

ENFORCEMENT OF FOREIGN JUDGMENTS IN CANADA

KURT H. NADELMANN*
Cambridge, Massachusetts

The Conference of Commissioners on Uniformity of Legislation in Canada has produced a new Reciprocal Enforcement of Judgments Act,¹ to replace an earlier one of 1924.² In two provinces, the new Act has already been enacted.³ The Act provides that, when reciprocal provisions have been made in a state in or outside Canada for enforcement of judgments from the enacting province and the Lieutenant-Governor in Council so states, judgments from the reciprocating state in or outside Canada shall have the benefits of the Act.⁴ The applicability of the scheme to jurisdictions outside Canada, which was not provided for in the earlier Act, makes the new Act of interest to foreign jurisdictions and, in particular, the neighboring states of the United States. An examination of the new Act, therefore, is called for. In the United States, attention will no doubt be given the Act by the National Conference of Commissioners on Uniform State Laws, currently engaged in the preparation of a Uniform Act on Recognition of Judgments rendered in Foreign Countries.⁵

Contrary to what may be thought, even among the common-law provinces of Canada there are differences in the status of the law on recognition of foreign judgments. Today's common-law rule

*Kurt H. Nadelmann, Harvard Law School, Cambridge, Massachusetts.

¹[1958] Proceedings of the Conference of Commissioners on Uniformity of Legislation in Canada [hereafter cited as Proceedings], p. 90.

²[1924] Proceedings 60; [1925] Proceedings, p. 13 (amendment).

³Alberta: 1958, c. 33 (text of the 1956 draft of the Uniform Act, [1956] Proceedings 82, without the changes made in 1958.) B.C., 1959, c. 70

⁴S. 12. (1): "Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a state in or outside Canada for the enforcement therein of judgments given in (name of province), he may by order declare it to be a reciprocating state for the purposes of this Act. (2) The Lieutenant-Governor may revoke any order made under subsection (1) and thereupon the state with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act."

⁵See [1958] Handbook of the Conference of Commissioners on Uniform State Laws [hereafter cited as Handbook], pp. 77, 151.

that a judgment from a foreign court with proper jurisdiction will be given conclusive effect,⁶ it must be remembered, was not established definitively by the courts of Westminster until 1870.⁷ At that time, legislation in some of the Canadian provinces had already tampered with the problem. In part this legislation was prompted by the fact that, while under common-law precedents foreign judgments were held to be at least *prima facie* evidence of the debt embodied in the judgment,⁸ in Quebec, following a French custom going back to the so-called Code Michaud of 1629,⁹ conclusive effect was denied to foreign judgments as a matter of law.¹⁰ Some alleviation of the conflict of principles occurred after the Union of Upper and Lower Canada for that area through an Act passed in 1860 by the Union Parliament. The Act¹¹ denied recognition to judgments from without but judgments from one side of the province were not allowed to be challenged on the other if the defendant had been served personally in the proceeding. Up to this day this two-sided system is maintained in Quebec¹² with the only change that the privileged status given judgments from Upper Canada has been extended to judgments from any of the Canadian provinces. In Upper Canada, that is Ontario, the scheme of 1860 has been abandoned,¹³ except that a retaliatory provision is maintained in that province under which conclusive effect is denied judgments from Quebec when the service in that action was not personal and no defence was made.¹⁴

⁶ Restatement, Conflict of Laws (1934), §§ 429-432; Goodrich, Conflict of Laws (3rd ed., 1949), p. 603; Dicey, Conflict of Laws (7th ed., 1958), p. 992.

⁷ *Godard v. Gray* (1870), L.R. 6 Q.B. 139.

⁸ Westlake, Private International Law (1858), p. 365; Story, Conflict of Laws (1834), § 605. *Walker v. Witter* (1778), 1 Doug. 1, 99 Eng. Rep. 1.

⁹ Art. 121 of the so-called Code Michaud, drafted by Chancellor Michel de Marillac. See Nadelmann, Non-Recognition of American Money Judgments Abroad and What to Do About It (1957), 42 Iowa L. Rev. 236, at p. 238.

¹⁰ See Johnson, Foreign Judgments in Quebec (1957), 35 Can. Bar Rev. 911, at p. 921.

¹¹ (1860), 23 Vict., c. 24. The text of the Attorney General's bill had less stringent features. See (1860), 6 Upper Can. L. J. 124.

¹² Code of Civil Procedure, (1897), arts. 210 to 212. Johnson, *op. cit.* *supra*, footnote 10, at p. 923.

¹³ Repeal: (1876), 39 Vict., c. 7, § 1, sched. A.

¹⁴ Ont. Judicature Act, R.S.O., 1950, c. 190 ss. 51-52. See *Vezina v. Newsome* (1907), 14 O.L.R. 658; *Lung v. Lee*, [1929] 1 D.L.R. 130, (1929), 63 O.L.R. 194, noted (1929), 7 Can. Bar Rev. 131. Falconbridge, Presidential Address, [1931] Proceedings, pp. 21, 24. Cf. *Plymouth Import Co. v. Kernerman*, [1947] O.W.N. 301.

¹⁵ Order 35, rule 38 of the Rules of the Supreme Court promulgated under the Judicature Act, S.N.S., 1950, s. 45 (originally: N.S. Acts, 1880, c. 13, s. 27). See Read, Recognition and Enforcement of Foreign Judgments (1938), p. 109.

In addition to the provisions in the Code of Civil Procedure of Quebec, there is written law on recognition of foreign judgments in Prince Edward Island and Nova Scotia, and also in Manitoba. In Nova Scotia¹⁵ and Prince Edward Island,¹⁶ a foreign judgment may be challenged by any domiciliary who had not defended the action in the foreign court. In Prince Edward Island, the challenge takes place even if the domiciliary had defended the action, provided the cause of action arose in the island.¹⁷ In Manitoba, a defendant in an action upon a foreign judgment may, as in Quebec, plead to the action on the merits, or set up any defense which might have been pleaded to the original cause of action; but in Manitoba—not in Quebec—the plaintiff may apply to the court to strike out any such pleading or defense upon the ground of embarrassment or delay.¹⁸

This shows a substantial variety of systems in Canada, some at odds with what may be considered today the general principles accepted in the common-law world and elsewhere on recognition of foreign judgments—principles largely in conformity with what has been worked out in the United States for interstate purposes by the Supreme Court under the Full Faith and Credit Clause of the American constitution.

