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RECOGNITION OF FOREIGN JUDGMENTS AND DECREES

ROBERT ALLEN SEDLER

I. INTRODUCTION

When a judgment rendered by a court of a sister state or foreign nation is sought to be enforced, the court of the forum occupies a position unfamiliar to it. It is not asked to adjudicate a case, but rather is asked to make the action of another court effective in the forum by issuing a judgment, which can be enforced upon property in the forum or the person of a defendant who is before it. It does not pass on the merits of the claim or apply substantive law, either its own or that of another state. It merely uses the foreign judgment as a model upon which to base its own judgment. There would seem to be a natural judicial reluctance to perform this function, particularly when the forum court may disagree with the result in the state of rendition. But if there is ever to be an end to litigation, judgments of other courts must be recognized, and the forum must make available its enforcement processes to the successful suitor. The common law rule is that the forum will recognize a judgment of another state unless the case comes within certain exceptions to the general principles of recognition. Recognition is also in issue when a judgment in favor of the defendant rendered elsewhere is asserted as a bar to a suit on the same claim in the forum.

A. Full Faith and Credit

In the United States the result is required as to judgments of sister...
states not only by the common law, but also by the Constitution and implementing federal legislation. The Constitution, article 4, § 1, reads as follows:

Full Faith and Credit shall be given in each State to the public Acts,4 Records,5 and judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.6

The statute7 does not enlarge on the constitutional provision nor furnish any guides as to its interpretation, so most cases talk in terms of the constitutional provision rather than the statute. Although the constitutional provision does not refer to federal court judgments, it is well settled that they are entitled to recognition under the same conditions as those rendered by state courts.8 So too, a federal court must give full faith and credit to a judgment rendered by any state court.9 Therefore, whenever a state court is involved either as the state of rendition or the state in which recognition is sought, full faith and credit is applicable, even though the other court may be a federal one. Where both the court of rendition and the court where recognition is sought are federal courts, it was thought at least in the pre-Erie10 days that full faith and credit was not applicable and that recognition depended upon principles of res judicata.11 However, by statute12 congress has not only provided that judgments rendered by one federal court must be recognized by another, but has gone further

4. A separate body of constitutional law has grown up about the duty of a state to enforce a statutory cause of action created by the law of a sister state. See the discussion and a review of cases in Watson v. Employers Liability Assurance Corp., 348 U.S. 66 (1954).
5. Such as land titles issued by the situs.
8. Hancock National Bank v. Farnum, 176 U.S. 640 (1900); Shay v. New York Life Insurance Co., 354 Mo. 920, 192 S.W.2d 421 (1946); In re Thompson's Estate, 339 Mo. 410, 97 S.W.2d 93 (1936); Stuart v. Dickinson, 290 Mo. 516, 235 S.W. 446 (En Banc 1921).
10. Erie Railroad v. Tompkins, 304 U.S. 64 (1938). Recognition would now be required by the Erie doctrine in any event.
and provided that a judgment rendered in one federal court shall be reg-
istrable in another federal court and have the same effect as if rendered
by the latter court, thus making it unnecessary for the plaintiff to insti-
tute an action on the judgment.

It should be emphasized that the full faith and credit clause only
prescribes minimum requirements. It is for the benefit of the party
seeking to enforce the judgment and not for the benefit of the party seek-
ing to resist enforcement. So long as the judgment is valid in the state
where rendered, the forum may recognize it, even though failure to do so
would not be a denial of full faith and credit. Thus, a defendant's claim
that the state violated his rights by recognizing a decree of a sister
state which it was not constitutionally required to do, raises no federal
question.\textsuperscript{13} \textit{In re Veatch}\textsuperscript{14} saw the Missouri court treat as conclusive a
judgment of a sister state, though its failure to do so would not have
violated the full faith and credit clause. An attorney, who was a member
of both the Illinois and Missouri bars, was found guilty of misconduct by
the Illinois court in a disciplinary proceeding. He practiced in Illinois, but
the misconduct constituted grounds for suspension in Missouri as well. In
a disciplinary proceeding in Missouri, the court refused to permit him to
relitigate the factual questions that were litigated in the Illinois action.
Although the court talked in terms of "full faith and credit" as to the
facts litigated in Illinois, it is clear that full faith and credit was not
required, since the Missouri officials were not parties to the Illinois action,
and technically the Illinois decision was not res judicata. However, the re-
spondent had the opportunity to litigate the question in Illinois and had
no right to raise it again in Missouri. Of course, Missouri would decide
what measures it wished to take and would not necessarily take the action
that Illinois did (\textit{i.e.}, it might suspend the attorney while Illinois would
disbar).

For purposes of analysis we will differentiate between a "true judg-
ment" and a "decree." A "true judgment" may be best defined as an
unconditional court order requiring the immediate payment of a sum
certain in money (\textit{e.g.}, an award of damages in the amount of \$10,000). A

\begin{footnotes}
\item[13.] Roller v. Murray, 234 U.S. 738 (1914) (claim that the situs court recog-
nized as conclusive a decree of a sister state that passed title to situs land).
Where the court of rendition had judicial jurisdiction, a sister state may treat its
judgment as conclusive. See particularly the discussion in Creager v. Superior
Court, 126 Cal. App. 280, 14 P.2d 552 (1932).

\item[14.] Sedler: Recognition of Foreign Judgments and Decrees Symposium:
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"decree" would be any other type of court order such as one requiring the payment of alimony in installments, ordering specific performance, or enjoining certain conduct. Since most decrees were historically administered by separate "courts of equity," and often involved the doing of an act or refraining from action, their treatment necessarily differs from that of a true judgment. However, merely because a court order takes the form of a decree does not mean that it is not entitled to full faith and credit. The vestige that "equity acts in personam" is not true insofar as it could be interpreted to mean that a decree in an "equity action" merely binds the defendant to the issuing court and is not entitled to extraterritorial recognition. Decrees are entitled to full faith and credit, and where a particular decree is not recognized, it must be for reasons other than the fact that "equity acts in personam."

B. Process of Enforcement

A judgment rendered in F-1 is not a judgment in F-2, except where two federal courts are involved. A foreign judgment is not self-operating, and thus an independent action must be brought on the judgment in F-2. Once the new judgment is issued by the F-2 court, it is enforceable in the same manner as any F-2 judgment. Under the formulary system, an action of debt on the judgment was employed, and the theory of the action governs suits on foreign judgments today.

Missouri has adopted the Uniform Enforcement of Foreign Judgments Law, which provides summary procedure for the enforcement of judg-
ments of sister states and federal courts. Note that it is not available where the judgment of a foreign country is involved, but that a plaintiff may in any case resort to the common law action instead of proceedings under the statute. Upon application, the judgment creditor may have the foreign judgment registered. The petition must set forth a copy of the judgment, together with the date of entry and any subsequent entries. It must be authenticated according to the federal statute. After registration the judgment creditor can have summons served on the judgment debtor, assuming he is amenable to personal jurisdiction in Missouri. If personal jurisdiction cannot be obtained, notice by registered mail is sent to the last known address of the debtor. Whether or not personal jurisdiction is obtained or the debtor comes in to defend, a levy may be made under the registered judgment upon any property the debtor has in Missouri. If the debtor comes in to defend, he may set up any defense that is available against enforcement of a foreign judgment, and may also move that the registration be set aside. If the registration is not set aside, it becomes a final Missouri judgment thirty days after service or thirty-five days after the mailing of notice.

Whether the debtor is served or appears is significant insofar as it affects the kind of judgment the court enters. If he is before the court, it can render a personal judgment for the full amount of the judgment upon which suit is brought. However, if the debtor is not before the court, it can only render a quasi in rem judgment for the value of the debtor's property in Missouri. Once the property is sold to satisfy the F-I judgment, the Missouri judgment is spent, so to speak, and if the plaintiff seeks recovery of the balance elsewhere, his suit must be upon the original judgment.

There is some question with respect to authentication as to whether the statute supersedes the prior Missouri law requiring proof of jurisdiction in certain instances. Under prior law, where the F-I court was a court of

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21. This is limited to judgments of sister states, territories and the federal courts. A judgment of a foreign nation, e.g., Canada, must be sued upon in a common law action sounding in debt on the judgment.

22. Missouri appears to have no other authentication statute and under the act makes reference to the federal statute. See note 7, supra.

23. In a quasi in rem action the forum employs its power over property situate there to adjudicate personal obligations. Recovery, of course, is limited to the property, which can be sold to satisfy the claim. Examples of the exercise of quasi in rem jurisdiction would include attachment and garnishment. If the owner of the property comes in to defend on the merits, the forum has in personam jurisdiction.
general jurisdiction, its jurisdiction over the subject matter and the parties was presumed, and the introduction of a certified copy of the judgment made out a prima facie case.\textsuperscript{24} But if it was not a court of general jurisdiction, such as a justice of the peace court, the burden was on the judgment plaintiff to show that the court had subject matter jurisdiction.\textsuperscript{25} The plaintiff would have to introduce the statute of F-1 giving the justice of the peace jurisdiction over that type of case. So too, where the judgment was entered by the clerk of court rather than the judge, while the court was in vacation, the statutory authority of the clerk so to act had to be shown.\textsuperscript{26} The theory was that such a practice was unknown to the common law, and therefore the presumption of jurisdiction did not attach. It is not clear whether this is changed by the Uniform Act. The federal statute, to which the act refers for authentication, says that there must be a certificate by the judge that the attestation is in proper form. There appears to be no Missouri statute on the subject. Still, the federal statute talks in terms of attestation, rather than the showing of authority. If a judgment was entered by the clerk, but the judge gives the certificate, then this should be conclusive proof of the clerk's authority to issue the judgment.

As to the subject matter jurisdiction of a court not of general jurisdiction, it is submitted that the Uniform Act changes the prior law. Since its purpose is to provide summary proceedings for enforcement, while giving the defendant an opportunity to raise all defenses, the burden should be on the defendant to show the lack of jurisdiction of the F-1 court. Should the question arise again, it is likely that the courts will hold that the statute supersedes the prior requirements.

There is also some confusion as to question of specificity. In the old case of \textit{Lackland v. Pritchett},\textsuperscript{27} it was held that a judgment for a sum and "costs" would not be recognized as to the costs, and that the plaintiff could not show what the costs were. A later court of appeals case, \textit{Kahn v. Mercantile Town Mut. Ins. Co.},\textsuperscript{28} permitted the plaintiff to introduce proof of the costs and also computed legal interest according to the rate in F-1. As to interest, it is expressly authorized by § 14 of the...

\begin{thebibliography}{99}
\bibitem{24} Toley v. Coover, 335 Mo. 113, 71 S.W.2d 1067 (1934).
\bibitem{27} 12 Mo. 484 (1849).
\bibitem{28} 150 Mo. App. 393, 130 S.W. 492 (St. L. Ct. App. 1910).
\end{thebibliography}
that the court is to award interest in accordance with the F-1 rate and such costs as are incidental to the proceedings in Missouri. On the question of extrinsic proof of costs, the statute is silent. The reasoning in the Kahn case, to the effect that to deny proof of costs is to deny the plaintiff the full amount he was to recover, is quite sound; and if the question were to arise today, the case would probably be followed.

An F-1 judgment is considered valid until reversed on appeal, even though an appeal may have been taken. The defendant bears the burden of showing that the judgment was reversed at the time enforcement is sought. However, a problem arises if an appeal is pending in F-1 at the time that enforcement is sought in F-2. At common law, an appeal did not vacate the judgment, but in many states by statute an appeal does vacate it, at least insofar as enforcement is concerned. If an appeal vacates its enforcement, then enforcement can not be ordered in a sister state until the appeal is decided. Most states will stay enforcement in any event until the appeal is decided in F-1. The Uniform Act directs the court to postpone the trial until the appeal is concluded. It also authorizes the court to set aside the levy, if the defendant furnishes adequate security for satisfaction of the judgment.

The Uniform Act provides a summary remedy for enforcement of a foreign judgment, while giving the defendant the opportunity to assert all defenses available to him in the traditional action on the judgment.

II. Principles of Recognition

The full faith and credit clause requires a valid judgment of a sister state to be recognized without regard to the nature of the underlying claim or to anything that transpired in the courts of F-1. This is most clearly demonstrated in Faunterloy v. Lumm. Mississippi law prohibited certain forms of future contracts. Such a contract was made in Mississippi between residents of that state, to be performed there. Upon breach it was submitted to arbitration. The party, in whose favor the award had been made, brought suit in Mississippi, which he dismissed when the defendant raised the issue of illegality. He subsequently caught the defend-

32. 210 U.S. 230 (1908).
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33. See Restatement, Conflict of Laws § 446, illustration 1 (1934).
34. 210 U.S. at 237-238.
35. See, e.g., Freedy v. Trimble-Compton Produc Co., 329 Mo. 879, 46 S.W.2d 822 (1931), and the discussion therein. See also the discussion in United States ex rel. First National Bank v. Lucy, 316 Mo. 812, 49 S.W.2d 8 (1932).
36. 287 Mo. 30, 228 S.W. 486 (1920).

