.Y. C.P.L.R. § 5403 (Supp. 1972). The judgment creditor may serve notice on the judgment debtor personally or by registered or certified mail.

Subdivision (c) is similar to the New York provision (N.Y. C.P.L.R. § 5403 (Supp. 1972)) except that it provides that property shall not be sold until 30 days after proof of service whereas the New York procedure provides only that the proceeds from execution shall not be distributed until that time. The provision of subdivision (c) regarding perishable property follows the New York procedure regarding the debtor's property generally. The delay is provided in order that the judgment debtor may raise any defenses, or institute proceedings for reopening, vacating, or staying the judgment, before the judgment is satisfied. See Code Civ. Proc. § 692 (requiring 10 days' notice to debtor before sale of personal property and 20 days' notice before sale of real property).

Note. The 1964 Uniform Act contained an optional subdivision (c) which provided:

No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until ( ) days after the date the judgment is filed.

New York provided that the distribution of the proceeds, but not the writ and levy of execution, should be delayed for 30 days as explained in the Comment. (See Exhibit II.) Pennsylvania and Kansas left out the subdivision completely; but it was adopted in six other states with time periods running from five to 20 days. The procedure of New York is recommended since it both gives the debtor an opportunity to raise any defenses before he completely loses his property to the creditor and prevents the judgment debtor from removing his assets between the time he receives notice of the filing of the judgment and the time execution is levied.

It seems better to restrain both the sale of the property and distribution of the proceeds since, if the defendant is successful in having the judgment quashed, he might want his property back and not merely the proceeds of an execution sale. Of course, in the case of perishables, it would be useless to hold the property without sale. As the Comment notes, Code of Civil Procedure Section 692 requires that notice be given to the judgment debtor before sale of his property anyway. Hence, the New York procedure which seems to allow sale before notice to the debtor is not in accord with existing California law.

§ 1710.50. Stay

1710.50. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the court any ground upon which enforcement of a judgment of any superior court, municipal court, or justice court of this state would be stayed, the court shall stay enforcement for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

Comment. Section 1710.50 is virtually identical to Section 4 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965).

Note. A provision may be desired which gives the court discretion to stay the judgment on its own motion based on information such as that in the affidavit in Section 1710.40(a). Kulzer suggests this be done. Kulzer, supra, at 288 (see Exhibit IV). Otherwise, a stay could be had only on motion of the debtor under the terms of the statute.

§ 1710.60. Fees

1710.60. Any person filing a foreign judgment shall pay to the clerk of court the fees prescribed by statute for the filing of an action in the court in which such judgment is filed. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for judgments of the court where the judgment is filed.

Comment. Section 1710.60 is based on Section 5 of the revised Uniform Enforcement of Foreign Judgments Act of 1964 (9A Uniform Laws Ann. 488 (1965)) and the Oklahoma statute (12 Okla. Stat. Ann. § 724 (Supp. 1972)). See Govt. Code § 26721 (fees provisions).

Note. The Uniform Act provided for a specification of the fee but, since we are dealing with three courts and since amendments in fee schedules will take place in the future, this flexible provision makes sense. Wisconsin omits any reference to fees, and New York, Pennsylvania, and Oklahoma refer over to other general provisions.

§ 1710.70. Uniformity of interpretation

1710.70. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Comment. Section 1710.70 is identical to Section 7 of the revised Uniform Enforcement of Foreign Judgments Act of 1964. 9A Uniform Laws Ann. 488 (1965).

Note. The Uniform Act contains the following as Section 6:

Optional Procedure.--The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this Act remains unimpaired.

Such a provision was included in the 1948 Act since it was believed that, if the new procedure proved more efficient, it would be used despite the availability of the traditional procedures. Leflar, The New Uniform Enforcement Judgments Act, 24 N.Y.U.L.Q. Rev. 336, 354 (1949). The staff recommends that this section be omitted for the following reasons: First, the proposed statute should be an entirely sufficient replacement for the traditional practice of bringing separate actions to enforce money judgments. Second, the procedure for enforcing sister state judgments in California is not now spelled out in the statutes but is rather part of the common law. Section 1913 of the Code of Civil Procedure merely requires that an action or special proceeding be brought to enforce a sister state judgment. To add the proposed registration procedure should not affect the common law method of enforcing judgments unless some judge who is seeking to void those traditional procedures finds an implication in the omission of this section that the Legislature intended to make the registration procedure exclusive. The point

is that the omission of this section surely would not compel a court to find that, in the case of money judgments, the registration procedure is exclusive of all others. Therefore, Section 6 seems superfluous. Third, the enactment of this section could easily be interpreted as preserving traditional methods of enforcing money judgments including those where quasi in rem jurisdiction has been required. Since the Commission has indicated its desire to leave the courts as free as possible to decide the jurisdictional questions under Code of Civil Procedure Section 410.10, this section implying the retention of quasi in rem jurisdiction should be omitted. An action to enforce a money judgment against a defendant-debtor who is not subject to personal jurisdiction, according to traditional theory, must be based on quasi in rem jurisdiction, i.e., by the attachment of the nonresident debtor's assets in the state. In traditional terms, full faith and credit requirements have meant resort to quasi in rem jurisdiction. In order to avoid forcing the courts into this traditional thinking, then, Section 6 of the Uniform Act of 1964 should not be adopted.