The British North America Act of 1867—the Canadian constitution—has brought no help to the inter-provincial solution of the problem. No “full faith and credit clause” appears in the Act. This failure to provide in the basic Act for inter-provincial recognition of judgments, as is done by the Full Faith and Credit clause in the United States constitution,¹⁹ has never been explained authoritatively. It is true that, going beyond what the American

¹⁶ Order 35, rule 1, of the Rules of Court promulgated under the Judicature Act, 1951, § 27 (originally: P.E.I. Acts, 1869, c. 15, s. 5).

¹⁷ *Ibid.* See Read, *op. cit.*, *supra*, footnote 15, at p. 110.

¹⁸ Queen's Bench Act, R.S.M., 1954, c. 52, s. 82, originally: Man. Acts, 1876, c. 2, s. 8 (suggested by Wood C.J. in *Hickey v. Legresley*, (1905), 15 Man. R. 304, at p. 313 *Bank of Montreal v. Cornish*, (1879), Temp. Wood Rep. 272, at p. 279). The principal rule was apparently taken from the Ontario law. Ontario abolished the rule in 1876, *supra*, footnote 13, the same year it was enacted in Manitoba. On “embarrassment”, see *Sloman v. Brenton* (1916), 29 D.L.R. 387, (1916), 9 W.W.R. 66; *Moore v. International Securities Co.* (1916), 10 W.W.R. 378; *Callaghan v. Nicholls*, [1921] 3 W.W.R. 476; *Lesperance v. Leistikow*, [1935] 4 D.L.R. 125, 43 Man. R. 322, [1935] 3 W.W.R. 1 (recognition denied to California judgment).

¹⁹ Clauses to this effect are in the federal constitutions of, *e.g.*: Switzerland (Const. of 1874, art. 61); Mexico (Const. of 1917, art. 121), Stern, Full Faith and Credit—The Mexican Experience (1951), 76 N.Y.U. L. Rev. 663; Australia (Const. of 1900, s. 118), Cowen, American-Australian Private International Law (1957), p. 19; India (Const. of 1949, art. 261 (1)). Cf. MacChesney, Full Faith and Credit—A Comparative Study, (1949), 44 Ill. L. Rev. 298.

constitution does, the British North America Act gives legislative jurisdiction to the federal Parliament over such subjects as marriage and divorce and criminal law, including procedure.²⁰ Furthermore, in view of the attention given to English precedents and the possibility—until recently—of an appeal to the Privy Council, a clause would hardly be needed if the common-law rules were followed in all common-law provinces; and Quebec had a rule which secured recognition in at least those instances where the debtor had been served personally with process. Legislative diversity in the common-law provinces would be overcome, it might also have been thought, by the procedure available under section 94 of the Act. The federal Parliament has power under that article to make provision for the uniformity of all laws relating to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all the courts in those three provinces, if the legislatures of the provinces concur. The machinery of section 94 has not been used, however.

As a result of the unsolved problem, the topic of interprovincial recognition of judgments came up at the very first meeting of the Canadian Bar Association, at Montreal in 1915. In his address, "Uniformity of Laws in Canada", Eugène Lafleur remarked: "Equally objectionable is the diversity in the rules governing the authority and effect in one of the provinces of judgments rendered in another."²¹ At the second meeting, the president of the Association conveyed a resolution for assistance from the Federation of Chambers of Commerce of the Province of Quebec in which it said, "that it is desirable that judgments rendered in one Province of Canada, including probates, be recognized in the other provinces provided they are rendered under conditions reciprocally accepted by two or more provinces".²² At the third meeting in Montreal in 1918, a draft for a bill to facilitate the reciprocal enforcement of judgments was presented by a member and referred to the Committee on Uniform Legislation.²³ That year, the Conference of Commissioners on Uniformity of Legislation in Canada was formed²⁴ and took over. The Conference requested the Commissioners for Prince Edward Island to prepare a draft of a model Act respecting the reciprocal enforcement of judgments.²⁵ In 1921, the Com-

²⁰ British North America Act (1867), 30-31 vict., c. 3, s. 91 (1), (26) and (27).

²¹ (1915), 1 Proceedings of the Canadian Bar Ass'n, Addresses, pp. 20, 28.

²² *Ibid.*, (1916), 2 pp. 74, 84.

²³ *Ibid.*, (1918), 3. pp. 28, 29, 173.

²⁴ *Ibid.*, p. 229 *et seq.*

²⁵ [1919] Proceedings, p. 16; [1920] Proceedings, p. 12.

missioners presented a draft²⁶ which was practically a copy of Part II of the British Administration of Justice Act of 1920,²⁷ itself the outcome of proposals made at the Imperial Conference of 1911 for arrangements for the mutual enforcement of judgments throughout the Empire.²⁸ Provided reciprocal arrangements have been made, judgments for a sum of money from any part of British territory may under the Act of 1920 be enforced in Great Britain by way of a registration procedure. The Commissioners found it advisable, however, for the Canadian provinces to establish among themselves a reciprocal enactment before attempting to do it on the Empire level.²⁹ A new draft was ordered to be made. This draft³⁰ was discussed in detail in 1923.³¹ The discussion led to the decision that the Committee should consider also the principles upon which defenses to foreign judgments should be made uniform in the several provinces.³² A report on the latter question was presented in 1924.³³ The Conference approved at the same meeting the text of a model Reciprocal Enforcement of Judgments Act.³⁴

The model Act of 1924, enacted in Alberta in 1925, British Columbia in 1925, Manitoba in 1950, New Brunswick in 1925, Ontario in 1929, and Saskatchewan in 1924, provides a registration procedure, for enforcement purposes, of judgments from other provinces of Canada. Existence of reciprocity, to be certified by the Lieutenant-Governor, is made a condition. Under the Act, no judgment is to be registered if it is shown that the original court acted without jurisdiction, that the debtor had no notice, that the judgment was obtained by fraud, that an appeal was pending, that the judgment violated the public policy of the registering court, or that the judgment debtor would have a good defence if an action were brought on the original judgment.

Except for the latter clause (clause g), the Act closely follows Part II of the British Administration of Justice Act of 1920. Clause (g) providing that no registration shall take place if the debtor would have a good defence if an action were brought on the original

²⁶ [1921] Proceedings, pp. 10, 46.

²⁷ 10 & 11 Geo. V, c. 81, Part II. Dicey, *op. cit.*, *supra*, footnote 6, at p. 1043.

²⁸ See 2 Ollivier, *The Colonial and Imperial Conferences from 1887 to 1937* (1954), pp. 45, 107; 3 Keith, *Responsible Government in the Dominions* (1912), p. 1544; Cmd. 5745, p. 316-22.

²⁹ [1921] Proceedings, p. 17.

