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An expansion of these two exceptions to the general rule may eventually accomplish the desired result, that is, an enforcement of all such exclusive jurisdictional agreements where inequities would not result. In those jurisdictions which have ruled on the question, it may eventually have to be accomplished by a frank overruling of previous jurisprudence.

Louisiana is one of those jurisdictions in which the question would be *res nova*. When the occasion arises to rule on such an agreement, it is hoped that the court will not follow the example of the other states and merely continue to mouth the doctrine of the *Nute* and *Morse* cases and strike down the agreement as an "attempt to oust the court of its jurisdiction." With the modern tendency to give enforcement to the intention of the parties to agreements validly entered into by mature individuals of equal bargaining power, there is no reason why Louisiana should not lead the way in fitting such agreements into the pattern of logical juridical sequence.

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INJUNCTIONS AGAINST SUITS IN FOREIGN JURISDICTIONS

American rules of jurisdiction give a plaintiff a wide choice of possible fora. Under the rules sanctioned by the Supreme Court of the United States, jurisdiction in a suit in personam may be exercised against an individual defendant not only by the state of which he is a domiciliary¹ but also by any state in which he may be personally served with process.² If the controversy arises out of an automobile accident, suit may also be brought in the state where the accident occurred.³ If the defendant is a corporation, suit may be brought not only in the state in which it is incorporated⁴ but in any state in which it is "doing business."⁵ The recent decision of *International Shoe Company v. State of Washington*⁶ implied that the plaintiff's electives may be extended

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1. *Blackmer v. United States*, 284 U.S. 421, 52 S.Ct. 252, 76 L.Ed. 375 (1932); Restatement, Conflict of Laws (1934) § 79.

2. *Fisher v. Fielding*, 67 Conn. 91, 34 Atl. 714 (1895); Restatement, Conflict of Laws (1934) § 78.

3. *Hess v. Pawloski*, 274 U.S. 352, 47 S.Ct. 632, 71 L. Ed. 1091 (1927).

4. All states have statutes providing for personal service on domestic corporations; Restatement, Conflict of Laws (1934) § 87.

5. Restatement, Conflict of Laws (1934) § 92.

6. 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057 (1945).

even further and that actions in personam may be brought against both individuals and corporations in any state in which the defendant or the transactions underlying the suit have such "minimum contacts . . . that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."⁷ In addition to all these possibilities, suit may be brought as an action quasi in rem in any state in which the defendant owns property,⁸ as well as in any state in which personal jurisdiction can be obtained over a debtor of the defendant.⁹ Finally, in practically all cases, jurisdiction can be exercised in every state in which the defendant has consented in advance to be sued¹⁰ or where, by entering an appearance, he expresses consent to be sued in the particular case.¹¹

The choice of forum thus afforded to a plaintiff, which seems to be wider than that available in any other country,¹² easily lends itself to abuse, as experience has shown. Two remedies have been developed in order to protect a defendant against a vexatious or otherwise abusive choice of a forum by the plaintiff. In the suit brought against him, the defendant may raise the defense of *forum non conveniens* and thus bring about a nonsuit if the action is brought in a state court, or a transfer to a more appropriate forum if the suit is in a federal court. However, this latter remedy, while based upon foundations of respectable age, was not very well known and, consequently, had not been widely used until its possibilities were revealed to the profession less than fifteen years ago by Professor Dainow¹³ and others¹⁴ and has, subsequently, obtained wide publicity through its recent applications in the Supreme Court of the United States¹⁵ and its statutory reception in the new federal judicial code.¹⁶ Resort was therefore had to another protective device which remains useful today because, if successful, it allows the defendant to ignore any action taken in the place in which the plaintiff has sued. This remedy is

7. *Ibid.*

8. *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1877).

9. Restatement, Conflict of Laws (1934) § 108.

10. *Id.* at § 81.

11. *Id.* at § 82.

12. Stumberg, Conflict of Laws (1937) c. 4.

13. Dainow, *The Inappropriate Forum* (1935) 29 Ill. L. Rev. 867.

14. Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law* (1929) 29 Col. L. Rev. 1.

15. *Miles v. Illinois Cent. R.R.*, 315 U.S. 698, 62 S.Ct. 827, 86 L.Ed. 1129, 146 A.L.R. 1104 (1942); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947); *Koster v. Lumbermen's Mut. Casualty Co.*, 330 U.S. 518, 67 S.Ct. 828, 91 L.Ed. 1055 (1947).

16. 28 U.S.C. § 1404(a).

the obtaining of an injunction by the defendant, prohibiting the plaintiff from beginning a threatened suit or further prosecuting a suit already commenced in the jurisdiction of his choice. This remedy pre-supposes, of course, that the state in which the injunction is sought has jurisdiction over the original plaintiff, and, in order to be effective, a factual possibility of punishing a violation of the injunction as a contempt of court.