The Missouri courts have consistently held that mistakes of law or other irregularities committed by the F-1 court do not prevent recognition in the F-2 state. Thus, in Abernathy v. Missouri Pacific Ry. Co., a judgment rendered in an action involving a minor was a bar to another suit in F-2, even though the original action was a "friendly suit" and there were irregularities in the administration of the judgment awarded to the minor. Nor can recognition be refused on the ground that F-2 does not consider the judgment plaintiff the real party in interest to enforce the substantive claim, so long as he was the real party in interest under the law of F-1.

The nature of the underlying transaction has been involved in a
number of cases and with one exception that may not now be valid, it has been held to be irrelevant. In *Kenney, Adm'r v. Supreme Lodge*, Illinois was required to enforce a judgment of a sister state, even though it would not have entertained a claim on the original cause of action. It had denied its courts jurisdiction to enforce claims under foreign wrongful death acts and judgments rendered pursuant to such claims. At that time it was assumed that full faith and credit did not require Illinois to entertain an action on the statutory claim, though now it is settled that it must do so. The Supreme Court held that a judgment could not be refused full faith and credit on the ground that *F-2* would not entertain a suit on the underlying claim. Since the claim had been reduced to judgment in a sister state, the underlying basis was irrelevant. Nor could Illinois achieve this result by denying its courts jurisdiction. Its courts were perfectly capable of enforcing judgments, and the purpose of the full faith and credit clause could not be thwarted by transparent devices.

In *Milwaukee County v. M. E. White Co.*, the Supreme Court held that a judgment for taxes rendered by a court of a sister state was entitled to full faith and credit. It was traditionally thought that a state was not required to "enforce the penal or revenue laws of another state." Even assuming that full faith and credit does not require a state to entertain a suit for taxes by a sister state, a judgment stands on a different foot-

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38. 252 U.S. 411 (1920).
41. 296 U.S. 268 (1935).
42. See Restatement, Conflict of Laws § 443 (1934). The rule was stated as follows:
   "A valid foreign judgment for the payment of money which has been obtained in favor of a state, a state agency, or a private person, on a cause of action created by the law of the foreign state as a method of furthering its own governmental interests will not be enforced."
Comment b. observed that enforcement was not required by the full faith and credit clause.

In the 1948 Supplement the section was amended to read as follows:
   "A valid foreign judgment for the payment of money which has been obtained in favor of a state, a state agency, or a private person, on a cause of action created by the law of a foreign state as a method of furthering its own governmental interests will be enforced unless it is deemed to be a penalty."

43. The point has not yet been decided by the Supreme Court. Such a suit has been entertained in Missouri. *State ex rel. Oklahoma Tax Commission v. Rodgers*, 238 Mo. App. 1115, 193 S.W.2d 919 (St. L. Ct. App. 1946). See the discussion, supra, note 53 and accompanying text.
The forum is not asked to litigate the merits of the case, nor to construe the revenue laws of another state. There is no danger of its misconstruing those laws or interfering with that state's revenue policy. These matters have been adjudicated in F-1. F-2 is simply asked to enforce a judgment for the payment of money. The Supreme Court observed as follows:

In numerous cases this court has held that credit must be given to the judgment of another state, although the forum would not be required to entertain the suit on which the judgment was founded; that consideration of policy of the forum which would defeat a suit upon the original cause of action are not involved in a suit upon the judgment and are insufficient to defeat it. Full faith and credit is required to be given to the judgment of another state, although the original suit on which it was based arose in the state of the forum and was barred there by the Statute of Limitations when the judgment was rendered, and where the original suit was upon a gambling contract invalid by the law of the forum where it was made. It was required where the judgment was for wrongful death, although it was thought that the statute giving recovery was not entitled to full faith and credit. (citations omitted)\(^\text{44}\)

As to judgments that are “penal,” the requirements of full faith and credit are not so clear, though there is no good reason why a “penal” judgment should not be entitled to the same recognition. By “penal” we mean a judgment by which the state and not an injured individual receives recovery. Clearly a judgment is entitled to recognition when an individual plaintiff receives the recovery, even though the substantive basis of liability may be punitive. In Huntington v. Attrill,\(^\text{45}\) the plaintiff recovered a judgment under a New York statute making a director who issued a false certificate as to corporate capitalization liable to creditors. When Maryland refused to enforce the judgment on the ground that it was “penal,” the Supreme Court reversed. Conceding that “the courts of no country execute the penal laws of another,” the court defined “penal” in the conflicts sense as “designed to redress a wrong to the public rather than to a private person.” Since recovery would go to the individual plaintiff, it was immaterial that the wrong of the defendant bore no relationship to the harm suffered or that the statute was designed to insure

\(^{44}\) 296 U.S. at 277.
\(^{45}\) 146 U.S. 657 (1892).
proper certification. As long as recovery is given to the individual plaintiff, the purpose of F-1 in imposing liability or the method by which liability is ascertained has no effect on the duty of F-2 to give full faith and credit to the judgment.46

Where the requirements of full faith and credit are not entirely clear is where the state is the plaintiff and has recovered a judgment for a penalty in its courts. In Wisconsin v. Pelican Insurance Co.,47 Wisconsin sued in the Supreme Court to enforce a judgment rendered by its courts against a foreign corporation that had failed to file business statements as required by Wisconsin statute. The statute imposed a penalty for such non-compliance, which the state recovered. The court found that it had original jurisdiction in a suit brought by a state against a citizen of another state, which would include a foreign corporation. However, the court also found that the grant of original jurisdiction in Article III did not authorize it to hear cases that would not be heard in a state court, the purpose in vesting such jurisdiction being to avoid partiality in favor of the citizen in his home state.48 Since no state was required to enforce the "penal laws" of another, a state court would not entertain the suit, and the Supreme Court would not do so either. The court expressly held that the full faith and credit clause did not abrogate the common law rule. This was because the clause was considered as but a "rule of evidence." The following language which was expressly repudiated by the court in the White case demonstrates the court's rationale in Pelican:

The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it; and the technical rules, which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court, to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim), from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it.49

46. See Restatement, Conflict of Laws § 444 (1934), illustration 1. See also the discussion in Loucks v. Standard Oil Co., 224 N.Y. 99, 120 N.E. 198 (1918) as to enforcement of "penal claims."
47. 127 U.S. 265 (1888).
48. The same purpose that the Court has recognized as the basis of conferring diversity jurisdiction on the lower federal courts, Guaranty Trust Co. v. York, 326 U.S. 99, 111-12 (1945).
49. 127 U.S. at 292, 93, The Court in White held that insofar as Pelican suggested that full faith and credit was not required unless the original cause of action
The Restatement now caveats the question as to whether full faith and credit requires recognition of a judgment founded upon a penalty in the conflicts sense, as defined in Huntington v. Attrill.\(^{60}\) In the White case the Supreme Court expressly left the question open:

We intimate no opinion whether a suit upon a judgment for an obligation created by a penal law, in the international sense, see Huntington v. Attrill, \(^{supra}\), is within the jurisdiction of the federal District Courts, or whether full faith and credit must be given to such a judgment even though a suit for the penalty before reduced to judgment could not be maintained outside of the state where imposed. See Wisconsin v. Pelican Insurance Co., \(^{supra}\).\(^{51}\)

It is submitted, however, that no valid distinction can be drawn between a judgment for taxes and a judgment for a penalty, even though the court in White emphasized that a judgment for taxes was not penal. In both instances \(F-2\) is merely being asked to enforce a judgment for money. A judgment for a penalty is considered a civil rather than a criminal judgment under the laws of most states.\(^{52}\) The underlying nature of the claim is of no concern to \(F-2\). In any event, I believe that Missouri would extend recognition to such a judgment, assuming that the holding of the St. Louis Court of Appeals in State ex. rel. Oklahoma Tax Commission v. Rodgers,\(^{53}\) would be adopted by our supreme court, as I think it would be. There, Missouri entertained an original suit to recover taxes brought by a sister state. While the court, as did the Supreme Court in White, distinguished between penal and revenue laws, it nonetheless emphasized that there was no interference with the policy of \(F-I\) by enforcing a money judgment, irrespective of the underlying nature of the obligation. It found that there was no inconvenience to the defendant, nor any burden upon Missouri courts. It emphasized that often a suit elsewhere was the only way a state could obtain a satisfaction of an obligation owed to it. It stressed the need for cooperation between sister states. Since a state may recognize the judgment of a sister state, though was entitled to like credit it was inconsistent with other decisions of the Court.

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\(^{50}\) Restatement, Conflict of Laws § 443 (1948 Supp.).
\(^{51}\) 296 U.S. at 278.
\(^{52}\) See, e.g., City of St. Louis v. DeLassus, 205 Mo. 576, 104 S.W. 12 (1907).
\(^{53}\) 238 Mo. App. 1115, 193 S.W.2d 919 (St. L. Ct. App. 1946).
not constitutionally required to do so, it is likely that Missouri would enforce judgments of sister states, even though penal in the conflicts sense.

With the possible exception of judgments based on suits by states for penalties, it is clear that the full faith and credit clause precludes any examination into the underlying basis of a judgment rendered by a sister state. Since Missouri is not likely to recognize even that exception, attacks on sister state judgments in Missouri will have to be founded on some other ground than the nature of the underlying transaction or events that occurred in the rendition of the judgment in a sister state.

III. NON-RECOGNITION

A. Nature of the Judgment

The judgment is entitled to full faith and credit only if it is a determination of the merits of the controversy. In Wilson & Co. v. Hartford Fire Insurance Co., a non-suit was entered in F-1. Under the law of F-1 a judgment of non-suit did not bar another action. Since a judgment is not entitled to any greater effect in F-2 than it has in F-1, another suit could be maintained in F-2. In the course of its opinion the Missouri Supreme Court enumerated the circumstances where the F-1 judgment would not be on the merits. If the F-1 court dismissed for want of jurisdiction, either to hear the case or to grant the relief sought, this would not be a merits determination. Other situations would be where the plaintiff misconceived his action or had joined improper parties or claims; where the complaint was dismissed for failing to state a cause of action and the complaint in the F-2 suit sets forth a cause of action in proper form; where the first suit was improperly brought; and where the subject matter of the F-1 suit was inadmissible under the pleadings. Also, the F-1 suit would not be on the merits where the action was barred by a statute of limitations or statute of frauds of F-1 construed as procedural. These situations are not difficult to ascertain, and dismissal in F-1 on a non-merits determination creates no problems.

54. See the discussion, supra, notes 13 and 14 and accompanying text.
55. See the discussion, supra, notes 13 and 14 and accompanying text.
56. See the discussion, supra, notes 13 and 14 and accompanying text.
Secondly, the judgment must be certain and unconditional. Where it is subject to a condition not yet performed, 58 or the amount is uncertain, 59 it will not be enforced in F-2. But even though it is originally conditional, if, at the time of suit in F-2, the condition has been satisfied or is impossible of performance, the judgment can be enforced. In Smith v. Kander, 60 the F-1 judgment in a replevin action provided for return of the chattel or its value, which was assessed at a definite sum. No time limit was set for return. At the time of suit in Missouri ten years had elapsed. The court construed the Wisconsin statute as giving the defendant a reasonable time to return the chattel. Since that time had elapsed, the judgment for the money had now become final and could be enforced. The court said that there was now a conclusive presumption—hence a rule of law—that the chattel could not be returned. 61

In any event, I cannot see why the F-2 court could not enforce the judgment as rendered by the F-1 court, irrespective of passage of time. The F-2 court can order return of the chattel within a specified time, and if it is not returned, enforce the money portion of the judgment.

B. Lack of Jurisdiction

In this section we will deal with the ground most often asserted to prevent recognition of a foreign judgment. The lack of jurisdiction can be predicated upon a number of grounds. The first is that F-1 constitutionally lacked judicial jurisdiction to render the judgment because of insufficient contacts with the person, transaction, or thing. In the conflicts sense, jurisdiction involves the power of F-1 to render a judgment that will be recognized in F-2. 62 A judgment may be valid where rendered, but the contacts may not be sufficient to justify its recognition by another state. Consider a case such as Buchanan v. Rucker, 63 therein the plaintiff sued

58. Restatement, Conflict of Laws § 437 (1934).
59. Restatement, Conflict of Laws § 436 (1934). See Central Pennsylvania Conference v. LaRue, 164 Mo.App. 93, 148 S.W. 152 (K.C. Ct. App. 1912), holding as uncertain a judgment entered by confession, which recited that the defendant owed the plaintiff a specified amount, but which authorized forgiveness under certain circumstances.
60. 58 Mo. App. 61 (K.C. Ct. App. 1894).
61. See also National Surety Co. v. Austin Machinery Corp., 35 F.2d 842 (6th Cir. 1929), where the same approach was taken when return of the chattel had become impossible.
on a judgment of the Island Court of Tobago. There, jurisdiction was
authorized against any person upon any claim merely by the filing of
the complaint on the courthouse door. The defendant had never been on
the island. The English court, of course, refused to recognize the judg-
ment, since the defendant had not been served there. Lord Ellenborough,
while conceding that the judgment could be valid where rendered, asked,
"Can the island of Tobago pass a law to bind the rights of the whole
world," and concluded that it could not. In the conflicts sense then, a
judgment may be valid where rendered, but not entitled to recognition in
F-2 because of the lack of contacts sufficient to give F-1 judicial jurisdiction.