³⁰ [1922] Proceedings, pp. 18, 78.

³¹ [1923] Proceedings, p. 13.

³² *Ibid.*, at pp. 13, 14.

³³ [1924] Proceedings, p. 58. The report contained the suggestion that, unless defendant was served personally or submitted, he should be able to avail himself of all defenses. This clause provoked "some discussion". *Ibid.*, p. 13.

³⁴ *Ibid.*, pp. 14, 60; [1925] Proceedings, p. 13 (amendment).

judgment, was added during the discussion of the draft at the 1924 meeting. The result of the clause is that the effect of the original judgment depends upon the rules on recognition of foreign judgments, common law or statutory, in force in the province where the judgment is to be registered.³⁵

The Committee on Defenses to Actions on Foreign Judgments, headed by John D. Falconbridge, in 1925 produced an exhaustive comparative study of the status of the law in the provinces and recommended that a model Act respecting defences be prepared specifying and defining the kinds of defences which may be set up.³⁶ The report includes the following paragraph:³⁷

Your committee presumes that it was not the intention of the Conference, after having carefully defined in clauses (a) to (f) certain cases in which a judgment should not be ordered to be registered, to permit by clause (g) a judgment debtor in every case to object to the registration of the judgment on the ground that he would have had a good defence to the original action. In a province in which a person sued upon a foreign judgment is permitted to defend the action on the merits, the result of clause (g) would seem, however, to be that the registering court will be obliged to try the case *de novo*—the only difference between the trial before the original court and that before the registering court being that the onus of proof is perhaps shifted from the plaintiff to the defendant.

The Committee was asked by the Conference to ascertain the views of the attorneys general of the provinces and draft an Act if the reaction to the idea of unifying the law was favorable.³⁸ Only one reply was received, a favorable one from Alberta.³⁹ In 1930, a draft of an Act to make uniform the Law Respecting Actions upon Foreign Judgments was submitted by the Saskatchewan Commissioners.⁴⁰ After a variety of changes made in the following years,⁴¹ an Act under the title, "The Foreign Judgments Act", was adopted by the Conference in 1933.⁴² The Act is of general application, that is, not limited to judgments from provinces of Canada and has no reciprocity requirement. The Act proceeds upon the stated theory that foreign judgments from a court with proper jurisdiction shall be conclusive, lists the defences which are allowed

³⁵ See discussion in Read, *op. cit. supra*, footnote 15, p. 307.

³⁶ [1925] Proceedings, p. 44.

³⁷ *Ibid.*, p. 49.

³⁸ *Ibid.*, p. 14.

³⁹ [1928] Proceedings, p. 63.

⁴⁰ [1930] Proceedings, pp. 19, 111.

⁴¹ See [1931] Proceedings, pp. 19, 20, 71; [1932] Proceedings, pp. 14, 16, 40.

⁴² [1933] Proceedings, pp. 15, 86. Horace E. Read, then a non-member, had submitted a series of criticisms. *Ibid.*, p. 82. Both the criticisms and the disposition by the committee are worth reading. A warning against making the bases of jurisdiction recognized in the Act exclusive was disregarded for unconvincing reasons.

(principally, lack of jurisdiction, lack of notice, fraud, and violation of public policy), and defines "jurisdiction." The jurisdictional bases which are recognized by the Act are: ordinary residence in the country, submission, and carrying on business in the country, provided, in the latter case, that the country, where the business was carried on, is a province or territory of Canada.

Only Saskatchewan in 1934⁴³ and New Brunswick in 1950⁴⁴ have adopted the Act. For New Brunswick this meant a change in the law. A statute of 1877 had denied conclusive effect to foreign judgments unless the defendant was served personally in the original proceeding.⁴⁵ In none of the other provinces with restrictions upon the common-law principles governing recognition of foreign judgments has the Act of 1933 been adopted, and no future adoption seems to be expected at this time.

Reverting now to the Model Act of 1924, the Reciprocal Enforcement of Judgments Act, this enactment merely provides a procedure for enforcement. The substantive questions are left untouched. A comparison may be made with the Uniform Enforcement of Foreign Judgments Act, produced in the United States by the National Conference of Commissioners on Uniform State Laws in 1948⁴⁶ and enacted in at least eight states (Arkansas, Illinois, Missouri, Nebraska, Oregon, Washington, Wisconsin, and Wyoming), except that, for the American Act, the substantive part is furnished by the clause in the American constitution which provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."⁴⁷ "Foreign Judgments", says the Uniform Act, "means any judgment, decree or order of a court of the United States or of any State or Territory which is entitled to full faith and credit in this state."⁴⁸ It is for these judgments that the procedure of the Act of 1948 is open.

One of the consequences of the reference back, in clause 4 (g) of the Canadian Model Act of 1924, to the rules in the enacting province governing recognition of foreign judgments is that enactment of the Model Act does not qualify a province to claim the benefits of the registration provisions in Part II of the British Administration of Justice Act of 1920. Saskatchewan in 1927 en-

⁴³ R.S.S., 1953, c. 87.

⁴⁴ R.S.N.B., 1956, c. 156.

⁴⁵ C.S.N.B., 1877, c. 48.

⁴⁶ [1948] Handbook, p. 156, (1957), 9A Unif. Laws Ann. 287. See Leflar, Conflict of Laws (1959), p. 152; Leflar, The New Uniform Foreign Judgments Act (1949), 24 N.Y.U.L. Rev. 336; Paulsen, Enforcing the Money Judgment of a Sister State (1957), 42 Iowa L. Rev. 202, at p. 219.

⁴⁷ U.S. Const., art. IV, s. 1.

⁴⁸ Uniform Act, s. 1 (a).

acted its own Judgments Extension Act, modelled after the British statute in order to qualify under that statute.⁴⁹ Except for Newfoundland which did so in 1922⁵⁰—long before joining Canada—Saskatchewan is the only Province of Canada which enjoys the benefits of the British Act of 1920.⁵¹

In 1933, the year the Canadian Commissioners adopted the Foreign Judgments Act which limits defences to foreign judgments, an event of great importance occurred in Great Britain in the matter of recognition of foreign judgments: the "Foreign Judgments (Reciprocal Enforcement) Act" was adopted. This Act,⁵² prepared after discussions with experts in Belgium, France, and Germany,⁵³ has as its principal objective the facilitating of enforcement abroad of judgments from Great Britain. The business world in London had long complained that enforcement of English judgments is difficult to obtain on the Continent and a Committee, the Greer Committee, had been appointed by the Lord Chancellor to investigate. The Committee found that among the reasons for the failure of foreign courts to recognize and enforce British judgments the following appeared to be the most important:⁵⁴

(a) The English procedure for "enforcing" a foreign judgment by new action upon the judgment is not in form an enforcement of the judgment, as understood in those countries where the procedure for the enforcement of a foreign judgment is by the grant of an "execratur", a procedure which results in the adoption of the foreign judgment by the court as a judgment given by itself (*i.e.* something similar to the registration of Scottish judgments under the Judgments Extension Act, or of Dominion and Colonial judgments under Part II of the Administration of Justice Act, 1920). The effect of an action upon the judgment is the same, but it is (perhaps not unnaturally) difficult to convince the foreign court of this.