In this comment the person who chooses a foreign forum will be called "the plaintiff." The person sued by him will be called "the defendant," insofar as he is referred to in his character as a person involved in the original suit brought against him by the plaintiff; however, insofar as he is referred to as the person who is endeavoring to enjoin the plaintiff from prosecuting the action in the forum of his choice, the defendant will be referred to as "the petitioner." The proceedings of the plaintiff against the defendant will be referred to as "the action," and those of the petitioner against the plaintiff will be called "the petition."

If personal jurisdiction over the plaintiff can be obtained in the state of the petitioner, the injunctive remedy may appear more attractive than resort to the defense of forum *non conveniens*. The remedy is of ancient origin. The use of the injunction was the most effective weapon of the Chancellor in his efforts to supplement or modify the common law through equity,¹⁷ and it was but a small step from enjoining a plaintiff from prosecuting a suit in a common law court of England to enjoining him from prosecuting a suit in a foreign jurisdiction. The oldest known case of this latter kind is *Harrison v. Gurney*.¹⁸ At the time of Story the remedy was so well recognized that it was described by him as follows:

"Although the courts of one country have no authority to stay proceedings in the courts of another, they have an undoubted authority to control all persons and things within their own territorial limits. When, therefore, both parties to a suit in a foreign country are residents within the territorial limits of another country, the courts of equity in the latter may act in personam upon those parties and direct them, by injunction, to proceed no further in such suit. In such a case, these courts act upon acknowledged principles of public law in regard to jurisdiction. They do not pretend to direct or control the foreign court, but, without regard to

17. Maitland, *Equity* (2 ed. 1936) 1, 2.

18. 2 Jac. and W. 563 (Ch. 1821).

the situation of the subject matter of the dispute, they consider the equities between the parties and decree in personam according to those equities, and enforce obedience to their decrees by process in personam. . . . It is now held that whenever the parties are residents within a country, the courts of that country have full authority to act upon them personally, with respect to the subject of suits in a foreign country, as the ends of justice may require; and, with that view to order them to take, or omit to take, any steps or proceedings in any other court of justice, whether in the same country, or in any foreign country."¹⁹

It is now generally recognized that a court having jurisdiction in personam over the plaintiff may, upon a proper showing, enjoin him from prosecuting an action in a court of a foreign jurisdiction.²⁰ This rule is firmly established in England,²¹ and it has been said that the tendency is toward a liberal exercise of this power by the courts.²² What elements or combination of elements must be shown to exist in order to induce the court to grant the injunction? The older cases indicated that such injunctions would be issued but rarely, and the courts evidenced a greater reluctance to grant relief in this instance than in other situations.²³ The present tendency is to apply ordinary equitable principles, and no basic distinction is made between this type of injunction and injunctions in general.²⁴

There are three grounds commonly urged in order to secure an injunction restraining a plaintiff from prosecuting an action

19. 2 Story, *Equity Jurisprudence* (4 ed. 1846) §§ 899, 900.

20. *Cole v. Cunningham*, 133 U.S. 107, 10 S.Ct. 269, 33 L.Ed. 538 (1890). For a general discussion of the subject see Comment (1941) 27 *Iowa L. Rev.* 76. For a discussion of Louisiana injunctions in general, see Bennett, *Injunctive Protection of Personal Interests—A Factual Approach* (1939) 1 *LOUISIANA LAW REVIEW* 665; Rubin, *The Mandatory Injunction in Louisiana* (1942) 4 *LOUISIANA LAW REVIEW* 422. For a civilian background, see Brodeur, *The Injunction in French Jurisprudence* (1939) 14 *Tulane L. Rev.* 211.

21. *Harrison v. Gurney*, 2 Jac. and W. 563 (Ch. 1821) (trustees were enjoined from prosecuting concurrent litigation in Ireland); *Carron Iron Co. v. Maclaren*, 5 H. L. Cas. 415 (1885); *Ellerman Lines v. Read* [1928] 2 K.B. 144 (the petitioner's ship was seized for a salvage claim in Constantinople, Turkey, and judgment rendered accordingly. The plaintiff, a British subject, was enjoined from further action in connection with the enforcement of the Turkish judgment on the grounds that the injunction was obtained by fraud); *Port Arlington v. Soulby*, 3 Myl. and K. 104, 40 Eng. Rep. 40 (1834); *Bushby v. Munday*, 5 Madd. Ch. 297, 56 Eng. Rep. 1908 (1821).

22. Comment (1920) 33 *Harv. L. Rev.* 92. This statement seems to be too general. See Hanbury, *Modern Equity* (3 ed. 1943) 11, 78, 471; Keeton, *An Introduction to Equity* (2 ed. 1948) 8 et seq.