Such a situation is not possible as between states of the union. A
judgment rendered without sufficient contacts to give the state of rendition
judicial jurisdiction, within the meaning of the due process clause, is void
where rendered and cannot be recognized by a sister state, since such rec-
ognition would in turn violate the due process clause. On the other hand,
where the contacts are sufficient to give F-1 jurisdiction, full faith and
credit requires F-2 to recognize the judgment, even though F-2 would
not take jurisdiction if the suit were originally brought in F-2. This proposi-
tion is best demonstrated in Missouri by our court's treatment of judg-
ments rendered by confession. Missouri does not recognize common law
confession of judgments, and the Missouri courts will not issue a judgment
upon confession unless there has been strict compliance with the statutory
procedure. But since jurisdiction can be obtained by consent consistent
with due process, it was early held that a judgment entered by confession
in a sister state must be afforded recognition in Missouri.

64. See also Schibsby v. Westenholz [1870] L.R. 6 Q.B. 155, where England
refused to recognize a French decree on grounds of lack of jurisdiction in the con-
flicts sense, even though England would have taken jurisdiction based on the same
contacts.

149, 103 N.E. 1113 (1913). The coextensive nature of due process and full faith
and credit is not entirely clear in regard to divorce decrees rendered by a state
other than the state of matrimonial domicile. See Williams v. North Carolina, 325
U.S. 226 (1945); Alton v. Alton, 207 F.2d 667 (3d Cir. 1953). Although a discus-
sion of divorce and other decrees in actions involving family law is not included in
this article because discussed elsewhere, it is submitted that due process and full
faith and credit will be held to be co-extensive in this area as well.


67. §§ 511.070-511.100, RSMo 1959.

68. Adam v. Saenger, 303 U.S. 59 (1938); York v. Texas, 137 U.S. 15 (1890);
Grover & Baker Sewing Machine Co. v. Radcliffe, 137 U.S. 287 (1890). A very good
discussion of consent in the area of confessed judgments will be found in Hazel v.

69. Randolph v. Keiler, 21 Mo. 557 (1855). The later case, which is most
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This writing will not explore all the ramifications of the constitutional bases of jurisdiction. Basically, however, they are (1) personal service within the state,70 (2) domicile,71 (3) consent,72 (4) in rem, based on a state's power over property situated there,73 (5) minimal contacts with the forum in the case of a foreign corporation,74 and (6) the doing of an act within the forum out of which the plaintiff's cause of action arises.75 As long as the F-1 judgment can be supported upon one of these bases, full faith and credit is required, even though such contact is not sufficient to support judicial jurisdiction in F-2. In addition to judgments by confession, judgments based on appearance and default,76 holding a position of trust pursuant to order of the F-1 court,77 and garnishment of a debt by personal service on the garnishee,78 have been held entitled to recognition.

By the same token, however, F-2 may inquire into lack of jurisdiction, since if it enforced a judgment rendered without sufficient contacts to give F-1 jurisdiction, F-2 would be denying the defendant due process. Therefore, it is not necessary for the defendant to have the judgment set aside.

often cited to sustain this position is Crim v. Crim, 162 Mo. 544, 63 S.W. 489 (En Banc 1901).

70. Pennoyer v. Neff, supra note 65.
71. Milliken v. Meyer, 311 U.S. 457 (1940). See, however, McDonald v. Ma-
bbe, 243 U.S. 90 (1917), where the exercise of judicial jurisdiction over a domici-
liary who had left the state without intention to return was held to be void, since
service was only by publication. This was held to be inadequate notice. As to the
power of the domicile to bind its domiciliaries extraterritorially see, Skirotes v.
Florida, 313 U.S. 69 (1941).

72. Cases cited note 68 supra.
74. McGee v. International Life Insurance Co., 355 U.S. 220 (1957); Inter-
Consolidated Mining Co., 342 U.S. 437 (1952) as to jurisdiction of causes of action
arising outside of the forum.
75. Hess v. Pawloski 274 U.S. 352 (1927). For the modern view as to the
extent of such jurisdiction see Gray v. American Radiator and Standard Sanitary
Saenger, supra note 68.
77. Shearer v. Parker, 364 Mo. 723, 267 S.W.2d 18 (1954). The defendant
was a Colorado administrator who had absconded with the assets. The Colorado
court rendered a judgment against him for the value of the assets for which he had
not accounted. See Michigan Trust Co. v. Ferry, 228 U.S. 346 (1913), which is the
Supreme Court holding that the result is constitutionally required and upon which
the court in Shearer relied.
78. Western Assurance Co. v. Walden, 238 Mo. 49, 141 S.W. 595 (1911). See
also Harris v. Balk, supra note 73. In order for the judgment to be entitled to full
faith and credit in the suit by the principal debtor against the garnishee the gar-
nishee must have originally given him notice of the garnishment proceedings. Other-
wise, the garnishment proceedings do not affect the principal debtor's rights against
the garnishee.

http://scholarship.law.missouri.edu/mlr/vol28/iss3/4
by the $F-1$ court, but he may collaterally attack the judgment in $F-2$ when enforcement is sought there. Supra. A number of cases have found the court refusing to enforce judgments of sister states on the ground that there was no constitutional basis of jurisdiction. Supra. In some cases the Missouri court has found that the defendant was not personally served in $F-1$; the court will inquire into whether service was actually made, and a recital of service is not conclusive. Supra. The most common ground of attack is where jurisdiction is ostensibly based on consent, but the defendant did not, in fact, consent. Some cases have involved unauthorized appearances by attorneys. An old case held that a recital of appearance was conclusive, and the defendant could not show that the appearance was unauthorized. Supra. This position was shortly repudiated, and the defendant was permitted to show that the attorney was not authorized to appear for him. Supra. Since he did not consent to the jurisdiction by having an attorney appear for him and since he was not personally served, there is no constitutional basis of jurisdiction, and judgment is void both in $F-1$ and $F-2$. Stuart v. Dickinson, Supra provides a good example of such a situation. The plaintiff brought suit against a railroad in Missouri; the railroad defended on the ground that the plaintiff had previously filed the same claim against it in receivership proceedings, which was disallowed. The plaintiff was permitted to show that at the time of the former proceedings he was incompetent and that the attorney who filed the suit was engaged by the plaintiff’s wife, who had no authority to act for him. There was sufficient evidence to take this contention to the jury, which found in the plaintiff’s favor. Since the appearance by the attorney was not authorized, the plaintiff was not bound by the earlier judgment.

The issue of consent becomes very relevant when suit is on a confessed

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79. See the discussion of this point in Stuart v. Dickinson, 209 Mo. 516, 547, 235 S.W. 446, 455 (En Banc 1921).
80. It should be noted that the forum employs its own conception of jurisdiction subject to the standards enunciated by the Supreme Court. See Restatement (Second), Conflict of Laws, Tentative Draft § 43 (1956).
81. Marx v. Fore, 51 Mo. 69 (1872); Winston v. Taylor, 28 Mo. 82 (1859); Gillet v. Camp, 23 Mo. 375 (1856). But a return of the writ of summons marked “returned in full” creates a prima facie case of service. Blackburn v. Jackson 26 Mo. 308 (1858).
83. Marx v. Fore, supra note 81. See also Topalian Bros. v. Asadorian, 104 S.W.2d 713 (St. L. Mo. App. 1937). In Napton v. Leaton, 71 Mo. 358 (1879), a party who was not represented by a guardian in probate proceedings was held entitled to attack then insofar as they affected her rights in Missouri land.
84. Supra note 79.
judgment. Since the court in F-1 had jurisdiction based on the consent that the defendant gave the plaintiff rather than the consent he gave the court, if there has been any departure from the consent contained in the instrument, the plaintiff had no authority to confess the judgment, and hence the F-1 court had no power to grant it. Not only is consent the basis of jurisdiction, but in a confession of judgment situation the defendant also waives the right to notice and an opportunity to be heard.\footnote{85} As a result the Supreme Court has held that the consent must be strictly construed and the Missouri courts, in view of their policy against confession, have been only too happy to oblige.

In Grover & Baker Serving Machine Co. v. Radcliffe,\footnote{86} the instrument authorized any attorney of any court of record to confess judgment. The plaintiff had judgment confessed in Pennsylvania by the prothonotary (clerk of court), which was authorized in Pennsylvania. The United States Supreme Court held that the judgment was void, saying that the defendant did not consent to be bound by the law of the state where judgment was confessed, but only by the instrument. He had the right to "insist upon the letter of the authority conferred." In National Exchange Bank of Tiffin v. Wiley,\footnote{87} the instrument authorized confession of judgment in favor of the payee. The Supreme Court held that it did not authorize confession by a holder to whom the instrument was negotiated by the payee, and a judgment confessed by such a holder was deemed void.\footnote{88}

The Missouri courts have been perhaps more stringent with respect to the plaintiff. In Bonnet-Brown Sales Service v. Utt,\footnote{89} our supreme court said that a power of attorney is to be construed with "minute strictness." This instrument authorized any attorney of record to appear and confess judgment on behalf of the maker. The court said that the judgment did not indicate whether the attorney who confessed judgment was representing the maker or the plaintiff. Therefore, it did not appear that there was compliance with the consent given. In Hester v. Frank,\footnote{90} a judgment obtained by confession was found to be void on the ground that the warrant of attorney did not survive payment by some of the co-makers; nor did

\footnotesize{85. See the discussion of this point in Hazel v. Jacobs, supra note 68.\
86. 137 U.S. 287 (1890).\
87. 195 U.S. 257 (1904).\
88. See RESTATEMENT (SECOND), CONFLICT OF LAWS, Tentative Draft § 81, illustration 1 (1956).\
89. 323 Mo. 589, 19 S.W.2d 888 (1929).\
it authorize assignment by the payee to an attorney to confess judgment against the remaining maker. However, some construction may be permissible. In *Irwin v. Rawling*, it was held that where the warrant of attorney contained in a joint and several note authorized confession of judgment against "the undersigned," the warrant was construable as authorizing confession against any one of the parties, so that the death of one of the parties did not revoke the authority to confess judgment against the others. The result is proper, since the note itself was a joint and several note, and the authority could really be open to only one construction. This represents the limit of tolerable construction, and any greater ambiguity will prevent recognition in Missouri. Whether the United States Supreme Court would hold that Missouri is acting properly in such a strict construction may be open to question, but it is submitted that the language and rationale in the *Grover* case support Missouri's position.

Jurisdiction may also be in issue where the party is allegedly bound by representative proceedings. In *Freydi v. Trimble-Compton Produce Co.*, suit was brought upon an assessment decree rendered against members of a mutual insurance company. The defendant was permitted to show that he was not a member at the time the proceedings were instituted and thus could not be bound by the judgment against the insurer. Since notice and an opportunity to be heard are requirements of due process, a judgment may be collaterally attacked on that ground, even though jurisdiction was present. Finally, even though the exercise of jurisdiction might be constitutional, if it was not authorized by the state of rendition the judgment

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91. 141 S.W.2d 223 (K.C. Mo. App. 1940).
92. The most common situation is where he is a member of a class whose rights or liabilities have been adjudicated in a valid class action. In such a situation F-2 must give conclusive effect to the class action in F-I. Barber v. Hartford Life Insurance Co., 245 U.S. 146 (1917), reversing 269 Mo. 21, 187 S.W. 867 (1916). There a party suing on a life insurance policy was held to be concluded by a finding in a Connecticut class action that the policy was forfeited for failure to pay certain valid assessment. Missouri was precluded from relitigating the issue of validity. Interestingly enough, on remand, Missouri found that the assessment was void for another reason, which issue was not adjudicated in the Connecticut action. 279 Mo. 316, 214 S.W. 207 (1921). The Supreme Court affirmed on the ground that the issue was not litigated in Connecticut, which enabled Missouri to litigate it here. Hartford Life Insurance Co. v. Barber, 255 U.S. 129 (1921). See also Sovereign Camp v. Bolin, 305 U.S. 66 (1938); Achenberg v. Sovereign Camp, W.O.W., 346 Mo. 927, 144 S.W.2d 73 (1940); Rechow v. Bankers Life Co., 335 Mo. 668, 73 S.W.2d 794 (1934).
93. 329 Mo. 879, 46 S.W.2d 822 (1931).
94. To the same effect is State *ex rel.* Wallace v. Summers, 222 Mo. App. 782, 9 S.W.2d 867 (K.C. Ct. App. 1928).
95. Napton v. Leaton, 71 Mo. 358 (1879); Sallee v. Hays, 3 Mo. 116 (1832).
is not entitled to full faith and credit, since a judgment is not entitled to greater weight in F-2 than it has in F-1. In Wignet v. Woods, the California lower court modified the judgment after it became final, which the Missouri court found could not be done under California law. Since the judgment was not valid in California, it would not be recognized in Missouri.