(b) The whole of the English procedure, including the conditions required for the recognition of a foreign judgment as conclusive, depends upon rules of Common Law only. There is always a natural tendency for the foreign court to suppose that such Common Law rules are too indefinite to be applied as rigidly as the provisions of a statute or a code, and that they are largely discretionary. Further while there are, on the one hand, difficulties in the way of His Majesty's Government giving official statements of rules of Common Law, on the other hand, the proof by expert evidence of such Common Law

⁴⁹ S.S., 1927, c. 12, R.S.S., 1953, c. 86.

⁵⁰ S.Nfld., 1922, c. 14.

⁵¹ See Dicey, *op. cit.*, *supra*, footnote 6, p. 1043, note 1.

⁵² Text in Read, *op. cit.* *supra*, footnote 15, p. 316. See Dicey, *ibid.*, p. 1046, and references to literature, note 20.

⁵³ See Report of the Foreign Judgments (Reciprocal Enforcement) Committee, 1932, Cmd. 4213.

⁵⁴ *Ibid.*, p. 10.

rules on the basis of decided cases as authority may fail to be sufficiently convincing.

Codification of the substantive law and provision for a procedure for recognition appeared to be the answer, and this is what the Act of 1933 did. Provided substantial reciprocity has been established, judgments from the Commonwealth countries as well as from foreign countries can be given the benefit of the Act by an Order in Council. In order to qualify for registration under the Act, the court which rendered the judgment must have had jurisdiction as specified in the Act. Recognized bases of jurisdiction are submission, residence or principal place of business (in the case of a corporate body), and an office or place of business in the country but only for transactions effected through or at that office or place of business. The defences allowed are, principally, the same as stated in the enactment of 1920 covering inter-Commonwealth judgments: lack of notice, fraud, and violation of public policy.

Through Orders in Council, the Act of 1933 has been made available to judgments from India, Pakistan, the Australian Capital Territory, France and Belgium⁵⁵—in the case of France and Belgium after conclusion of treaties with these two countries in 1934 in which the principles for the reciprocal recognition of these judgments are stated in the same way as in the Act of 1933.⁵⁶ By signing these treaties, France and Belgium have removed for judgments from the United Kingdom the right asserted by the courts in these two countries to re-examine the merits of a foreign judgment. The treaties have an accession clause enabling other parts of the British Commonwealth to obtain the same benefits in these countries once legislation similar to the Act of 1933 has been passed.⁵⁷ New Zealand has, on this basis,⁵⁸ secured the benefits of

⁵⁵ References in Dicey, *op. cit.*, *supra*, footnote 6, p. 1048.

⁵⁶ Convention with France of Jan. 18th, 1934, for the reciprocal enforcement of judgments in civil and commercial matters (1936), 171 League of Nations Treaty Series 183; Convention with Belgium of May 2nd, 1934, (1936), 173 League of Nations Treaty Series 293.

⁵⁷ Convention with France, art. 11: "His Majesty may, by a notification given through His Ambassador at Paris, at any time while the Convention is in force under Article 10, and provided that an agreement has been concluded by an exchange of notes on the points mentioned in paragraph (2) of this Article, extend the operation of this Convention to the Channel Islands, the Isle of Man, Newfoundland, Southern Rhodesia, any of His Colonies or Protectorates, and any territories under his suzerainty, or any mandated territories in respect of which the mandate is exercised by His Government in the United Kingdom. (2) Prior to any notification of extension in respect of any territory under the preceding paragraph, an agreement shall be concluded between the High Contracting Parties by an exchange of notes as to the courts of the territory concerned, which shall be deemed to be 'superior courts' for the purposes of this Convention, and the courts to which application for registration of any judgment shall be made."

the treaties of 1934.⁵⁹ The Capital Territory of Australia likewise adopted legislation corresponding to the Act of 1933⁶⁰ and Newfoundland did the same in 1938.⁶¹

The developments in Great Britain were brought to the attention of the Conference of Commissioners on Uniformity of Legislation in Canada in 1935.⁶² The following year the Conference had a draft report from John E. Read, one of the federal representatives,⁶³ and decided to have a report prepared on the desirability of adopting a policy of international reciprocal enforcement of judgments.⁶⁴ The report, by the federal representatives and the Ontario Commissioners, led in 1937 to a resolution declaring that the adoption of a policy of international reciprocal enforcement of judgments is desirable.⁶⁵ In 1939, John E. Read, for the federal representatives, presented a report with a draft of a uniform Act which had the British Act of 1933 as a model.⁶⁶ The report contains this passage:⁶⁷

Generally it is assumed that separate Conventions will be negotiated with France and Belgium, in the event that the policy proves to be acceptable to the Dominion and Provincial Governments. It is also assumed that draft legislation should follow as closely as possible the United Kingdom Act. In that manner, intra-Commonwealth action would be made possible and international negotiations would be facilitated. It is also assumed that the Model Act will supplant the Model Act of 1924.

The war came and slowed down work. In 1942, John E. Read recommended on behalf of the federal representatives that the draft Uniform Act of 1939 be examined by the Conference and that it be referred to the provinces for approval.⁶⁸ The report said:⁶⁹

It is true that the machinery for the reciprocal enforcement of foreign judgments contemplates the existence of agreements between Canada

⁵⁸ Reciprocal Enforcement of Judgments Act, [1934] N.Z. 49. See Read, *op. cit.*, *supra*, footnote 15, p. 309.

⁵⁹ 141 British and Foreign State Papers 295 (France); 142 British and Foreign State Papers 136 (Belgium). N.Z. Reciprocal Enforcement of Judgments Rules, 1938, [1938] N.Z. Statutory Regulations No. 176 (France), p. 734, No. 177 (Belgium), p. 744.

⁶⁰ Australian Capital Territory Ordinance No. 11 of 1954. Great Britain, [1955] Statutory Instruments No. 559. See 7 Halsbury's Laws of England (3rd ed. 1954), p. 160. no. 286, note (e), (1959) Cumulative Supp. to vol. 7, no. 286.