23. Comment (1942) 22 *Iowa L. Rev.* 77, 86.

24. Comment (1920) 33 *Harv. L. Rev.* 92; Comment (1933) 31 *Mich. L. Rev.* 88.

in a foreign jurisdiction.²⁵ The first one is that the suit was brought by the plaintiff in a foreign jurisdiction in order to gain a procedural or substantive advantage; the second, that the suit was brought in a foreign jurisdiction to harass the defendant; the third, that regardless of what the plaintiff's motive was, a suit brought in such jurisdiction results in additional expense and inconvenience to the defendant that he would not have to suffer if the suit were brought in the plaintiff's domicile or in some other, more appropriate forum.

Suits Brought in a Foreign Jurisdiction to Gain an Advantage of Procedure or Substance

(A) *Procedural Advantages.* Because courts are reluctant to interfere with a person's right to seek a forum where he can secure the best "bargain" or relief possible, as long as that forum has jurisdiction over the parties and the subject matter,²⁶ it has been said that procedural differences are not sufficient to warrant an injunction.²⁷ The fact that the forum has different rules of evidence,²⁸ or requires less than a unanimous jury to return a verdict,²⁹ or prohibits the jury from visiting the scene of the accident,³⁰ or has a better system of enforcing judgments,³¹ or does

25. Dean Pound suggests the following classification: (1) Where the foreign court lacks jurisdiction, (2) where there is concurrent litigation pending or threatened, (3) attempts to reach exempt property by suing in a foreign jurisdiction. He goes on to state that some courts are adding a fourth: cases where the plaintiff is going to a foreign jurisdiction because of more favorable views in procedural and substantive matters. He further classifies under the first heading the three problems of power, adequacy of the legal remedy, and exercise of discretion. Pound, *The Progress of the Law* (1920) 33 *Harv. L. Rev.* 420, 425. Other grounds that do not conveniently fit into any of the chosen categories occasionally arise. The most common of these are fraud and lack of jurisdiction. Fraud and lack of jurisdiction, if either can be shown to exist, are generally recognized as sufficient grounds for an injunction. For a case involving the element of fraud, see *Kempson v. Kempson*, 58 *N.J. Eq.* 94, 43 *Atl.* 97 (1899). For a case involving an allegation of lack of jurisdiction, see *Greenberg v. Greenberg*, 218 *App. Div.* 1404, 218 *N.Y. Supp.* 87 (1st Dept. 1926).

26. *Royal League v. Kavanaugh*, 233 *Ill.* 175, 84 *N.E.* 178 (1908); *Illinois Life Ins. Co. v. Prentiss*, 277 *Ill.* 383, 115 *N.E.* 554 (1917).

27. Comment (1933) 31 *Mich. L. Rev.* 88.

28. *Edgell v. Clarke*, 19 *App. Div.* 199, 45 *N.Y. Supp.* 979 (1st Dept. 1897), where the petitioner sought an injunction in New York to restrain action in Mississippi because Mississippi allowed oral proof of conversations held with a party since deceased, while New York rejected such testimony.

29. *Missouri-Kansas-Texas R.R. v. Ball*, 126 *Kan.* 745, 271 *Pac.* 313 (1929), where the action was brought in Missouri, where nine concurring jurors may render a verdict, and the petitioner sought an injunction in Kansas, where a unanimous verdict is required.

30. *Davis v. District Court of Tulsa Co.*, 129 *Okla.* 236, 264 *Pac.* 176 (1923); *Pittsburg and L. E. R. Co v. Grimm*, 28 *Pa. Dist. R.* 419 (1919); *Chicago, M. and St. P. R. R. v. McGinley*, 75 *Wis.* 565, 185 *N. W.* 218 (1921).

31. *Jones v. Hughes*, 156 *Iowa* 684, 137 *N.W.* 1023 (1912); *Grover v. Woodward*, 92 *N.J. Eq.* 227, 112 *Atl.* 412 (1920).

not allow pre-trial examinations of the parties,³² or refuses to allow a set-off,³³ have been held insufficient to warrant the enjoining of the proceedings by another court.

(B) *Substantive Advantages.* If, in choosing a foreign forum, the plaintiff is attempting, or the result is likely to be, a circumvention of a law (statutory or unwritten) which is regarded in the state of the petitioner as belonging to its domain of public policy,³⁴ an injunction to prevent the plaintiff from using the foreign forum usually is granted.³⁵ The principal application of this device has been in divorce proceedings. American courts in divorce cases do not apply the choice of law technique, but apply exclusively their own respective law once jurisdiction is established on the basis of the plaintiff's domicile. As a result, it is possible that a party may unilaterally abandon the common home, establish a new domicile in another state and there obtain a divorce upon a ground unknown, or even repugnant, to the law of the hitherto common domicile. It may also happen that one party to the marriage establishes himself in another state under circumstances which make it questionable whether he has obtained a true domicile there, creating, however, such an appearance that would induce a lenient court to find a domicile. The frequency of suits to restrain the prosecution of divorce actions in other states has apparently varied according to the liberality of the divorce policy in the enjoining state. Such actions are relatively common in New York, which recognizes only adultery as a ground for dissolution of the marriage,³⁶ while no such cases have been discovered in Nevada. Injunctions in such cases are generally issued for the following reasons: (1) prevention of an evasion of the divorce law of the enjoining state,³⁷ (2) protection of the innocent spouse from the harmful effects of the plaintiff's contemplated

32. *Chicago, M. and St. P. R.R. v. McGinley*, 175 Wis. 565, 185 N.W. 218 (1921).