The lack of subject matter jurisdiction can also be raised collaterally. It may be predicated upon constitutional infirmity such as the exercise of jurisdiction over land not under state control, or the exercise of in rem jurisdiction over property not within its boundaries, or it may be that the particular court lacked jurisdiction under F-1 law. In Thompson v. Whitman, an action was brought in New York to recover a boat that had been ordered seized in New Jersey pursuant to statute prohibiting its use for unlawful purposes, and a judgment was rendered in a justice's court. Under New Jersey law that court had jurisdiction only if the boat was used for the illegal purpose in a particular county and the seizure took place there. The New York court found that the defendant was not engaged in the proscribed activity and that the seizure did not occur in the required county. Therefore, the court did not have jurisdiction over the subject matter and the judgment, being void where rendered, was not entitled to full faith and credit. The United States Supreme Court affirmed, holding that the F-2 state can independently determine the jurisdictional facts upon which the F-1 judgment was based.

The jurisdiction of a federal court may also be questioned under the same circumstances as that of a sister state. However, a question arises as to challenges to federal jurisdiction as opposed to jurisdiction over the person or subject matter. In Wonderly v. Lafayette County, when plaintiff brought action to enforce a federal judgment, the defendant sought to enjoin enforcement, by way of counterclaim, on the ground that the judgment had been obtained by a fraudulent assignment in violation of the

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96. 294 S.W.2d 431 (Spr. Mo. App. 1956).
98. Duke v. Durfee, 308 F.2d 209 (8th Cir. 1962). See also Hanson v. Denckla, 357 U.S. 235 (1958), involving an attack on a Florida decree purporting to determine the validity of a trust where the assets and the trustee were in Delaware.
100. See also RESTATEMENT, CONFLICT OF LAWS §§ 429(d), 432, illustration 1 (1934).
102. 150 Mo. 635, 51 S.W. 745 (1899).
The trial court granted the injunction and the Missouri Supreme Court affirmed, saying that it was not permitting a collateral attack but merely acting on the defendant's "person." This is but a semantic difference, since the effect is still to refuse enforcement of the federal judgment. In *National Surety Co. v. Casner*, the court said in dictum that it could not permit a collateral attack on a federal court judgment on ground of improper removal. The case on which it relied, however, *Chesapeake & Ohio Ry. Co. v. McCabe*, involved the state court from which the case had been removed and not a state court asked to enforce a federal judgment. There the state court found that removal was improper, which was clearly not a function of the state court. The situation is different where a judgment of a federal court, sued upon in a state, is challenged for want of jurisdiction. But the court in *Casner*, it is submitted, was correct, and the reasoning is equally applicable to fraudulent assignment or any other challenges to federal jurisdiction. Directly in point are two United State Supreme Court cases, *Dowell v. Applegate* and *Des Moines Navigation Co. v. Iowa Homestead Co.*, which held that an unreversed judgment of a federal court was a bar to another action in a state court, even though federal jurisdiction was lacking, and that the state had to give full faith and credit to the prior federal decree. The court in *Wonderly* recognized the authority of these cases, but held that collateral attack was not being permitted. It said that this was a fraud on the federal court and the defendant, who was "tricked out of asserting his defense." But as later cases will indicate, "fraud" as a defense is limited to the fraudulent obtaining of jurisdiction over the defendant's person, which was not involved here. Here the fraud only related to the matter of assignment and if the federal court did not discover it, the decision is no more erroneous than in the cases of improper removal. The defendant had his opportunity to raise the question before the federal court. The position of the Supreme Court is clear. Improper federal jurisdiction is a question only for the federal court.

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103. 18 STAT. 470, 472 (1887), 28 U.S.C. § 41 (1) (1940). This provided that suit in a federal court by an assignee could not be maintained unless it could be maintained by the assignor, e.g., both the assignor and the assignee had to be diverse to the defendant. The 1948 Revision eliminated this provision and provides that jurisdiction shall exist unless the assignment was collusively made. 62 STAT. 935 (1948), 28 U.S.C. § 1359 (1950).

104. 253 S.W.2d 1057 (Mo. 1923).

105. 213 U.S. 207 (1909).

106. 152 U.S. 327 (1894).

107. 123 U.S. 552 (1887).

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courts, and the state courts may not refuse to recognize unreversed judg-
ments of the federal courts, valid as regards jurisdiction over the defendant. 
The statements in Casner indicate that Wonderly would no longer be fol-
lowed insofar as to do so would deny enforcement of a federal court's 
judgment, because of the absence of federal jurisdiction.

Thus far, in our discussion of lack of jurisdiction, we have assumed 
that the defendant had standing to raise the question. As to personal 
jurisdiction, he had standing only if he did not contest the question in F-I. 
A party has no right to contest the question of jurisdiction more than 
one, and relitigation is prohibited by the full faith and credit clause. 
In Hall v. Wilder Mfg. Co., a Missouri corporation was sued in New 
York. It claimed that New York lacked jurisdiction over it, but the claim 
was decided against it and there was no appeal. When sued on the judgment 
in Missouri, it defended on the ground that the New York court lacked 
jurisdiction. In an excellent and well-reasoned opinion, the Missouri Supreme 
Court held that full faith and credit precluded Missouri from relitigating 
the question of jurisdiction. It stated that a party can attack a judgment 
of a sister state for want of personal jurisdiction only if he did not litigate 
the question there. In later cases the United States Supreme Court took 
the same position, and it is well-settled that an unfavorable decision as to 
jurisdiction, even if not appealed, precludes relitigation in F-2.

In Citizens Bank & Trust Co. v. Moore, the Kansas City Court of 
Appeals did not permit a jurisdictional attack, even though the defendant 
did not litigate the jurisdictional question in F-I. A minor resided with a 
relative in Mississippi after his mother died. The defendant was his step-

108. See York v. Texas, 137 U.S. 15 (1890), upholding the Texas practice 
barring special appearances. Any appearance is deemed a general appearance by 
which the defendant subjects himself to the jurisdiction of the court. It was held 
that this procedure did not offend due process, since he need not appear and then 
could contest the jurisdiction when enforcement is sought in F-2. He is not harmed 
by the judgment until enforcement is sought. As long as he has one opportunity 
to litigate the question, due process is satisfied, even though if he choses to litigate 
jurisdiction, he cannot litigate the merits (if F-2 finds Texas had jurisdiction, full 
faith and credit precludes re-examination of the merits).

109. 316 Mo. 812, 293 S.W. 760 (1927).

110. American Surety Co. v. Baldwin, 287 U.S. 156 (1932). See also Treinies 
Traveling Men's Ass'n., 283 U.S. 522 (1931), where the principle of res judicata 
prevented relitigation of the jurisdiction of one federal court when recognition was 
sought in another. See also Restatement, Conflict of Laws § 451(1) (1950 
Supp.).

father, who claimed that the mother's domicile was Missouri, since the
defendant was domiciled there. He further alleged that upon the mother's
marriage the minor took his mother's domicile by operation of law. The
Mississippi court appointed a guardian; it did not appear that the defendant
was before the court. The guardian sued the defendant in Missouri to
require him to turn over property belonging to the minor. The court held
that the judgment of the Mississippi court could not be collaterally attacked.
While the result was not constitutionally required, since the defendant was
not before the Mississippi court, it is nonetheless sound. No "rights" of
the defendant were affected by the Mississippi decree, since he was merely
required to turn over property belonging to another, and a stepfather had
no right to be a guardian of the child.\textsuperscript{112}
Mississippi was the state having
the real interest in the child's welfare, since that was where he was residing,
and the court rightfully refused to disturb its appointment.

As to subject matter jurisdiction the result is not so clear. When a party
litigates the question of personal jurisdiction, he is deemed to waive any
objections to such jurisdiction, even though, in fact, it may not exist. But
subject matter jurisdiction, unlike personal jurisdiction, cannot be waived.
Consequently, while the issue of personal jurisdiction cannot constitutionally
be relitigated, the full faith and credit clause does not prevent relitigation
of subject matter jurisdiction. However, the principle of res judicata may
be applicable. Since subject matter jurisdiction has been litigated in \textit{F-I},
the policy behind res judicata—that there be an end to litigation—comes
into play. Ordinarily a party who has had his day in court should not have
the opportunity again to question the court's subject matter jurisdiction.
But in some circumstances, the policy against permitting a court to act
on things beyond its power may outweigh the policy behind res judicata.
As the Restatement puts it:

Where a court has jurisdiction over the parties and determines
that it has jurisdiction over the subject matter, the parties cannot
collaterally attack the judgment on the ground that the court did
not have jurisdiction over the subject matter, unless the policy
underlying the doctrine of res judicata is outweighed by the policy
against permitting the court to act beyond its jurisdiction.\textsuperscript{113}

\textsuperscript{112} Cf. May \textit{v. Anderson} 345 U.S. 528 (1953), holding that \textit{F-I}'s
determination that the mother is not entitled to custody is not binding on \textit{F-2} if the mother
was not present in \textit{F-I} even absent any change of circumstances.

\textsuperscript{113} \textit{Restatement, Conflict of Laws} § 451(2) (1950 Supp.). Among the
factors to be considered in determining that collateral attack should be permitted
it lists (1) the lack of jurisdiction was clear, (2) the issue depended on a question
In the latter situation a party will not be precluded from relitigating subject matter jurisdiction.

Such a case was Duke v. Durfee,\textsuperscript{114} involving title to several hundred acres of land, once an island, in the Missouri River bottoms on the Missouri-Nebraska border, the main channel of the river forming the boundary between Missouri and Nebraska. The land was originally within the boundaries of Nebraska, but it was alleged that because of shifts in the main channel of the Missouri River, it was now within Missouri. The plaintiff in the Missouri action claimed title through a patent issued to her by Missouri officials. The defendant claimed title through a Nebraska tax deed issued by Nebraska officials. The defendant had earlier instituted an action to quiet title in which the plaintiff had appeared. Subject matter jurisdiction in an action to quiet title exists, of course, only where the land is situated in the forum. Here the determination of subject matter jurisdiction and the merits were co-extensive. If the land was located in Nebraska, the court had subject matter jurisdiction, and the Nebraska title was valid and the Missouri one void, since Missouri would have no power to pass title to Nebraska land. Conversely, if the land was not located in Nebraska, the court would not have subject matter jurisdiction to hear the suit to quiet title. The court concluded that the land was in Nebraska and rendered judgment for the Nebraska claimants, which was affirmed by the Nebraska Supreme Court.\textsuperscript{115}

Three years later the plaintiff instituted a title action in Missouri, which was removed to the federal court. The lower court concluded that the land was in Missouri, since the main channel of the river had shifted by the time that the plaintiff had acquired her title. However, it dismissed on the grounds that the matter was res judicata, since it has been determined by the Nebraska court in an action in which the plaintiff had participated.\textsuperscript{116} The Court of Appeals for the Eighth Circuit reversed, first pointing out that full faith and credit was not involved and that the question was one of res judicata. It thoroughly reviewed the Supreme Court of law rather than of fact, (3) the court in \textit{F-I} was of limited jurisdiction, (4) the question of jurisdiction was not actually litigated and (5) the policy against court's acting beyond its jurisdiction is strong.

\textsuperscript{114} 308 F.2d 209 (8th Cir. 1962).
\textsuperscript{115} Durfee v. Keiffer, 168 Neb. 272, 95 N.W.2d 618 (1959).
\textsuperscript{116} This being so, it may be asked why the court decided the substantive question of where the land was located.
cases on the subject and concluded that, this being a non-divorce situation,\textsuperscript{117} the Restatement test was applicable; that being that in certain situations the policy underlying non-recognition of the jurisdiction of the court whose judgment is under attack overrides application of the res judicata principle.

Applying the Restatement factors,\textsuperscript{118} it concluded that here the policy against the court's acting beyond its jurisdiction was strong. The court was "concerned with judicial disposition of real estate" and "was confronted with the traditional policy of immunity of a state's real property from direct disposition by a sister state's judgment."\textsuperscript{119} It noted that the state itself was not bound by the res judicata effect of private litigation and that the state's sovereignty would be indirectly affected by prohibiting determination in Missouri.

The result is sound, but permitting relitigation should be limited to a situation such as this. Unless F-2 has a strong interest in deciding the question, res judicata should operate. In view of Missouri's strong policy that litigation should be terminated, the Missouri Supreme Court would probably accept the Restatement position. In the great run of cases, inquiry into subject matter jurisdiction would be foreclosed because of the prior determination, but the court would permit inquiry in a case such as \textit{Duke v. Durfee}, where Missouri's sovereignty was strongly affected by the prior litigation.