⁶¹ S.Nfld., 1938, No. 20, R.S. Nfld., 1952, c. 130. The Judgments Extension Act of 1922 was repealed by s. 14 of the Act of 1938.

⁶² [1935] Proceedings, pp. 14, 24.

⁶³ The Dominion is represented on the Conference of Commissioners.

⁶⁴ [1936] Proceedings, pp. 14, 15. ⁶⁵ [1937] Proceedings, pp. 32, 33.

⁶⁶ [1939] Proceedings, pp. 42, 44 to 54.

⁶⁷ *Ibid.*, p. 43.

⁶⁸ [1942] Proceedings, p. 35.

⁶⁹ *Ibid.*, p. 36.

and foreign countries, but it is desirable that the Act be accepted by all the Provinces before an international agreement is negotiated. It would be inadvisable for the Canadian Government to negotiate a treaty with a foreign country which applied to only a few of the provinces, not only because foreign countries are reluctant to deal with parts of a country, but also because of the confusion which would result from such partial application.

The report also stated:⁷⁰

It is essential in this case that the Act should fit in with the Quebec law, and the draft with suggestions for revision, might well be remitted for consideration by the Quebec Commissioners with a view to considering particularly what changes were necessary in order to fit in with the laws in force in that country.

The draft was referred by the Conference to the federal and Quebec representatives for a joint report.⁷¹

In 1946, the federal and Quebec representatives suggested a review of the pre-war resolution.⁷² John E. Read had become a member of the International Court of Justice and was not connected with this report. For the case of non-confirmation, it was suggested in the new report that the project of the draft of 1939 be deferred but that the Model Act of 1924 be re-examined for changes that might render the Act acceptable to all provinces.⁷³ The result was an instruction by the Conference to the federal and Quebec representatives and the Ontario Commissioners to prepare an Act in two parts, Part I dealing with the reciprocal enforcement of judgments inter-provincially and Part II extending the reciprocal enforcement to other parts of the Dominions and to foreign countries.⁷⁴ In 1950, W. P. T. O'Meara, Q.C., one of the federal representatives, reported difficulties in the way of an Act that would be acceptable to all jurisdictions.⁷⁵ The following year, the federal and Quebec representatives and the Ontario Commissioners suggested that there need not be two parts to a Uniform Act, the procedure to be used being essentially the same.⁷⁶ They referred to the experience of Manitoba and Ontario in enacting Acts based on the Uniform Reciprocal Enforcement of Maintenance Orders Act and later enlarging the scope of the Uniform Act so as to permit a wider application of its principles.⁷⁷ "We submit," the report said, "that all that is required is a broad provision (to take place of section 9 of the 1924 Uniform Act) which will enable any province

⁷⁰ *Ibid.*, p. 37.

⁷² [1946] Proceedings, p. 57.

⁷³ *Ibid.*, p. 58.

⁷⁴ *Ibid.*, p. 21. Confirmed: [1947] Proceedings, p. 19; [1948] Proceedings, p. 17; [1949] Proceedings, p. 23.

⁷⁶ [1951] Proceedings, p. 46.

⁷¹ *Ibid.*, p. 17.

⁷⁵ [1950] Proceedings, p. 27.

⁷⁷ *Ibid.*, p. 49.

that passes the Act to make reciprocal arrangements with any outside jurisdiction if it may wish, whether it be another province, another part of the Commonwealth or a foreign state." The Conference adopted the report and asked the representatives and Commissioners to prepare a new Reciprocal Enforcement of Judgments Act in accordance with the recommendations in the report.⁷⁸ In 1952, a draft was presented which, in form and language, followed the Act of 1924 wherever possible but extended its scope to make it applicable to judgments from in and outside Canada.⁷⁹

Further work was delayed⁸⁰ by a law suit, *Re Scott*,⁸¹ in which the constitutionality of a number of provisions in the Reciprocal Enforcement of Maintenance Orders Act, including the provision making the Act applicable to foreign countries on the basis of reciprocity, was an issue. The Supreme Court of Canada⁸² reversing the decision of the Ontario Court of Appeal upheld the constitutionality of the clause and work was resumed. Revisions of the draft were made by the Conference at the 1956 meeting and a further editing took place in 1957.⁸³ In 1958, the new Uniform Reciprocal Enforcement of Judgments Act was adopted by the Conference.⁸⁴

Except for the clause which makes application of the Act to judgments from foreign countries possible on a reciprocity basis, the Act is fundamentally the same as the Act of 1924, as far as substance is concerned. Registration of the foreign judgment may be obtained under the Act *ex parte* if the judgment debtor was served personally in the original action or appeared or otherwise submitted. In all other cases, notice of the application for registration must be given. With registration, enforcement becomes possible but, in the case of an *ex parte* registration, no sale or other disposition can be made until after the debtor has received notice

⁷⁸ *Ibid.*, p. 20.

⁷⁹ [1952] Proceedings, pp. 19, 42. Cf. [1953] Proceedings, p. 18 (disapproved by Manitoba and Ontario).

⁸⁰ See [1954] Proceedings, p. 94; [1955] Proceedings, p. 17.

⁸¹ [1954] 4 D.L.R. 546, [1954] O.R. 676 (C.A.), reversing [1954] 2 D.L.R. 465, [1954] O.R. 246 (involving English order).

⁸² [1956] S.C.R. 1371, (1956), 1 D.L.R. (2d) 433. The court held that a reciprocal arrangement, as under the Reciprocal Enforcement of Maintenance Orders Act, S.O., 1948, c. 53, R.S.O., 1950, c. 334, is no exercise of any treaty-making authority vested in the Parliament of Canada. See Laskin, Comment, (1956), 34 Can. Bar Rev. 215, at p. 217.

⁸³ [1956] Proceedings, p. 73 (report by C. R. Magone and Horace E. Read on *Re Scott*, the currency question, and the matters raised by the Manitoba report, [1954] Proceedings, p. 96, and p. 80 (text). [1957] Proceedings, p. 25 (editorial changes suggested by Gilbert D. Kennedy).

⁸⁴ [1958] Proceedings, p. 81 (Kennedy report), and p. 90 (text). Approved: pp. 21, 22.

of the registration and time for an application to have the registration set aside. Registration is not allowed while an appeal is pending or when the time for an appeal has not yet expired.

Grounds for denial of registration are that the original court acted without jurisdiction under the conflicts rules of the registering court or had no jurisdiction over the subject matter; that the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the state of the original court, did not voluntarily appear or otherwise submit; that he was not duly served with process and did not appear; that the judgment was obtained by fraud; that the judgment was in respect of a cause of action that for reasons of public policy would not have been entertained by the registering court; or that the judgment debtor would have a good defence if an action were brought on the judgment.