33. *Wells v. Menominee Boom Co.*, 203 Mich. 14, 168 N.W. 1011 (1918).

34. In many states, it is forbidden to bring suits in sister states for the purpose of defeating exemptions; even where it is not criminal, the bringing of such suits have been restrained as being violative of public policy. *Wilson v. Joseph*, 107 Ind. 490, 8 N.E. 616 (1886); *Teager v. Landsley*, 69 Iowa 725 (1886); *Hager v. Adams*, 70 Iowa 746 (1886); *Wierse v. Thomas*, 145 N.C. 261, 59 S.E. 58 (1907). Perhaps the best-known case on the point is *Bigelow v. Old Dominion Co.*, 74 N.J. Eq. 457, 71 Atl. 153 (1908). The public policy that is considered as being violated may, but does not have to, depend upon a legislative act for its existence. For cases dealing with injunctions where the forum was chosen to circumvent statutes existing in the domiciliary state, see *Weaver v. Alabama Great Southern Ry.*, 200 Ala. 432, 76 So. 364 (1917); *O'Haire v. Burns*, 45 Colo. 432, 101 Pac. 755 (1909).

35. *Ibid.*

36. *New York Civil Practice Act*, § 1147.

37. *Johnson v. Johnson*, 146 Misc. 93, 261 N.Y. Supp. 523 (1933).

conduct,³⁸ and (3) prevention of the perpetration of a fraud on the courts of the sister state.³⁹ Prior to 1942, under the rule of *Haddock v. Haddock*,⁴⁰ the domiciliary state of the defendant was not required to recognize a divorce decree under the full faith and credit clause of the United States Constitution if the state wherein the divorce was granted was not, at the time of the granting of the divorce, the state of matrimonial domicile. Upon this basis, the New York court in *Goldstein v. Goldstein*⁴¹ refused to enjoin a spouse who was prosecuting a divorce action in Florida because the decree would be a nullity in New York, and hence all the defendant wife could suffer would be annoyance and injury to her feelings. This view seems unduly harsh, and other courts have reached a contrary result on similar facts.⁴² The Illinois court in the case of *Kahn v. Kahn*⁴³ stated that it regarded the dissent in the *Goldstein* case as more persuasive than the majority opinion, and that in any event, the rule of the *Haddock* case had been overruled by the first case of *Williams v. North Carolina*.⁴⁴ This view was followed in the case of *Russell v. Russell*⁴⁵ where *H* and *W* were married in 1937 and were domiciled in Illinois. In 1941, *W*, in Illinois, filed a complaint for divorce, which was later amended to a petition for separate maintenance. *H* commenced proceedings for a divorce in Nevada and *W* petitioned the Illinois court for an injunction restraining further prosecution of his action until there had been a determination of the pending litigation in Illinois. The trial court found that *H*'s residence in Nevada was colorable, that his action constituted a fraud on the defendant and the State of Illinois and issued the injunction. On appeal, the action of the trial court was sustained.

Under certain conditions, creditors will not be allowed to resort to a foreign jurisdiction in order to gain an advantage over other creditors.⁴⁶

38. *Greenberg v. Greenberg*, 218 App. Div. 104, 218 N.Y. Supp. 87 (1926).

39. *Usen v. Usen*, 136 Me. 480, 13 A.(2d) 738 (1940).

40. 201 U.S. 562, 26 S.Ct. 525 (1906).

41. 283 N.Y. 146, 27 N.E. (2d) 969 (1940).

42. *Usen v. Usen*, 136 Me. 480, 13 A.(2d) 738 (1940); *Kahn v. Kahn*, 325 Ill. App. 137, 59 N.E.(2d) 874 (1945).

43. *Ibid.*

44. 317 U.S. 287, 63 S.Ct. 207 (1942).

45. 329 Ill. App. 580, 70 N.E.(2d) 70 (1946).