Finally, a party may be precluded from attacking a decree for want of jurisdiction by the doctrine of collateral estoppel. In \textit{McCune v. Goodwillie},\textsuperscript{120} a decree of a sister state was attacked on the ground that it passed title to Missouri land, which was beyond the court's power. The Missouri Supreme Court held that they could not question the decree. A ground may have been that since they were before the court, the issue as to the ownership was res judicata.\textsuperscript{121} But a more cogent reason was that the assailant had accepted benefits under the decree he was now attacking.

\textsuperscript{117} There subject matter and judicial jurisdiction are concurrent, since grounds for divorce are universally determined by the \textit{lex fori}. The theory is that the domicile is deciding the status of its domiciliary. Any appearance in a divorce action precludes relitigation of the jurisdictional question in \textit{F-2}. Sherrer \textit{v. Sherrer}, 334 U.S. 343 (1948); Coe \textit{v. Coe}, 334 U.S. 378 (1948). See also Cook \textit{v. Cook}, 342 U.S. 126 (1951).

\textsuperscript{118} See note 113 \textit{supra}.

\textsuperscript{119} See discussion, \textit{infra} note 202 and accompanying text.

\textsuperscript{120} 204 Mo. 306, 102 S.W. 997 (1907).

\textsuperscript{121} See the discussion, \textit{infra} notes 210-212 and accompanying text.
The assailant occupied the other land that was awarded to him and received other benefits. The court observed as follows:

As will presently be seen, the parties to the Ohio suit having taken part in a domestic distribution, and having recited in their partition deeds the Ohio decree, they and their privies are estopped to deny the finality and conclusiveness of that decree. Having accepted the decree as final and enjoyed benefits under it, they may not spurn the latter on which they claimed or disown the cup of which they drank.\footnote{122}

In the later case of \textit{Jones v. Park},\footnote{123} the court explained the case on collateral estoppel grounds and said the result would have been the same even if the parties had not been before the Ohio court.\footnote{124} In addition then to the requirement that the assailant not have litigated the jurisdictional question, he must also not have received benefits under the decree so that he is estopped from now challenging it.\footnote{125}

\section{C. Fraud}

It is often stated that a judgment is not entitled to full faith and credit if jurisdiction over the defendant was obtained by fraud. This statement is not accurate. Fraud in obtaining jurisdiction does not destroy the court's jurisdiction to render the judgment, and fraud, as such, is not a defense to enforcement of a judgment of a sister state.\footnote{126} However, a judgment is entitled to no greater effect in F-2 than it would have in F-1. Consequently, if the judgment would be set aside in F-1 or is otherwise voidable because of the fraud in obtaining jurisdiction, F-2 may refuse to recognize it or enjoin its enforcement.\footnote{127} That this is the test is demonstrated by \textit{Jaster v. Currie}.\footnote{128} There the United States Supreme Court held that Nebraska had failed to give full faith and credit to an Ohio judgment. Both the

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\item \textit{Compare} Napton v. Leaton 71 Mo. 358 (1879), where a minor unrepresented by a guardian at the time was permitted to attack probate proceedings in F-1 to establish her title to Missouri land, even though she received some money from the estate on the assumption that the defendant would be receiving the land.
\item Christmas v. Russell, 72 U.S. (5 Wall.) 290 (1877).
\item \textit{Restatement, Conflict of Laws} § 440 (1934). \textit{See also} Levin v. Gladstein, 142 N.C. 482, 55 S.E. 371 (1906).
\item 198 U.S. 144 (1905).
\end{itemize}
Nebraska court and the Supreme Court proceeded on the assumption that the issue was whether the judgment would have been impeachable for fraud in Ohio. The Supreme Court concluded that it would not have been and reversed.

The Missouri cases are not always clear as to whether the court is looking to F-1 or the Missouri law to determine fraud. In *Ward v. Quinlivin*, for example, one of the first cases dealing with the subject, the court, in commenting on *Christmas v. Russell*, concluded that that case recognized the possibility of a judgment's being impeachable for fraud in the state of rendition. In any event, the grounds on which Missouri has refused recognition because of fraud are such as to be grounds for impeachment in probably every state. We will assume then that Missouri is looking to F-1 in accordance with the constitutional requirement.

The fraudulent conduct must relate to the obtaining of jurisdiction over the defendant's person. Thus, fraud in obtaining a note upon which suit was brought and judgment rendered in F-1 is no defense to enforcement, nor is the use of perjured testimony by the plaintiff. One situation where fraud has been recognized as a defense has been where the plaintiff led the defendant to believe that suit would not be brought or continued. In *Ward v. Quinlivin*, the plaintiff promised to dismiss the suit. When the defendant was informed of this, he returned to Missouri. The plaintiff did not dismiss the action as he had agreed to do, and judgment was entered by default. Enforcement was refused on grounds of fraud. In *New York Knee Pants Co. v. McDonald*, the plaintiff had accepted a check in full settlement of his claim and promised to dismiss the case. Instead he obtained a judgment for a larger amount. The court held that the judgment was procured by fraud and refused enforcement. In the recent case of *Rosenberry v. Crump*, a husband and wife had made a property settlement in a Kansas divorce action. The wife assured the husband that she would not seek permanent alimony, which promise was incorporated into the settlement. At her suggestion he was not represented by counsel. The court awarded a lump sum for permanent alimony. The Kansas City Court of

129. 57 Mo. 425 (1874).
130. Crim v. Crim, 162 Mo. 544, 63 S.W. 489 (En Banc 1901).
131. Lieber v. Lieber, 239 Mo. 1, 143 S.W. 458 (En Banc 1912); Field v. Sanderson, 34 Mo. 542 (1864).
132. Supra note 129.
133. 11 S.W.2d 754 (St. L. Mo. App. 1928).
Appeals held that enforcement would be refused in Missouri because of her improper conduct. There could be no doubt that the Kansas courts would also refuse enforcement.

Improper conduct, designed to prevent the wife's receiving notice of a divorce action, was involved in *Leickty v. Kansas City Bridge Co.*, where in workmen's compensation proceedings the plaintiff claimed that she was the wife of the decedent. It was contended that they were divorced, and the husband had indeed obtained a divorce decree. However, the wife had been served by publication only, due to the husband's false statement that he did not know her address. After the divorce he led her to believe they were still married (they were not living together) and had her join in a conveyance of real estate. The court held that the decree of divorce was obtained by fraud and that the wife was not bound by it.

In summary, when the judgment has been procured by fraud, it is not entitled to full faith and credit, assuming it would be set aside for fraud in *F-1*. The defendant is not required to have it set aside in *F-1*, however, and can collaterally attack the judgment when enforcement is sought in *F-2*.

### D. Statute of Limitations

Enforcement of judgments, just as maintenance of the original cause of action, may be barred by lapse of time. Both the statute of limitations of *F-1* and *F-2* must be considered. Traditionally we think of statutes of limitation as destroying only the "remedy," while leaving the "right" unimpaired. This is a peculiarity of common law jurisdictions and has been severely criticized. Nonetheless, the principle continues to be accepted, and ordinarily the fact that the judgment cannot be enforced due to lapse of time in *F-1* will not prevent its enforcement in *F-2*, if *F-2* has a longer period, since the statute in *F-1* merely means the judgment is not enforceable there. In some instances, however, the statute of *F-1* is interpreted as a statute of prescription, which destroys the right as well as the remedy. When this is the case the judgment is not entitled to recognition in *F-2*.

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135. 354 Mo. 629, 190 S.W.2d 201 (En Banc 1945), *cert. denied*, 327 U.S. 782 (1946).

136. See *Restatement, Conflict of Laws* § 603 (1934).


138. St. Louis Type Foundry v. Jackson, 128 Mo. 119, 30 S.W. 521 (1895); Baker v. Stonebreaker's Adm'r's., 36 Mo. 338 (1865).
The matter of statutory interpretation is difficult, and it is submitted that no general guidelines can be established by which it is possible to determine whether the statute is one of prescription. Words to the effect that the judgment became “dormant and ceased to be a lien” have been held to indicate a statute of prescription.

Even if the action is not barred by the F-1 statute of limitations, it cannot be enforced in F-2 if barred by the latter’s statute. The statute of limitations may be a statute of rest or reflect F-2’s policy against stale evidence, or both. In any event, F-2 is not required to open its doors to enforcement of judgments that violate this policy. It was early established that refusal to enforce a judgment of a sister state, that is barred by F-2’s statute of limitations, is not prohibited by the full faith and credit clause.

The Missouri statute is expressly applicable to all judgments whether rendered by Missouri courts, federal courts, courts of sister states, territorial courts, or courts of foreign states. The limitation period is ten years. The statute is expressed, however, in terms of presumptions, which could cause some confusion. The judgment is presumed satisfied after the expiration of ten years from date of rendition, or ten years from date of revival, or ten years after date of the last payment on it. But it then says that after the expiration of that time the judgment shall conclusively be presumed to be paid and no execution shall be had nor suit brought on the judgment. A literal reading could raise the question of whether the presumption of payment could be rebutted after the lapse of time and the action maintained. However, our supreme court has held to the contrary. In Wormington v. City of Monnett, holding that an appeal did not operate to stay the running of the statute, it stated that the presumption is not rebuttable. It also construed the statute as destroying the right itself, insofar as a Missouri judgment is involved, and operating as a statute of prescription on judgments entered here. As to judgments of other courts or states, it operates to prevent their enforcement after ten years, even though enforcement is not barred in F-1.
An interesting question arises with respect to judgments of sister states that have been revived. In *Roche v. McDonald*, the plaintiff's assignor obtained a judgment against the defendant in June 1918 in the state of Washington, where the statute of limitations for judgments was six years. In February, 1924, the judgment was assigned to the plaintiff. He brought suit on the judgment in Oregon, where personal service was obtained, in March, 1924. Judgment was rendered for the plaintiff in that action in October, 1924. Shortly after recovering the Oregon judgment, the plaintiff sued in Washington, where the statute of limitations was held to be a bar. The United States Supreme Court reversed, holding that Washington had failed to give full faith and credit to the Oregon judgment, which, in turn, had been entered on the original Washington judgment.

It was immaterial that the judgment had expired in Washington, even if the Washington statute should be construed as extinguishing the right. Since the Oregon court had jurisdiction over the parties and the subject matter, the court observed that the judgment was valid despite any errors of law it might have committed, citing *Faunterloy v. Lum*. Since the second judgment was a new judgment, the statute of limitations would have to be applied from the date of the Oregon judgment, and at the time of suit it had, of course, not expired.

The principle is applicable when a judgment has been revived in the state of rendition. F-2's statute of limitations must have expired as to the second judgment. In *Union National Bank v. Lamb*, the plaintiff had obtained a judgment in Colorado in 1927. He obtained a revivor in Colorado in 1945. When he sued on the judgment in Missouri in 1948, the court held that he was barred by the ten year statute of limitations, since under the Missouri concept of revivor, the 1945 action did not create a new judgment, nor toll the operation of the statute of limitations. The United States Supreme Court reversed, holding that if under Colorado law the 1945 action created a new judgment, the Missouri statute could only run from 1945. It was immaterial that the Missouri statute of limitations on the original judgment had expired at the time of revivor if under Colorado law a new judgment was thereby created. On remand the Missouri Supreme Court concluded that under Colorado law the 1945 action did not create a new judgment.

146. 275 U.S. 449 (1927).
judgment,\textsuperscript{149} since there was no service of process on the defendant in Colorado in the 1945 action. Due to this lack of personal service, the 1945 action could not be treated as creating a new judgment.

The point to note is that $F-2$'s statute of limitations must bar the last judgment created under the law of $F-1$.

E. Extraterritorial Suits Involving Personal Representatives

Here the issue is to what extent an $F-1$ judgment involving a personal representative—an administrator or executor—will be recognized in a state other than the one where the representative was serving. There are four possible situations: (1) the representative was plaintiff and was successful; (2) the representative was plaintiff and was unsuccessful; (3) the representative was defendant and was successful; and (4) the representative was defendant and was unsuccessful, that is, a judgment was recovered against him in his representative capacity.

Insofar as full faith and credit is involved, a distinction has been drawn based upon the conceptual difference between testate and intestate administration. A judgment rendered against an executor in $F-1$ is entitled to full faith and credit when that executor is sued on the judgment in another state.\textsuperscript{150} However, when judgment is rendered against an administrator, this judgment is not entitled to full faith and credit in a suit against the ancillary administrator in $F-2$.\textsuperscript{151} The theory is that the administrators are not in privity. Each is administering assets subject to the jurisdiction of the state of his appointment, and $F-1$ cannot bind the assets being administered in $F-2$. The judgment is not against the administrator individually, but against the assets which he is administering; it being analogous to an \textit{in rem} judgment. A judgment rendered in favor of the defendant in a suit by the administrator, as plaintiff, is not a bar to an independent suit by an ancillary administrator.\textsuperscript{152} The executor, however, is deemed to obtain his authority from the will, even though he may be serving as executor in more than

\textsuperscript{149} Union Nat. Bank v. Lamb, 360 Mo. 81, 227 S.W.2d 60 (1950).