The Act accomplishes a number of things, and others it does not. From the adoption by five provinces of the Act of 1924 and the agreement of the Commissioners on the Act of 1958 the conclusion can be drawn that the procedure of registration provided for by the Act has advantages over an action brought on the original judgment. When the debtor was served personally or submitted in the original proceeding, enforcement of the judgment from the foreign jurisdiction can be started quickly in the new jurisdiction under the provisions of the Act, and this is highly important as a practical matter. Foreign states will have to consider seriously whether, in order to obtain for their judgments the benefit of the new Act, they should make similar facilities available to foreign judgments if they do not exist. On the other hand, the range of application of the new Act is narrowed down substantially by the provision that judgments which qualify are those obtained against a person who either submitted to the jurisdiction of the original court, or was an ordinary resident or carried on business in the state of the original court. If the non-resident has caused damage by driving his car in the state of the original court, for example, the judgment obtained in that court cannot be registered under the Act of 1958 unless the non-resident had appeared or otherwise submitted in the proceeding to the jurisdiction of that court.

What the new Act has not accomplished is unification of the substantive law on recognition of foreign judgments. The law of the registering province determines whether the original court had jurisdiction and whether foreign judgments shall be given conclusive effect. The mere adoption by a province of the Act of 1958 thus does not enable that province, any more than it was possible

through adoption of the Act of 1924, to claim the privileges of the British Acts of 1920 or 1933 and, through the accession clause, the benefit of the British treaties with France and Belgium. The courts in these latter countries will continue to apply, if they please, the theory of *révision au fond*—review of the merits—even if a judgment is involved from a Canadian common-law province in which conclusive effect is given to foreign judgments and which has passed the new Act. Newfoundland is, in this respect, in a peculiar situation. Before joining Canada, Newfoundland in 1938, adopted a version of the British Act of 1933⁸⁵ which made it eligible for the privileges of the Act of 1933 and of the treaties with France and Belgium. Possibly Newfoundland could ask the Canadian Government to request Her Majesty the Queen to make use of the accession clause in the two treaties for the benefit of Newfoundland.

The fact that, in at least two of the common-law provinces, Nova Scotia and Prince Edward Island, jurisdictional bases acceptable under the common law cannot be recognized by the courts because of restrictions introduced by local rules; that, furthermore, in Manitoba, the defendant may argue his cause again unless the court stops him upon the ground of "embarrassment or delay"; and that, in Quebec, the defendant can have a new trial even if it is to cause embarrassment or delay, creates a problem for foreign states which may be interested in obtaining for their judgments the benefits of the registration procedure of the Act of 1958. It is conceivable that legislatures may be found unwilling to facilitate enforcement of judgments from foreign jurisdictions where their own judgments are denied the effect which is given foreign judgments in their states. Treatment of the provinces on an individual basis is a possible answer.

In view of the wide agreement existing in the common-law world and in the Western world generally on the principles to govern recognition of foreign judgments, the fact that two or three of the common-law provinces in Canada have not fallen in line as yet is surprising—at least to the outsider,⁸⁶ although anomalies have survived also in American states.⁸⁷ The Manitoba pro-

⁸⁵ See *supra*, footnote 61.

⁸⁶ It seems to disturb also the insider. See references at the 1955 meeting of the Comparative Law Section of the Canadian Bar Association, 38 Proceedings of the Canadian Bar Association, pp. 38, 83.

⁸⁷ Compare the action—or inaction—of Oregon, Montana, and the Commonwealth of the Philippines in respect to their statutory provision which allows a challenge of foreign judgments "for clear mistake of law or fact". References in Nadelmann, *op. cit.*, *supra*, footnote 9. California, which had the same provision (taken from David Dudley Field's draft of 1849), repealed it in 1907 to avoid disadvantages abroad resulting from

vision of 1876, which has no common-law background, is clearly out of date. A second trial after a trial abroad by a court with proper jurisdiction always causes embarrassment and delay. Consequently, no defendant should succeed in having his cause reargued. By encouraging manoeuvres for delay, the provision can only inconvenience the courts. The common-law rules on requirements of jurisdiction of the foreign court, notice, and so forth, are entirely adequate to protect the local defendant in the matter of enforcement of foreign judgments.

Passing on to the limitations put, for foreign courts, on "jurisdiction" in Prince Edward Island and Nova Scotia, they are consequential. Domiciliaries may evade the *res judicata* effect of a foreign judgment by staying away from the proceeding abroad. They may do so, and are encouraged to do so, even if the foreign court had a proper jurisdictional basis for acting, as when the non-domiciliary had carried on business within the jurisdiction, hurt a person with his car, or done other acts of consequence there—instances in which the courts in Prince Edward Island and Nova Scotia probably assume jurisdiction over non-residents. Under Prince Edward Island law, even submission is not accepted as a basis for jurisdiction when the cause of action involving the domiciliary arose in the island. Those who enacted the provision in 1869 may not have trusted the intelligence of their domiciliaries, or may not have realized that it is for the forum to decide whether there was submission⁸³ (if that question is what was bothering them). Though going back to statutory enactment, today these special rules on recognition of foreign judgments in Nova Scotia and Prince Edward Island, only appear in the "Rules of the Court," promulgated by their Supreme Courts under statutory authorization. As they go to substance and not to procedure their validity may be open to question. In any event, the rules can be changed

the provision. And compare a provision on the statute books of Maryland since 1813 (Md. 1813, c. 164): "No sentence, judgment or decree, final or interlocutory, of any judge, court, board, council or tribunal, having or exercising municipal, admiralty or prize jurisdiction without the limits of the United States and its territories shall be conclusive evidence in any case or controversy in the courts of this state of any fact, matter or thing therein contained, stated or expressed, except of the acts or doings of such foreign judge, court, board, council or tribunal, provided that nothing herein contained shall impair or destroy the legal effects of any such foreign sentence, judgment or decree on the property affected or intended to be affected." Md. Ann. Code, art. 35 § 39 (Michie ed., 1957). The principle was taken from a provision in the Pennsylvania law (Pa. 1809, c. 78, p. 132), where it was limited, however, to decisions of foreign prize courts. Cf. Alexander J. Dallas, *The Opinion of Judge Cooper on the Effect of a Sentence of a Foreign Court of Admiralty* (Phila., 1810).