46. The following acts by over zealous creditors have been enjoined: Attempted evasion of the state's exemption laws, *Wilson v. Joseph*, 107 Ind. 490, 8 N.E. 616 (1886); *Munaper v. Wilson*, 72 Iowa 163, 33 N.W. 449 (1887); *Griggs v. Doctor*, 89 Wis. 161, 61 N.W. 761 (1895); Attempt to reach property temporarily in another state, *Munaper v. Wilson*, 72 Iowa 163, 33 N. W. 449 (1887); *Stewart v. Thompson*, 97 Ky. 575, 31 S.W. 133 (1895); Attempt to gain

In theory, it should never be necessary for one court to restrain a suit in a foreign forum on the ground that the plaintiff is seeking an advantage of substantive law. Under ordinary conflict of law rules, the substantive law applied to any single cause of action should be the same law, regardless of the forum. However, as each state is the judge of its own choice of law rules,⁴⁷ two different states may apply different rules to the same cause of action. Where the difference of the conflict of laws rules would result in a serious difference of substantive law, injunctions have occasionally been granted. For example, Louisiana restrained a wrongful death action in Mississippi because under Mississippi law, brothers and sisters could maintain the action, but Louisiana law would limit, under the particular facts involved, the right of action to the parents.⁴⁸ Maryland, which did not allow attachment of wages where the debt owed is less than one hundred dollars, enjoined an attachment of wages made in the State of West Virginia where the debt was less than one hundred dollars and payable in Maryland.⁴⁹ In *Dinsmore v. Neresheimer*⁵⁰ an injunction was granted to stay prosecution in the District of Columbia of a suit which involved the interpretation and validity of a clause in a contract. A similar clause had been interpreted as contrary to the public policy of the District of Columbia, while New York, "the place of contracting" for the contract involved, had held such clauses valid.

However, in the majority of cases, the courts refuse to grant injunctions when sought on the sole ground that the substantive law in the two states involved is different. The courts usually point out that the court of the forum, by use of its choice of law rules, will apply the proper substantive law to the controversy.⁵¹

a preference after a general assignment for the benefit of creditors, *Hawkins v. Ireland*, 64 Minn. 339, 67 N.W. 73 (1896); *Kendall v. McClure Coke Co.*, 182 Pa. 1, 27 Atl. 823 (1897); Evasion of local insolvency laws, *Cole v. Cunningham*, 133 U.S. 107, 10 S.Ct. 269, 33 L.Ed. 538 (1890); Attempt to beat the local distribution of assets by administrators, *Davis v. Butters Lumber Co.*, 132 N.C. 233, 43 S.E. 650 (1903). For a more detailed discussion of the subject, see *Comments* (1941) 27 Iowa L. Rev. 76, (1932) 31 Mich. L. Rev. 88, (1934) 13 N.C. L. Rev. 235.

47. At least insofar as the state's discretion is not limited by the Constitution of the United States, particularly the "full faith and credit clause" and the "due process clause" of the Fourteenth Amendment. See in this respect Cheatham, *Internal Law Distinctions in the Conflict of Laws* (1936) 21 Corn. L. Q. 570; Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution* (1945) 45 Col. L. Rev. 1.

48. *New Orleans and N.E. R. Co. v. Bernick*, 178 La. 153, 150 So. 860 (1933).

49. *Keyser v. Rice*, 47 Md. 203, 28 Am. Rep. 448 (1877).

50. 32 Hun 204 (N.Y. 1884).

51. See Annotation, *Injunction against bringing or prosecuting action*

Suits Brought in Foreign Jurisdictions Solely for Harassment Purposes

It is generally conceded that a suit brought in a foreign jurisdiction solely to harass, worry or inconvenience the defendant by forcing him to defend a law suit in a remote place will be enjoined.⁵² It is difficult to determine when such are the motives prompting the plaintiff to bring suit.⁵³ Such motives may be inferred from the fact that a suit on the same set of facts is pending in another jurisdiction.⁵⁴

Suits Brought in Foreign Jurisdictions that Create Added Expense and Inconvenience for the Defendant

Even if the plaintiff has a reason other than harassment for choosing a foreign forum, the disadvantages to the defendant may outweigh any advantages to the plaintiff. As expressed by the Michigan court:

"It is not to be denied that much hardship is likely to arise where a person is called upon to defend himself against a charge arising out of transactions occurring at a distance, and out of the jurisdiction. Witnesses cannot always be compelled or induced to be present at the trial."⁵⁵

Generally speaking, a suit in a foreign jurisdiction will not be restrained merely because it is more convenient for the petitioner to litigate the subject matter of the suit in another forum.⁵⁶ However, all courts do not apply this general rule, and some have granted injunctions on grounds of mere inconvenience.⁵⁷ For

in another state or country because of the danger that result would be different from that which would be reached in the jurisdiction whose law is the proper governing law as regards matters of substance, 69 A.L.R. 591 (1930).

52. *Wabash Ry. v. Peterson*, 187 Iowa 1331, 175 N.W. 523 (1919).

53. The burden is on the petitioner to show that the plaintiff received no benefits from his choice of forum.

54. Where the plaintiff receives no visible benefits from choosing a foreign forum, it is an indication that the suit may be vexatious. *Standard Rolling Bearing Co. v. Crucible Steel Co.*, 71 N.J. Eq. 61, 63 Atl. 546 (1906); *Clafin v. Hamlin*, 62 How. Pr. 284 (N.Y. Sup. Ct. 1881); Comment (1925) 34 Yale L.J. 912.