\textsuperscript{150} Carpenter v. Strange, 141 U.S. 87 (1891). In the earlier case of Hill v. Tucker, 54 U.S. (13 How.) 458 (1851) the court held that while a judgment against an executor in $F-1$ was not conclusive against a different executor in $F-2$, it was, nonetheless, prima facie evidence of the claim, and it would toll the statute of limitations in $F-2$.

\textsuperscript{151} Stacy v. Thrasher, 47 U.S. (6 How.) 44 (1848). \textit{See also} Brown v. Fletcher's Estate 210 U.S. 82 (1908), which involved an executor and an administrator \textit{c.t.a}; the judgment was not entitled to full faith and credit.

\textsuperscript{152} Ingersoll v. Coram, 211 U.S. 335 (1908).
one state. He receives his initial authority from the will and is legally responsible for all assets of the decedent wherever situated.

The constitutional situation then is as follows. If an executor is plaintiff and is successful, the judgment is entitled to full faith and credit when he sues on it in F-2, assuming he has capacity to sue in F-2.\textsuperscript{153} If an executor is plaintiff and unsuccessful, then the judgment would be a bar to a suit in another state.\textsuperscript{154} If an executor is defendant and successful, the judgment would bar another suit against him elsewhere.\textsuperscript{155} If an executor is defendant and the claimant prevails, the judgment against the executor is entitled to recognition in F-2.\textsuperscript{156} If, on the other hand, the representative is an administrator, the adverse judgment has no effect beyond F-1. A judgment against the administrator, as plaintiff, does not bar a suit by another administrator to collect the claim in another state.\textsuperscript{157} A judgment against him, as defendant, is not entitled to full faith and credit when sought to be enforced against the ancillary administrator in F-2.\textsuperscript{158} A judgment for him, when sued as a defendant, will not prevent a suit by the same claimant against an ancillary administrator elsewhere.\textsuperscript{159} The only time a judgment in an action involving an administrator has any effect outside F-1 is when he is plaintiff and is successful. Since a claim due the decedent is merged in a money judgment, recovery by an administrator in F-1 is a bar to an action by another administrator in F-2.\textsuperscript{160} And when the foreign administrator is permitted to sue on a judgment recovered in his representative capacity,\textsuperscript{161} that judgment would be entitled to full faith and credit in his suit against the defendant in F-2.

Not all of these situations have arisen in Missouri. Where the foreign administrator has recovered a judgment as plaintiff, he is permitted to sue in Missouri without ancillary administration, and the judgment of F-1 is

\begin{enumerate}
\item \textsuperscript{153} This follows from Carpenter v. Strange,\textit{ supra} note 150.
\item \textsuperscript{154} \textit{Restatement, Conflict of Laws} § 506 (2) (1934).
\item \textsuperscript{155} \textit{Id.} § 511(2) (1934).
\item \textsuperscript{156} \textit{Id.} § 510(2) (1934).
\item \textsuperscript{157} \textit{Id.} § 506(1) (1934).
\item \textsuperscript{158} \textit{Id.} § 510(1) (1934).
\item \textsuperscript{159} \textit{Id.} § 511(1) (1934).
\item \textsuperscript{160} \textit{Id.} § 505 (1934).
\item \textsuperscript{161} In the absence of statute most states will permit suits on claims arising out of transactions after his appointment, but not on claims belonging to the decedent. Statutes in many states permit suit on the latter. \textit{See} \textit{Restatement, Conflict of Laws} §§ 507, 508 (1934). As to Missouri \textit{compare} Wells v. Davis, 303 Mo. 388, 261 S.W. 58 (1924), with DeMattei v. Missouri-K.T. Ry. Co., 345 Mo. 1136, 139 S.W.2d 504 (1940). \textit{See} as to recognition, Moore v. Kraft, 179 Fed. 685 (7th Cir. 1912).
\end{enumerate}
entitled to full faith and credit. The same is obviously true as to a judgment recovered by an executor. Research has disclosed no cases involving suits by administrators in Missouri, following an unsuccessful suit by an administrator elsewhere. I would predict that if the defendant were a Missouri domiciliary sued elsewhere, the Missouri courts would hold the action by the Missouri administrator barred, and I would hope that the result would be the same even if the defendant were not a Missouri domiciliary. It is unfair to harass the defendant with repeated suits by permitting him to be sued if he can be served or has property in a state where there is ancillary administration. The administrators should be acting in concert and should be in communication. It is inconceivable that the Missouri administrator would be unaware of the suit elsewhere, and he could assist the F-1 administrator in that suit. It is hoped that Missouri will hold that a judgment against an administrator as plaintiff in F-1 will bar another action by the administrator in F-2.

There have been Missouri cases where the representative is the defendant in F-1 and was unsuccessful. The leading case is In re Thompson's Estate. A judgment was rendered against a Missouri administrator in a suit in a federal court in Louisiana where he was personally served. The Missouri Supreme Court held that the judgment was not entitled to full faith and credit, since F-1 lacked jurisdiction. It relied on section 512 of the Restatement, which states declares that an action cannot be maintained against an administrator on a claim against the decedent outside of the state of his appointment. Since the administrator had no authority outside the state of his appointment to bind the assets, his appearance could not confer jurisdiction. The result and rationale are correct. If there were assets in Louisiana, the judgment could be satisfied out of those assets. In some sense a judgment against an administrator can be considered in rem. Missouri's policy against permitting suits against Missouri administrators outside of the state justifies the result. When the plaintiff sued the Missouri administrator in Louisiana, it should have been only with the view toward


163. A defeated executor would, of course, be barred, as the prior discussion indicates.

164. 339 Mo 410, 97 S.W.2d 93 (1936).

165. Restatement, Conflict of Laws § 512 (1934).
obtaining Louisiana assets in satisfaction. Although the decedent carried on operations in Louisiana, it did not appear that he had assets there. The result is not unfair to the plaintiff, who was aware that he was suing a foreign administrator and through discovery could have probably determined whether there were assets in the state of suit.166

A different question is presented where the plaintiff has recovered a judgment against an ancillary administrator. In First National Bank of Corning v. Dowdy,167 the Springfield Court of Appeals held that a judgment recovered against an ancillary administrator in Arkansas was not entitled to full faith and credit in a suit against a Missouri administrator. Here there was no question of lack of jurisdiction. There were apparently assets in Arkansas, as the appointment of an ancillary administrator indicates. Missouri's policy of prohibiting suits against a Missouri administrator elsewhere is not involved. There is no reason to permit relitigation in Missouri, since F-I had jurisdiction over the parties and the assets located there. I would hope that our supreme court would hold the judgment res judicata and recognize the claim in Missouri. Assuming that administrators would be in communication, the Missouri administrator would almost certainly be aware of the action pending in Arkansas. Because there is no question of jurisdiction and no interference with Missouri's policy that an administrator appointed by its courts should not be suable elsewhere, the court should not permit relitigation.

As to foreign suits against the administrator, in which the administrator was successful, research has also disclosed no Missouri cases. If the plaintiff sued the Missouri administrator elsewhere, the court to be consistent with Thompson, would have to hold that there was no jurisdiction, since the administrator cannot be sued there. Still, it was the plaintiff who initiated the action there against the Missouri administrator. It does not seem unfair to hold him estopped from now asserting the lack of jurisdiction in F-I.168 He invoked the jurisdiction of that court and should now not be
heard to complain of the lack of jurisdiction. Where the suit was against a foreign administrator and judgment was in his favor, the Missouri courts should hold the action res judicata. It is neither fair nor sound to permit suits against the estate in every state where assets are located. Where a court of another state, having jurisdiction over the parties and the subject matter has decided against the plaintiff, he should not be permitted to relitigate his claim in Missouri. Particularly where the decedent was domiciled here, our courts should not permit the estate to be diminished by a foreign claimant whose claim was adjudicated against him in another tribunal.169

In summary as to administrators, it has been decided by our supreme court that a judgment rendered in favor of a foreign administrator as plaintiff is entitled to full faith and credit when sued on in Missouri. Where the foreign administrator was unsuccessful as plaintiff, it is hoped that our courts will not permit suit against the defendant here by an ancillary administrator. Where a judgment is rendered against a Missouri administrator as defendant elsewhere, that judgment will not be recognized because of the absence of power in F-1 to bind the assets here. If rendered in his favor when sued as defendant elsewhere, it is submitted that the plaintiff should be estopped from suing him again in Missouri. Finally, where suit involves a foreign administrator as defendant, it is submitted that the decision should be res judicata here, whether the decision is for or against the administrator. A number of questions concerning judgments in suits involving administrators are now open in Missouri.

F. Judgments of Foreign States

The question of recognition of judgments of foreign states does not appear to have arisen in Missouri, and indeed there is scant authority in any state on the question.170 Since one of the parties will usually be a citizen of a foreign state, diversity jurisdiction exists in the federal courts; moreover, since Missouri is an “inland state,” enforcement of foreign judgments is not as likely to be sought here as for example in New York.

Since the full faith and credit clause is inapplicable to judgments of

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169. See also First Nat. Bank v. Blessing, 231 Mo. App. 121, 98 S.W.2d 149 (K.C. Ct. App. 1936), where it was held that a judgment obtained against a foreign executor in another state is not a bar to a further suit against the Missouri executor here.

170. The matter is discussed in Reese, Status in this Country of Judgments Rendered Abroad, 50 COLUM. L. REV. 783 (1950).
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foreign states, there is no constitutional provision expressly requiring recognition. The due process clause would, of course, prohibit recognition where jurisdiction was lacking in the due process sense, unless perhaps both parties were citizens of F-1.\textsuperscript{172} It has been suggested that the foreign relations powers of the United States may prohibit the states from acting upon foreign judgments contrary to the rules imposed by the federal courts,\textsuperscript{172} but I cannot see where recognition of a judgment in the ordinary civil action\textsuperscript{173} has any effect on our foreign relations policy, and I doubt if the United States Supreme Court would hold that it has the power to establish standards for recognition of judgments of foreign states, except as due process is involved.\textsuperscript{174} Indeed, in diversity cases it may be that the federal courts are required to follow the state practice as to recognition of foreign judgments under the \textit{Erie} doctrine.\textsuperscript{175}

In a pre-\textit{Erie} case the Supreme Court established the rules for the federal courts as to recognition of judgments of foreign states. In \textit{Hilton v. Guyot},\textsuperscript{176} a French plaintiff sued on a judgment recovered against American defendants in a French court. There was personal service on the defendants, and the jurisdiction of the French court was not questioned. The Court held that an \textit{in rem} judgment of a foreign court would be conclusive here; likewise an \textit{in persona} judgment rendered against a citizen of F-1 as defendant, or in favor of the defendant when the F-1 citizen was plaintiff. But where the F-1 citizen was plaintiff and the defendant was an American, the judgment would be recognized only if F-1 would recognize as conclusive a judgment of an American court rendered in favor of an American against an F-1 national. Since France would treat such a judgment as only "prima facie evidence of the justice of the plaintiff's claim," we would accord the same treatment to a French judgment. This doctrine is called "retortion." It has not found much favor in this country and has been specifically rejected in New York,\textsuperscript{177} and by statute in California.\textsuperscript{178} As far as F-2 is

\textsuperscript{171} See Gruebel v. Nassauer, 210 N.Y. 149, 103 N.E. 1113 (1913). Though the court does not talk in constitutional terms, I think the result was constitutionally required.
\textsuperscript{172} Reese, \textit{supra} note 170 at 777-78 and cases cited therein.
\textsuperscript{174} In Aetna Life Insurance Co. v. Tremblay, 223 U.S. 185 (1912), the court held that Maine's refusal to recognize a Canadian judgment presented no federal question.
\textsuperscript{175} See the brief discussion of this point in Reese, \textit{supra} note 170 at 792.
\textsuperscript{176} 159 U.S. 113 (1895).
\textsuperscript{177} Johnson v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121 (1926).
\textsuperscript{178} See Reese, \textit{supra} note 170 at 788, note 29.
concerned, the matter is settled, and there is no reason to permit relitigation in its courts. At least where F-I is a “civilized” state, since our policy as to res judicata prohibits relitigation in our courts, it is of no concern to us that F-I would permit relitigation if suit were brought there on our judgment. Retortion is a primitive concept, and it is submitted that it should not and will not be followed in Missouri if the question should arise.

However, a foreign state is not a sister state, and we may protect what we consider to be our legitimate interests and that of our citizens against judgments of foreign states, even though we may not do this as to judgments of sister states. If a case such as *Faunterloy v. Lum* were before a foreign court and the court failed to apply Missouri law properly, we would, no doubt refuse recognition if the judgment went against a Missouri citizen. We might hold that our statute of limitations ran against the original judgment unless there was a valid revivor under our concept of what constitutes valid revivor. We would probably determine the question of fraud by our standards. Finally, if we considered the claim on which the judgment was founded extremely unfair and undesirable, we might refuse recognition on that count.