⁸³ Cf. Paulsen, *op. cit.*, *supra*, footnote 46, at p. 209.

by the courts themselves and that they have not can surprise in view of the action of the Commissioners in 1933. The Conference of Commissioners on Uniformity of Legislation may find it easier to obtain co-operation from the legislatures than the Supreme Courts. These "Rules" are contrary to a basic common-law experience—that courts are capable of handling conflicts questions, like any other question, without statutory help on a case to case basis and that, generally speaking, courts do a better job than legislatures in the difficult conflicts field. Thus, a court should have no difficulty in attending to such a situation as the one considered in Prince Edward Island where a domiciliary is involved and the cause of action arose at home. Depending upon all the facts of the case, in such an instance no acceptable jurisdictional basis may remain for the foreign court.

The Quebec law, with its Janus face, poses problems of a different, more complicated and more serious, kind. On the inter-provincial level, Quebec recognizes foreign judgments if the defendant was served personally in the foreign jurisdiction or had appeared; on the international level it does not even in that case. In making personal service the criterion for inter-provincial recognition, Quebec has adopted the most un-civilian of all acceptable bases for jurisdiction. Since the Roman law, domicile has been the traditional basis for jurisdiction in the civil law: *actor sequitur forum rei*—and this would seem to be also the Quebec view today.⁸⁹ Personal service as basis for jurisdiction has, on the other hand, been regarded with suspicion, and rightly so. When all other contact with the forum is lacking, jurisdiction based on personal service can do great injustice in the individual case. When the notion of obtaining jurisdiction over a person through personal service developed in early England, domiciliaries were involved in most cases. Today, wide agreement exists on the weaknesses of jurisdiction based on personal service⁹⁰ and the principle remains accepted only in combination with the doctrine of *forum non conveniens* by which cases of hardship can be taken care of. The selection of personal service as the "recognized" basis for jurisdiction, was, in fact, not of Quebec's free choosing, the provision having got into the law as a compromise measure voted by the Union

⁸⁹ See Leflar, *op. cit.*, *supra*, footnote 46, p. 239; Johnson, *The Conflict of Laws*, (vol 2, 1934), p. 374; Johnson, *op. cit. supra* footnote 10, at p. 945.

⁹⁰ See Restatement Second, *Conflict of Laws*, s. 78, comment c. (Tent. Draft No. 3, 1956), s. 117 (e) (Tent. Draft No. 4, 1957). Cheshire, *Private International Law* (5th ed., 1957), p. 109; Ehrenzweig, *Conflict of Laws* (1959), p. 102.

Parliament of Upper and Lower Canada.⁹¹ If this explains the origin, an explanation for maintenance of the rule by Quebec would seem to be lacking.

It is interesting that the other face of the Janus rule—that judgments from abroad shall not be recognized even in the case of personal service—has not given entire satisfaction—if this is the right word—to Quebec either. The rules on recognition and non-recognition of foreign judgments are in the Code of Civil Procedure: articles 210 to 212. Inasmuch as they deal with substance, rather than with procedure, it has been observed—quite properly it would seem—that they should have been in the Civil Code. On the other hand, the Civil Code has a provision related to the subject which has entered into play, and this provision might have created less trouble than it has if it were in the Code of Civil Procedure, instead of the Civil Code. Article 1220 of the Civil Code provides:

The certificate of the secretary of any foreign state or of the executive government thereof, and the original documents and copies of documents hereinafter enumerated, executed out of Lower Canada, make *prima facie* proof of the contents thereof without any evidence being necessary of the seal or signature affixed to such original copy, or of the authority of the officer granting the same, namely:

1. Exemplifications of any judgment or other judicial proceeding of any court out of Lower Canada, under the seal of such court, or under the signature of the officer having the legal custody of the record of such judgment or other judicial proceeding.

Courts in Quebec have read the provision as providing *prima facie* proof even for the contents of an exemplified judgment, be it existence of jurisdiction and giving of notice, or the propriety of the adjudication of the factual and legal issues of the case.⁹² A shifting of the burden of proof is the result—which can have serious consequences. Though strongly attacked by Walter S. Johnson, eminent Quebec conflicts specialist,⁹³ the courts have not given up this construction of the article which, it has been pointed out, interferes with the principle of non-recognition of foreign judgments established by article 210 of the Code of Civil Procedure—provision preceding in time the provision of the Civil Code. Perhaps, except for the harsh rule of article 210 of the Code of

⁹¹ See *supra*, footnote 11.

⁹² See *Spohn v. Bellefleur*, [1956] Que. Q. B. 608, at p. 610; *Ryan v. Pardo*, [1957] R.L. 321, and cases cited in Crépeau, *La reconnaissance judiciaire des jugements de divorce étrangers dans le droit international privé de la Province de Québec* (1959), 19 R. du B. 310, at p. 327, note 70.

⁹³ See Johnson, *op. cit.*, *supra*, footnote 89, p. 393; Johnson, *op. cit.*, *supra*, footnote 10.

Civil Procedure, would the courts not have read article 1220 as they do. The reading given article 1220 seems to have created a serious problem and Quebec might well be better off if it did rid itself of both article 210 as reading and article 1220 as read.

The situation created by article 210—the non-recognition provision—is extraordinary in many ways. It is particularly so as seen from a neighboring state of the United States. In a letter which I wrote to the Editor of the Canadian Bar Review, in March 1958, I said:⁹⁴

1. Will a Quebec party holder of a money judgment from a Quebec court, which had (international) jurisdiction in the case, be satisfied if in an action brought upon the judgment, for example, in Vermont, *res judicata* effect is denied there to the Quebec judgment regularly obtained and the judgment creditor is forced, as under article 210, to argue and prove his case all over again?

2. What is the justification—other than “statute”—for denying *res judicata* effect to money judgments regularly obtained in, for example, Vermont if conclusive effect is given under like conditions to judgments from, for example, New Brunswick?

3. What argument can support the Code Michaud view that a party which had its “day in court” in a court with proper jurisdiction, should not be bound everywhere by the judgment duly obtained in that court?

4. What rights deserving protection are violated under the doctrine recognized in the common-law world and prevailing in the civil law world that conclusive effect shall be given to a money judgment duly obtained in a foreign court with (international) jurisdiction, the defenses of fraud and public policy being reserved?

No answer has so far come from any corner. Judgments from France, incidentally, are given the same negative treatment in Quebec, and, on the other hand, Quebec judgments do not have in France the favored position they could have if Quebec qualified under the terms of the Franco-British treaty of 1934. Nor does France today hold to the principles of the Code Michaud, long repudiated by French doctrine.⁹⁵

What conclusions of a general nature may one draw from the Canadian situation as it has evolved in the matter of recognition of foreign judgments? Evaluations for non-Canadian purposes should be made with caution for local elements may have had prime responsibility for the successes and failures noticed in Can-

⁹⁴ (1958), 36 Can. Bar Rev. 142.