55. *Great Western Ry. v. Miller*, 19 Mich. 305, (1859).

56. This is the conclusion reached by most writers on the subject. For example, see Annotation, Injunctions on grounds of inconvenience against prosecution of an action in a particular state or district, 57 A.L.R. 77 (1928), 115 A.L.R. 237 (1937). It is difficult to tell exactly what part "inconvenience" plays, as most cases have other factors as different procedural rules, etc. The principal items alleged as causing extra expense and inconvenience are (1) lack of compulsory process for defense witnesses, (2) cost and ineffectiveness of depositions, (3) added attorney fees.

57. Cases where injunctions were granted wholly or in part on grounds of inconvenience: *Baltimore and Ohio R.R. v. Bale*, 31 F. Supp. 221 (N.D.

example, the Federal District Court in West Virginia granted an injunction restraining a suit under the Federal Employers' Liability Act brought in an Indiana state court when the cause of action arose in West Virginia and the plaintiff and all witnesses resided there.⁵⁸ The Indiana court approved the issuance of an injunction under identical circumstances except that the suit was brought in Missouri.⁵⁹ However, other courts under similar fact situations have denied injunctions.⁶⁰

Prior to the case of *Baltimore and Ohio Railroad v. Kepner*,⁶¹ the venue section of the Federal Employers' Liability Act⁶² was

W.Va. 1940), noted in (1940) 46 W. Va. L. Q. 344 (discussed above); *McConnell v. Thompson*, 200 N. E. 96 (Ind. 1936), noted in (1936) 21 St. Louis L. Rev. (discussed above); *Ex parte Crandall*, 53 F.(2d) 650 (App. D.C. 1931), affirmed 53 F.(2d) 969 (1931), certiorari denied 285 U.S. 540, 52 S.Ct. 312, 76 L.Ed. 992 (1932) (suit under federal employers' liability act in a Missouri state court for a death occurring in Tennessee, the major complaint being the cost of transporting defense witnesses to the trial); *Cleveland, C. C. and St. L. R. Co. v. Shelly*, 96 Ind. App. 273, 170 N.E. 328 (1930) (suit in Missouri when all defendant's witnesses resided in Indiana); *Kern v. Cleveland, C. C. and St. L. R. Co.*, 204 Ind. 595, 185 N.E. 466 (1933) (death in Indiana and suit brought under federal employers' liability act in Missouri); *Bankers' Life Co. v. Loring*, 217 Iowa 534, 250 N.W. 8 (1933) (Iowa citizen sued another Iowa citizen under an insurance policy issued in Iowa, the forum chosen being Minnesota). This list of cases is illustrative and does not purport to be a complete list of all the cases on the point.

58. *Baltimore and Ohio R.R. v. Bale*, 31 F. Supp. 221 (N.D. W.Va. 1940), noted in (1940) 46 W. Va. L.Q. 344.

59. *McConnell v. Thompson*, 200 N.E. 96 (Ind. 1936), noted in (1936) 21 St. Louis L. Rev. 348.

60. Cases in which injunctions were denied where the grounds were inconvenience to the parties: *Chesapeake and O. R. Co. v. Vigor*, 90 F.(2d) 7 (C.C.A. 6th, 1937), certiorari denied 302 U.S. 705, 58 S.Ct. 25, 82 L.Ed. 545 (1937); *Mobile and O. R. Co. v. Parrent*, 260 Ill. App. 284 (1931); *Wabash R. Co. v. Lindsey*, 269 Ill. App. 152 (1933); *Missouri-Kansas-Texas R. Co. v. Ball*, 126 Kan. 745, 271 Pac. 313 (1928); *New Orleans Brewing Co. v. Cahall*, 188 La. 749, 178 So. 339, 115 A.L.R. 231 (1937); *Southern Pac. Co. v. Baum*, 39 N.M. 22, 38 P.(2d) 1106 (1934); *Banuso v. Angwin*, 166 Kan. 469, 201 P.(2d) 1057 (1949), where the court said, "The fact that a large number of the witnesses to be called in the case reside in this state, where the cause of action accrued, making it necessary to take depositions instead of oral testimony; that trial procedure in the sister state is different from that in this state; that a verdict may be rendered by nine concurring jurors in the sister state; that the parties will be put to considerable additional expense and inconvenience; that delay will result because of the crowded condition of the docket in the sister state—are not in and of themselves sufficient grounds for enjoining a party from commencing and prosecuting an action in such sister state." This list of cases is illustrative and does not purport to be a complete list of all the cases on the subject.

61. *Baltimore and Ohio R.R. v. Kepner*, 314 U.S. 44, 62 S.Ct. 6, 86 L.Ed. 37 (1941); same case in the Ohio State Court, 137 Ohio St. 206, 28 N. E. 586, 30 N.E.(2d) 982 (1940). Actually the *Kepner* case dealt with the enjoining by a state court of a suit under the Federal Employers' Liability Act pending in a federal district court. The issue as to whether one state court could enjoin another state court in such cases was settled in the negative by *Miles v. Illinois C. R.R.*, 315 U.S. 693, 62 S.Ct. 177, 86 L.Ed. 484 (1942).