The only case that may give any indication as to Missouri policy on foreign judgments is *Grey v. Independent Order of Foresters*, decided by the Springfield Court of Appeals in 1917. The case will be discussed at greater length in the next section. When confronted with a Canadian judgment, the court stated that Missouri would recognize a foreign judgment through comity where there was personal and subject matter jurisdiction. The court did not discuss retortion, and no reference was made to *Hilton v. Guyot*, which had been decided earlier. The court, however, refused to recognize an Ontario judgment rendered prior to the Missouri judgment, though after Missouri acquired jurisdiction. As we will see in the next section, if Ontario had been a sister state, the full faith and credit clause would have required recognition of its judgment.

It is submitted that the approach taken by the court in that case will be followed in Missouri if the question should arise. Retortion has no place

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180. See the discussion, *supra* notes 146-49 and accompanying text. See also the discussion in Reese, *supra* note 170 at 793-94.
181. Such as that involved in *De Brimont v. Penniman*, 7 Fed. Cas. 309 (No. 3715) (C.C.S.D.N.Y. 1873), which was rendered pursuant to a French statute requiring a father-in-law to support his son-in-law.
182. 196 S.W. 779 (Spr. Mo. App. 1917).
in our law and is inconsistent with our policy of res judicata. Consequently, it is of no concern to use what F-I would do with our judgment. Since we deem it desirable that there be an end to litigation, we will recognize the F-I judgment as conclusive without considering what F-I will do. However, we are not inhibited by the full faith and credit clause from promoting policies we deem desirable. The requirements of a federal system and the need for uniform recognition among the several states which, while sovereign in the conflicts sense, are not sovereign in the national and international sense, are not present when a foreign state is involved. France is a foreign state realistically, while Illinois is not. Thus, where we decide that recognition of the foreign judgment will violate our policies we will refuse such recognition. But since such a refusal would run counter to our well-recognized principle of res judicata, the interference with those policies will have to be most serious.

IV. CONFLICTING JURISDICTION AND JUDGMENTS

A. Conflicts of Jurisdiction

A problem arises when the same case is before two courts. In *Morris v. Jones*,183 defendant was an Illinois unincorporated association authorized to do business in Missouri. In 1934 the plaintiff sued in Missouri for malicious prosecution. In 1938, before judgment was obtained in the Missouri action, liquidation proceedings were filed against the association in Illinois. The Illinois proceedings vested title to all the association's property in the liquidator, set a time for filing claims against the association and stayed all suits against it. Counsel for the association withdrew from the Missouri suit, stating that the Illinois proceedings prevented the suit in Missouri. The Missouri court disagreed and entered judgment for the plaintiff. The claim was disallowed in the Illinois proceedings, despite the contention that it was entitled to full faith and credit. The United States Supreme Court reversed, holding that full faith and credit had been denied to the Missouri judgment. There was no question of priority of claims, nor was the title of the Illinois liquidator to the association's assets in issue. The point was that Illinois had failed to recognize as valid a claim supported by a judgment of a sister state, which had jurisdiction over the parties and the subject matter. Of course, it was im-

183. 329 U.S. 595 (1948).

http://scholarship.law.missouri.edu/mlr/vol28/iss3/4
material that the underlying claim would not have been recognized in Illinois. If the Illinois decree staying suits was to have been recognized in Missouri, the place to raise that question was before the Missouri courts. In other words, as between states of the Union, that judgment controls which is rendered first. So if suit had been brought first in Illinois and then in Missouri, assuming the Missouri court did not decline jurisdiction, and Missouri rendered judgment first, that judgment would be entitled to full faith and credit in the Illinois action.

In *Grey v. Independent Order of Foresters*, the latter question was before the Springfield Court of Appeals in regard to a judgment of a foreign state. There was a dispute over a suicide provision in an insurance policy. Suit was instituted in Missouri by the original beneficiary in March, 1915, and the assignee was substituted as plaintiff in October, 1915. Later in March, 1915, the insurer sued the original beneficiary in Toronto, Canada, obtaining personal jurisdiction. In May, 1915, the Canadian court rendered a judgment resolving the disputed issue in favor of the insurer. It also enjoined the beneficiary from prosecuting suit elsewhere. In October, 1915, the Missouri court resolved the disputed issue in favor of the plaintiff, holding that the Canadian judgment was no bar.

On that point the court of appeals affirmed. The principle was established that when two courts have jurisdiction, the one whose jurisdiction first attaches prevails, and that court will retain jurisdiction to judgment. The result could not constitutionally be the same if Toronto were a sister state. Since it had jurisdiction over the parties and the subject matter, its judgment would be entitled to full faith and credit here, and the question of which court first acquired jurisdiction would be immaterial. As to foreign states, however, the decision represents Missouri's view as to retention of jurisdiction, and it is submitted it would be followed by the Missouri Supreme Court.

B. Conflicting Judgments

Here *F-1* and *F-2* have both rendered judgments, and the issue is what *F-3* or *F-1* may do if the *F-1* judgment is challenged by the *F-2* judgment. Where the issue is as to the jurisdiction of either *F-1* or *F-2* to render the judgment, *F-3* may independently decide which state had jurisdiction. In *Riley v. New York Trust Co.*, a Delaware corporation sued in Delaware

185. 315 U.S. 343 (1942).
to interplead two administrators, one appointed by Georgia and the other by New York. Both claimed the right to the decedent's stock in the Delaware corporation. The New York administrator was not a party to Georgia proceedings which had determined that the decedent was domiciled in Georgia. New York had earlier determined that the decedent was domiciled in New York. The Delaware court found that the decedent was domiciled in New York and awarded the property to the New York administrator. It was held that Delaware did not deny full faith and credit to the Georgia proceedings. Since jurisdiction depended upon the domicile of the decedent, such domicile was a jurisdictional fact, which F-2 or F-3 may always examine. Conceivably, Delaware could have found that the decedent was domiciled in a third state. So too, if the Georgia decree were in issue in New York, New York could deny it recognition because of the lack of domicile.\(^{186}\)

An entirely different situation would have been presented if the New York administrator had litigated the jurisdictional question in Georgia. In Riley, Chief Justice Stone, joined by Justices Frankfurter and Jackson, concurred on the ground that the New York administrator was not bound by the Georgia decree, since he was not before the Georgia court. In Treinies v. Sunshine Mining Co.,\(^{187}\) it was held that where there were inconsistent decrees the action of the court rendering the second decree, where the jurisdictional question was litigated, was entitled to recognition. The estate of the decedent was being administered in Washington. The parties, whom we shall call M and T, both claimed the stock in the estate. M sued T in Idaho, seeking a decree that she was entitled to the stocks as against T. The Idaho court held that it could take jurisdiction over the cause, classifying the action as more or less in personam, and gave judgment for M. Pending the action, M sued in Washington to remove the executor, who was T's assignor. By a cross-petition the executor claimed the stock. A judgment was entered in favor of T's assignor in 1935. The action proceeded to judgment in Idaho, and in 1936 judgment was entered for M against T. T had challenged the jurisdiction of the Idaho court, and pleaded the Washington proceedings against M as a bar. The Idaho court concluded that the Washington court did not have jurisdiction to enter the


\(^{187}\) 308 U.S. 66 (1939).
decree and refused recognition. Apparently this was based on the lack of power of the probate court, rather than because of any constitutional objection. The power of the probate court had not definitely been established by the state supreme court in that case, and the Idaho court decided that it lacked jurisdiction under Washington law. Subsequently, T sued M in Washington, alleging that the Idaho decree was void. The corporation then filed the interpleader bill in the federal court.

When the case reached the United States Supreme Court, it was held that the Idaho decree was binding on the parties. The issue of Washington's jurisdiction to issue the decree had been litigated in Idaho by the defendant and decided adversely to him. It was noted that he did not petition for certiorari from the final determination in Idaho, though he had from an earlier one. He was, therefore, precluded from relitigating the question. Had the Washington court, if the suit were before it, permitted such relitigation, it would have denied full faith and credit to the Idaho decree. It was not disputed that the Washington decree would have had to be recognized in the Idaho case if the Washington court had jurisdiction, since it was rendered first. But the finding that the Washington court did not have jurisdiction was conclusive on T, who had litigated it in Idaho. Thus, a litigation of the question of F-1's jurisdiction in F-2 precludes its relitigation in F-3 or in F-1, just as a litigation of jurisdiction in F-1 precludes its relitigation in F-2.

With this in mind, let us consider the holding in Grimm v. Barrington. B sued R in Missouri to cancel a contract for services that R was performing for her, and judgment was for B. R then sued B in New Jersey, joining an insurance company as garnishee, to recover on a quantum meruit theory for services performed prior to repudiation. In the New Jersey action judgment was for R. P, a creditor of R, sued B in Missouri as garnishee, setting up the New Jersey judgment against B as proof of B's liability to R. The St. Louis Court of Appeals refused to recognize the New Jersey judgment despite P's claim that the New Jersey court decided that the Missouri judgment did not bar quantum meruit recovery against B. The court concluded that the Missouri judgment did hold such recovery was barred and that the New Jersey decision was directly opposed to that of Missouri. Full faith and credit, it said, did not require Missouri to recognize a judg-

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189. 308 U.S. at 77.
190. 109 Mo. App. 35, 84 S.W. 357 (St. L. Ct. App. 1904).
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ment that conflicted with a Missouri decision rendered on the identical issue. But B was a party to the New Jersey proceedings. The suit was begun by garnishment, and she elected to come in and defend. The court observed that she did not appeal the New Jersey decision. Her claim that New Jersey denied full faith and credit to the Missouri decree was decided against her in New Jersey. Her remedy was to appeal and petition the Supreme Court for certiorari. Failing to do so, she should not have been permitted to relitigate the question in Missouri, and if the case were to arise today, it would have to be decided differently.

In summary, a judgment rendered by a sister state must be recognized even if F-2 acquired jurisdiction first or the judgment otherwise interferes with the operation of proceedings in F-2. Conflicting judgments must be examined in terms of jurisdiction. The conflict must be resolved in jurisdictional terms, but if a party has litigated the question of jurisdiction or any other question in F-2, he cannot relitigate it in F-1, nor F-3, and is bound by the F-2 determination.

V. Decrees

It is here that the law is in a state of flux and the requirements of full faith and credit may be less confining. We have earlier defined a decree as anything other than an unconditional court order requiring the immediate payment of a sum certain in money. This is a functional, rather than a historical definition. Historically, judgments were issued by the law courts and decrees by the equity courts. Thus, an order in replevin or ejectment would be denominated a judgment, while an award of damages by an equity court would be denominated a decree. The problems as to recognition have involved “equity” decrees, other than those for the payment of damages. Our use of the term decree will be in the functional sense; only the situs has subject matter jurisdiction to issue an order in ejectment, so there is no problem of recognition; nor are there any special problems as to replevin orders.

A. Constitutional Requirements

The requirements of full faith and credit are equally applicable to decrees. The historical concept that “equity acts in personam” has no significance here. A decree binds the parties and not only their “consciences.”

191. See the discussion, supra note 4.
In Sistare v. Sistare, the United States Supreme Court made it clear that the full faith and credit clause requires recognition of an alimony decree as to past due installments, reaffirming an earlier holding to the same effect in Barber v. Barber. An award of alimony is an equitable action; since payment is to be in installments and it may be subject to modification, the action historically had to be maintained in the chancery courts, which also had divorce jurisdiction. The court observed that as installments become due, the right to them becomes vested, and is, therefore, protected by the full faith and credit clause. That an equity decree for a sum certain in money is entitled to full faith and credit was expressly decided in Missouri prior to Sistare. A decree for future installments of alimony is not entitled to full faith and credit, since at the time of suit the right is not vested, as the decree is subject to modification in the state of rendition. Past installments are not entitled to recognition if they are still subject to modification in the state of rendition. The point is that the historical nature of the decree as "equitable" has nothing to do with the question of full faith and credit. If a decree is not to be recognized, it must be for other reasons. The most frequent questions outside the family law area, which is subject to special treatment and will not be discussed here, involve decrees affecting foreign land and antisuit injunctions.

B. Extraterritorial Land Decrees

In a suit between A and B in an F-I court having jurisdiction over the parties and the subject matter of the case, e.g., construction of a will of an F-I domiciliary, the court decides that A is entitled to land located in Missouri. The question arises as to what effect Missouri will give the decree when the successful party seeks to establish his title in Missouri.