⁹⁵ See Batiffol, *Traité élémentaire de droit international privé* (3rd ed. 1959), p. 862. Cf. *Charr v. Hasim Ulusahim*, App. Paris, Oct. 21st, 1955, [1956] Dalloz, *Jurisprudence* 61, [1956] *Semaine Juridique* II, No. 9047; (1956), 44 *Revue Critique de Droit International Privé* 769. Nadelmann, *Recognition of Foreign Money Judgments in France* (1956), 5 *Am. J. Comp. L.* 248.

ada; and what worked or did not work in Canada may have other results elsewhere.

In the first place, all federal systems lacking legislative control over the subject matter of recognition of foreign judgments have experienced problems analogous to those found in Canada. Only, in Canada, because of the absence of a counterpart to the Full Faith and Credit Clause in the United States constitution, the problems have been found difficult to handle even on the inter-provincial level. Canada is worse off, in this respect, than the United States, Australia, India, Switzerland, and Mexico, where the basic law imposes the grant of conclusive effect everywhere in the country to judgments emanating from any of the constituent parts of the federation.⁹⁶

That only two of the Canadian provinces should have enacted the all but radical Uniform Foreign Judgments Act of 1933 may surprise. The status of foreign judgments for both judgments from a sister province and judgments from without Canada is set by the Act. Starting with the inter-provincial problem alone might have been more prudent. Interesting also is the wide success had with the Act of 1924 through which quick enforcement may be secured *via* the registration procedure. In the United States, the Uniform Enforcement of Foreign Judgments Act of 1948 has many but not all of its features. The Act has had limited success being enacted in eight states only. A reexamination of the Act has been under consideration for some time.⁹⁷

The absence in Canada of any progress on the international level is the result, principally, it would seem, of the view which was taken in the report of 1942⁹⁸ that a negotiation of agreements with foreign nations is necessary and that negotiations without the accord of all provinces would be inadvisable. The latter view can give a minority of one a veto power over doing what may be in the interest of all except one. In a conflict of interests situation this might be justified. Such situation is, however, here lacking. The interests of the opposing province need not be affected in any way by the agreement to be negotiated. The agreement negotiated by the Commonwealth would be for such of its constituent parts as desire to take advantage of it by enacting the legislation outlined in the agreement—the legislation prepared by the Conference of

⁹⁶ See *supra*, footnote 19.

⁹⁷ See 1958 Report of the Committee on Amendments to Uniform Enforcement of Foreign Judgments Act, National Conference of Commissioners on Uniform State Laws, [1958] Handbook, p. 54. Cf. Paulsen, *op. cit.*, *supra*, footnote 46.

⁹⁸ *Supra*, footnote 44.

Commissioners on Uniformity of Legislation. This is basically the scheme of the old United Kingdom treaty practice through the accession clause to act for the benefit of dominions and colonies which could be interested.

The argument made that foreign countries are reluctant to deal with parts of a country and that confusion may result from partial application of a system has little force at least today. Federalism and its problems have been given increased attention everywhere. Nothing abnormal will be found in the leading countries abroad in a solution under which the recognition of judgments is settled not for the federation as a whole but for specified component parts of it. Differentiation between parts of a federation has, for a long time, been made in countries which, for recognition of foreign judgments, have the reciprocity requirement.⁹⁹ The problem is well known in other countries also from fields of the law where the reciprocity requirement obtains.

Whether formal arrangements by way of a treaty must at all be made remains an open question. The United Kingdom has used treaties to establish the basic reciprocity with France and Belgium, but this was many years ago. Identical results can be reached without treaty through reciprocal legislation, the partner to the arrangement passing legislation similar to that in the other country, as was done, for example, with regard to the British Act of 1933 by India and New Zealand. In recent years the use in unification work of uniform legislation instead of treaties has been recommended as an alternative with possibly greater chances of success on a wider level. Developments may well go into that direction.¹⁰⁰

In the relations between the states of the United States and the provinces of Canada, obviously uniform legislation is the appropriate vehicle to be used. Both countries have applied the method with success for internal purposes and it can be used equally well between a state and a province. The Canadian Act of 1958, applicable upon the condition of reciprocity on both the inter-

⁹⁹ See, e.g., advice by the Swiss Department of Justice, May 19th, 1943, (1942/43), 16 *Verwaltungsentscheide der Bundesbehörden* 129; Buelow and Arnold, *Der Internationale Rechtsverkehr in Zivil- und Handelssachen* (1954), Part E, No. 991-992.

¹⁰⁰ See Nadelmann and Reese, *The American Proposal at the Hague Conference to Use the Method of Uniform Laws* (1958), 7 *Am. J. Comp. L.* 239; Nadelmann, *Uniform Legislation vs. International Conventions, in International Trade Arbitration* (Domke ed., 1958), p. 167; *Proceedings, Second Meeting of Organizations Concerned with Unification of Law, [1959] II Year-Book of the International Institute for the Unification of Private Law.*

provincial and international level, has been a step in that direction. Unilateral drafting, however, is not the best way to reach results. The British Act of 1933 was enacted after prolonged discussions with prospective partners to the planned arrangements. Co-operation in drafting commends itself and the two Conferences of Commissioners should join hands for that purpose. Many a student of the close relations between the two "neighbors without a frontier" has been wondering at the lack of co-operation on that level. It contrasts with what has been done elsewhere for unification of law between neighbors, and even for entire regions, generally and, in particular in the matter of recognition and enforcement of judgments.¹⁰¹

Judgments will be a good choice for a joint venture of the two Conferences. The work is both desirable and feasible. If it imports to facilitate internally enforcement of judgments across state and provincial lines, providing for similar facilities of enforcement on the other side of the national frontier is no less important. The states and provinces bordering the frontier can testify to it. And as far as feasibility is concerned, study of what has so far been done on each side justifies anticipation of success both on the drafting level and for the ultimate enactment of the joint product in a great number of jurisdictions.

¹⁰¹ See Nadelmann, *op. cit.*, *supra*, footnote 9, p. 256. *Adde*, for the European Economic Community, art. 220 of the convention of March 25th, 1957, (1957), 51 Am. J. Int'l L. 865, which provides that "The Member States shall, so far as necessary, engage in negotiations with each other with a view to ensuring for their nationals . . . the simplification of the formalities governing the reciprocal recognition and execution of judicial decisions and arbitral awards."