62. 35 Stat. 66 (1910), 36 Stat. 291 (1911), 45 U.S.C.A. § 56.

the cause of much doubt in both state and federal courts.⁶³ Kepner, an employee of the Baltimore and Ohio Railroad Company, was injured in Ohio. Kepner was a resident of Ohio; the railroad was a Maryland corporation with lines in Ohio and New York. Under the authority of the venue section of the Federal Employers' Liability Act (which allows an action to be brought in a United States District Court in the district of the defendant's residence, or in which the cause of action arose, or in which the defendant is doing business at the time of the commencement of such action, or in a state court of competent jurisdiction) Kepner brought suit in the United States District Court for the Eastern District of New York. The railroad asked the Ohio courts to enjoin Kepner on the grounds that the forum was seven hundred miles from the place of the accident and that it would cost the railroad approximately four thousand dollars to transport its twenty-five witnesses to New York. The Ohio courts refused to grant an injunction, and the case finally reached the United States Supreme Court, where it was held that a state court could not interfere with the privilege granted by the venue section of the Federal Employers' Liability Act on the grounds of inconvenience, harassment and extra expense. Three judges dissented on the grounds that the result was an implied repudiation of the doctrine of *forum non conveniens*.

In the recent case of *Zayatz v. Southern Railway Company*,⁶⁴ an injunction was coupled with a declaratory judgment action to obtain a result contrary to that of the *Kepner* case. Zayatz executed a written release of a claim for injuries sustained while engaged as a switchman for the railroad. Later when the railroad was advised of the likelihood of its being sued in St. Louis, Missouri, for these injuries, it applied for a declaratory judgment in Alabama to construe the release and the rights thereunder. It sought, also, an injunction to restrain Zayatz from initiating suit in another forum on the ground that the prosecution in any place

63. This confusion has come back to plague the federal courts since the passage of the new liberal change of venue provisions of the new Judicial Code (discussed supra p. 303). The federal district courts were split as to whether Section 1404(a) applied to suits filed under the Federal Employers' Liability Act, see Comment (1949) 10 U. of Pitt. L. Rev. 390 (1949). The Supreme Court, in *Ex parte Collett*, 337 U.S. 55, 69 S.Ct. 944, 93 L.Ed. 901 (1949) held that Section 1404(a) does apply to the Federal Employers Liability Act cases. Now, while the action may be brought in any place permitted by the venue provisions of the Federal Employers Liability Act, the federal district judge may order its transfer to another district under Section 1404(a).

64. 248 Ala. 137, 26 So.(2d) 545 (1946), cert. denied 329 U.S. 789, 67 S.Ct. 353, 91 L.Ed. 676 (1946).

other than Alabama would be inequitable, vexatious, and harassing to the railroad and a burden on interstate commerce. The Supreme Court of Alabama held that there was adequate basis for the declaration and injunction, stating expressly that the Federal Employers' Liability Act was not involved.

Louisiana's Approach to the Subject

The device of injunction has not been used extensively to prevent persons subject to the personal jurisdiction of Louisiana courts from taking their causes of action elsewhere to be litigated.⁶⁵ Louisiana cases are in accord with the general rule that a party may, upon a proper showing, be enjoined from prosecuting an action in a court of another state.⁶⁶ An injunction will not be granted upon the mere allegation that the courts of Louisiana are better able to do substantial justice between the parties; neither will the Louisiana courts act on the basis of any distrust by them of the courts of another state.⁶⁷ In an early Louisiana case the petitioner alleged that the plaintiffs were seeking an undue advantage over petitioner's other creditors by suing in New York.⁶⁸ He sought to enjoin this New York suit. In denying the injunction, the court pointed out that the plaintiffs had a legal right to seize property located in New York as a basis for suit and, furthermore, that there was nothing unjust or unfair about an active creditor's attempting to gain an advantage over a less active creditor when the estate of the common debtor was insufficient to satisfy all claims.

In the case of *Lancaster v. Dunn*,⁶⁹ Mrs. Dunn, a resident of Louisiana, sued in a state court at Marshall, Texas, under the Federal Employers' Liability Act for the death of her husband, which had occurred near Maringouin, Louisiana. The petitioner, defendant in that action, sought an injunction in Louisiana, alleging that under ordinary circumstances the action would not have been brought at Marshall, Texas, which is two hundred and sixty-one miles from Maringouin, but would have been brought at

65. Up to November, 1949, there have been only six reported cases, all in state courts, dealing with this subject matter as it pertains to Louisiana.