We must begin with a consideration of Fall v. Eastin, the only United States Supreme Court case on the subject. This is a wonderful case for teaching purposes as it shows how a lawyer's mistakes can cause the

192. 218 U.S. 1 (1910).
196. Barber v. Barber, 323 U.S. 77 (1944), where the past installments were found to be non-modifiable. Mr. Justice Jackson, concurring, took the position that past installments were entitled to recognition unless modified in F-I.
197. They will be discussed elsewhere in the Symposium.
court to decide the case against his client by confusing the court as to the real issue involved. Suit was brought in Nebraska to cancel a mortgage and quiet title to land situated there. The plaintiff had obtained a divorce in Washington, which was the matrimonial domicile. As part of the decree the Washington court ordered the husband to execute a deed to the wife to satisfy a division of the marital property. When he failed to do so, the court under an appointive statute appointed a commissioner to execute a deed to the land located in Nebraska. In the meantime the husband had conveyed the land to the defendant after giving a mortgage to her. Apparently she had no notice of the Washington order. In any event, the Nebraska Supreme Court refused to recognize the Washington decree as vesting title in the plaintiff. The United States Supreme Court affirmed, holding that full faith and credit did not require the Nebraska court to vest title in the plaintiff based on the Washington decree. The case and the problem of recognition of foreign land decrees have been extensively discussed by many writers, the discussion by Professor Currie particularly being excellent, and need not be discussed at great length here. Suffice it to say that counsel for the plaintiff tried to persuade the Supreme Court that the Washington decree passing title to Nebraska land was in and of itself entitled to full faith and credit. Of course this is not so. No state but the situs can by its decree pass or void title to land, and this point had earlier been decided by the Supreme Court. The court held that the findings were not required to be given res judicata effect in a suit in Nebraska to determine title to Nebraska land. The court gave no convincing reasons for its decision, and seemed to say that the “equities” given by the Washington court, as to Nebraska land, did not have to be recognized by Nebraska when title was in issue there.

Of course the decree could not operate as a conveyance of Nebraska land because of the absence of Washington’s power over the land. But it was conclusive as between the parties and their privies as to who had the right to have the land. Since the action was one to quiet title, the adju-

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199. Where the defendant has failed to convey, the situs can issue an in rem decree passing title. See e.g., Garfein v. McInnis, 248 N.Y. 261, 162 N.E. 73 (1928).


202. Justice Holmes concurred, though he disagreed with the holding. He held that the decision could rest on an adequate state ground, namely, that Nebraska
dication that the plaintiff had title to the land as against the husband and his privies, assuming notice, should have been given full faith and credit. Of course, there is nothing to prevent the situs from treating the findings as res judicata, and some courts have so held. It is immaterial to the situs who has title, as there is no question of a conflicting grant of title from the situs. Fall v. Eastin may be limited by the principle of stare decisis to the holding that the Washington court did not have the power to pass title by its decree to the Nebraska land, or can be explained by Justice Holmes's concurrence that the Nebraska decision rested on an adequate state ground, i.e., that the defendant was a bona fide purchaser for value without notice of the wife's rights. If the question were to arise today, it is submitted that the finding that the wife was entitled to the land as against the husband and his privies, would be subject to the requirement of full faith and credit.

The principle is equally applicable to an order of F-1 requiring the defendant to execute a conveyance to land in F-2 in an action for specific performance or the like. If the defendant executes the conveyance under court order, of course, it will be recognized as a matter of substantive law, since court compulsion is not recognized as duress, and the conveyance is otherwise valid. F-2 need not give the same remedy as did F-1, e.g., specific performance, since the question of what remedy to give must be

found the defendant was a bona fide purchaser for value, without notice, and thus was not bound by the adjudication against his transferror, which only served to give the wife "equitable title."

203. Roller v. Murray, 234 U.S. 738 (1914). Since F-1 had jurisdiction over the parties it could issue an in personam decree, which F-2 may recognize consistent with due process. Thus, F-2's treating as conclusive a decree of F-1 holding that the plaintiff was not entitled to have a trust enforced in F-2 land raised no federal question.

204. See, e.g., Matson v. Matson, 187 Iowa 607, 173 N.W. 127 (1919); Weesner v. Weesner, 168 Neb. 346, 95 N.W.2d 682 (1959); McElreath v. McElreath, 162 Tex. 190, 345 S.W.2d 722 (1961). The Nebraska court explained the Fall case on the grounds that (1) Washington did not have power to pass by court decree title to Nebraska land and (2) at that time the Nebraska courts did not have the power to award realty as part of a divorce decree. Since the Nebraska court now had the power and since the parties were before the court in F-1, the decree was res judicata and according to the court, entitled to full faith and credit. For cases expressing the contrary view, namely that the decree involving F-2 land is entitled to no effect, see Bullock v. Bullock, 52 N.J. Eq. 561, 30 Atl. 676 (Ct. Err. & App. 1894); Clouse v. Clouse, 185 Tenn. 666, 207 S.W.2d 576 (1948).

205. Cf. Duke v. Durfee, 308 F.2d 209 (8th Cir. 1962), and the discussion, supra notes 113-117 and accompanying text.

decided by the court asked to grant the remedy. If F-2 feels that damages are adequate for breach of a contract to convey land, then full faith and credit does not require it to resort to specific relief with more severe sanctions. If it would grant specific performance in the case of other land contracts, however, it would be required to do so here, but it is not required to give a remedy that it does not give to parties in its own courts. The question is academic, since specific performance is granted, as of course, in land contracts. A number of cases have applied this principle and have granted specific performance based on a F-1 decree ordering specific performance of a contract to convey F-2 land.

The Missouri Supreme Court has decided that it will treat a foreign land decree as any other, that is, as conclusive between the parties. Applegate v. Brown was an action to quiet title to Missouri land. The plaintiff claimed that a part of her son's will, which devised his share of the land to trustees, violated the rule against perpetuities. In a prior action before the Nebraska court, in which the plaintiff was a party, it was held that the provision, as construed, did not violate the Missouri rule against perpetuities. The court decided, therefore, that title to the land was in the trustees. The Nebraska decree was held to be conclusive, since all parties to the Missouri suit were before the Nebraska court. It was immaterial that the effect of the decree was to determine title to Missouri land. In the earlier case of McCune v. Goodwillie, the court expressed the same view, though the case has been explained on grounds of collateral estoppel. In a suit in Tennessee, a decree was rendered setting aside a conveyance to Missouri land. Obviously the decree could not a propriore vigore change the title in Missouri. However, the decree was res judicata as to the rights of the parties. The court observed:

They had their day in a court of equity having jurisdiction of their persons. It had jurisdiction of the subject matter, and could bind and did bind the conscience of every party to the suit. While the

207. See Restatement, Conflict of Laws § 449 (1934). As to the application of the same principles for choice of law purposes, see Sedler, op. cit., note 137 supra, at 826.


209. 344 S.W.2d 13 (Mo. 1961).

210. 204 Mo. 306, 102 S.W. 997 (1907).

211. See the discussion, supra note 123 and accompanying text.
decree could not directly affect the bare legal title to land in Missouri, yet it could and did conclude the parties on every issue it could... 212

It is clear then that Missouri will treat as res judicata a decree of another state involving Missouri land, when that state had jurisdiction over the parties and the subject matter. This is so, irrespective of whether the result is required by full faith and credit.

C. Anti-suit Injunctions

Here F-1 has enjoined a party from enforcing a claim or judgment in another state. From the earliest times of chancery practice the court has recognized its power to enjoin persons from prosecuting suits or enforcing judgments, either in the same state when law and equity were separate, or in other states. 213 When sued in F-2, either after the anti-suit injunction was issued in F-1, or when the F-1 injunction was issued after suit was begun in F-2, the defendant sets up the F-1 injunction as a bar to prosecution of the action. It is assumed that such injunctions are not entitled to full faith and credit, and ordinarily they are not. This is not because an anti-suit injunction "merely binds the consciences" of the parties, 214 but because the F-1 determination is not on the merits. Usually an anti-suit injunction will be granted because it is unfair to require the defendant to defend in the state where the plaintiff is suing or because the case can be more conveniently tried in F-1. It should be noted that the Missouri courts are very chary about issuing anti-suit injunctions. 215 But, where a merits determination takes the form of an anti-suit injunction, then full faith and credit is required. In Dobson v. Pearce, 216 the plaintiff brought

212. 204 Mo. at 336, 102 S.W. at 1005.
213. See the discussion in Kempson v. Kempson, 58 N.J.Eq. 94, 43 Atl. 97 (1899). See also Lord Portarlington v. Soulby [1843] Chan. 3 Myline & Keen 104.
214. The concept that "equity acts in personam" has meaning in this situation. F-1 obviously cannot bind the F-2 courts just as the historic chancery courts could not bind the law courts. But it can bind "the person of the defendant" and punish him for contempt if he prosecutes the suit.
216. 12 N.Y. 156 (1854).
suit in New York on a judgment earlier obtained by his assignor. The defense was asserted that the judgment was obtained by fraud. When the assignor had sued to enforce the judgment in Connecticut, the Connecticut court found that the judgment had been obtained by fraud and enjoined its enforcement elsewhere. The New York court held that the action was barred. The issue of fraud had been litigated in Connecticut and decided adversely to the plaintiff's assignor. The full faith and credit clause prohibited relitigation in New York, even though the Connecticut decree took the form of an anti-suit injunction. So too if F-1 would enjoin enforcement of a negotiable instrument by the payee on the ground that it was obtained by fraud, this represents a merits determination, and the issue of fraud could not be relitigated if enforcement were sought in F-2.

Ordinarily, however, the anti-suit injunction is not on the merits, and the issue is whether F-2 will, in the literal sense, extend "comity" to the F-1 determination by refusing to entertain a suit on the claim in its courts. Though the findings of fact as to vexatiousness and the like are res judicata, F-2 will generally not refuse to entertain the suit because of the F-1 adjudication that it should not be brought in F-2, and Missouri follows that approach. However, there may be situations where the anti-suit injunction of F-1 will be respected. In Strubinger v. Mid-Union Indemnity Co., the plaintiff, an attorney, alleged that he had performed various services for the defendant, an Illinois insurance corporation now in conservatorship, for which he was not paid. He instituted garnishment proceedings against the corporation's debtor in Missouri. Proceedings had been previously instituted in Illinois under the conservatorship to rehabilitate the corporation. All persons having claims against the corporation were enjoined from instituting suit against it pending rehabilitation. Apparently, the plaintiff was before the Illinois court; in any event, it was pointed out that he did not contest Illinois' personal or subject matter jurisdiction.

217. See the valuable discussion in Note, Extraterritorial Recognition of Foreign Anti-Suit Injunctions, 6 St. Louis U.L.J. 552 (1961).

218. Kepner v. Cleveland, C. & St. L. Ry., 332 Mo. 299, 15 S.W.2d 825 (En Banc 1929), cert. denied, 280 U.S. 546 (1929); Lindsey v. Wabash Ry., 61 S.W.2d 369 (K.C. Ct. App. 1933); Grey v. Independent Order of Foresters, supra note 215. In the Kepner case, F-1 had enjoined the plaintiff from prosecuting an FELA claim in Missouri. In Miles v. Illinois Central R.R., 315 U.S. 698 (1942), it was held that the statute prohibited a state from enjoining prosecution of an FELA claim in a sister state. See also Baltimore & O. R.R. v. Kepner, 314 U.S. 44 (1941), involving state anti-suit injunctions against proceeding in the federal courts.

219. 352 S.W.2d 397 (St. L. Mo. App. 1961).
In a well-reasoned opinion the St. Louis Court of Appeals refused to permit the suit. Though it talked in terms of full faith and credit, it did not indicate the result was constitutionally required,\textsuperscript{220} and of course, it was not, since the Illinois ruling did not represent a merits determination. It took the position that an action to enforce the right against property in liquidation should be brought only before the liquidating court. If the plaintiff was permitted to enforce his right against the garnishee, he would be given a preference against other creditors. It was not Missouri's policy to give its residents preferences over foreign creditors. The result is sound and shows proper consideration for the interests of a sister state.

Assuming, as I think it will, the reasoning of this case will be followed, Missouri will not automatically refuse recognition of anti-suit injunctions not on the merits, but will consider whether proper respect for the interests of a sister state or the litigants justifies refusal to entertain the suit in Missouri because of the issuance of the injunction.

\textbf{VI. Conclusion}

The question of recognition of foreign judgments and decrees must be approached first, with an eye toward the requirements of full faith and credit when, as usually is the case, F-I is a sister state. In order for a federal system, such as ours, to function properly, we must not treat sister states as "foreign sovereignties." This, coupled with our policy of res judicata, means that with very few exceptions, a judgment rendered by a court with jurisdiction over the parties and the subject matter will be recognized in Missouri. Even when the mandate of full faith and credit is not clear, our policy of res judicata generally precludes collateral attack. But the lawyer must carefully examine the permissible grounds of attack in order to prevent enforcement against his client of a judgment of a court lacking the power to bind him.

Except for certain questions of family law, not discussed herein, recognition of foreign judgments and decrees then involves an area of fairly settled law, and most unresolved points are likely to be determined in favor of recognition. Such results are in accord with the necessities of a federal system and our strong policy that there be an end to litigation.

\textsuperscript{220} Sometimes courts use full faith and credit in the generic rather than the constitutional sense, \textit{i.e.}, say they will extend full faith and credit when they mean that they will recognize the \textit{F-I} action.