66. *Commercial Soap Works v. F. A. Lambert Co.*, 49 La. Ann. 459, 21 So. 639 (1897); *Lancaster v. Dunn*, 153 La. 15, 95 So. 385 (1922); *Missouri Pac. Ry. v. Harden*, 158 La. 889, 105 So. 2 (1925); *New Orleans and N.E. R.R. v. Bernick*, 178 La. 153, 150 So. 860 (1933); *New Orleans Brewing Co. v. Cahall*, 188 La. 749, 178 So. 339, 115 A.L.R. 231 (1937); *Natalbany Lumber Co. v. McGraw*, 188 La. 863, 178 So. 377 (1938).

67. *Missouri Pac. Ry. v. Harden*, 158 La. 889, 105 So. 2 (1925). There is no indication as to whether "state" includes a foreign country.

68. *Commercial Soap Works v. F. A. Lambert Co.*, 49 La. Ann. 459, 21 So. 639 (1897).

69. 153 La. 15, 95 So. 385 (1922).

Maringouin, Louisiana, where all the witnesses lived, and that it would be expensive and inconvenient for the defendant to defend the suit elsewhere.⁷⁰ The injunction was refused on the ground that Congress by statute had expressly given litigants like Mrs. Dunn the right to sue in Texas, and that mere inconvenience to the defendant was not a sufficient reason to deny her that right.⁷¹

In *Missouri Pacific Railway Company v. Harden*,⁷² the plaintiff brought suit in Mississippi for injuries sustained in Louisiana. The petitioner, a Missouri corporation, urged several grounds⁷³ as bases for an injunction, but was probably motivated, so the court thought, by the desire to have the suit brought in a state where it could be removed to the federal courts on grounds of diversity of citizenship. The injunction was refused.

The case of *New Orleans Brewing Company v. Cahall*⁷⁴ presented clearly the issue of whether the defendant in a foreign lawsuit is entitled to an injunction solely because it is more convenient and less expensive for him to defend lawsuits at his home. The Louisiana court refused to grant the injunction.⁷⁵

However, the Louisiana court did grant an injunction in *New Orleans and N. E. Railroad Company v. Bernick*.⁷⁶ A little girl was killed while playing on the defendant's track in New Orleans; the brothers and sisters of the deceased, who were residents of Louisiana, and her parents, whose residences were not stated, brought a wrongful death action in Mississippi. The defendant succeeded in enjoining the brothers and sisters because they were not proper parties to institute such action under Louisi-

70. The petitioner also raised the usual issue that Texas had juries whose findings of fact are conclusive. This is a standard allegation in every petition filed in Louisiana in this type of injunction suit.

71. The court actually listed three reasons for its decisions. The other two were (1) the plaintiff had qualified as administratrix of her husband's estate in Texas, (2) Louisiana's equity power is limited by Article 21 of the Civil Code. Evidently the court conveniently overlooked Article 303, La. Code of Practice of 1870.

72. 158 La. 889, 105 So. 2 (1925).

73. The various allegations were (1) different procedure and practice in Mississippi, (2) was a harassment suit, (3) was brought for fraudulent purposes, (4) Mississippi juries are prejudiced against railroads, (5) it was inconvenient and expensive to the defendant to be forced to defend the suit in Mississippi.

74. 188 La. 749, 178 So. 339, 115 A.L.R. 231 (1937).

75. The factual situation was such that if the injunction had been granted it would have meant a shift from the defendant to the plaintiff of the extra expense and inconvenience. The case could be distinguished on its weak factual basis if the issue is squarely put to the court again.

76. 178 La. 153, 150 So. 860 (1933).

ana law.⁷⁷ The court also pointed out that in Mississippi the jury is the sole judge of the facts.⁷⁸

In *Natalbany Lumber Company v. McGraw*,⁷⁹ the plaintiff, a Louisiana resident, brought an action in Mississippi against a Louisiana corporation, for personal injuries suffered in Louisiana. The defendant obtained an injunction on the ground that in Louisiana he could urge contributory negligence, whereas under Mississippi law the doctrine of comparative negligence obtained.⁸⁰

In an unreported case,⁸¹ the petitioner succeeded in enjoining a suit in Mississippi on the allegation that Mississippi had a "privileged communication act" and Louisiana did not, and that the plaintiff was seeking to benefit by that fact.⁸²

In all cases where the Supreme Court of Louisiana has allowed an injunction of this type, both parties have been residents of the State of Louisiana.⁸³ This might indicate that Louisiana is in accord with the policy of limiting the issuance of such injunctions to situations in which both parties are local residents.⁸⁴

In the case of *New Orleans Brewing Company v. Cahall*, it was said that Louisiana would not enjoin a local resident from prosecuting a suit elsewhere simply because of the possibility of his obtaining a procedural advantage.⁸⁵ However, where the effect of the foreign suit is to give the plaintiff a substantive advantage

77. Would this case have been different if the plaintiff had used the strategy of the plaintiff in the *Harden* case [Missouri Pac. Ry. v. Harden, 158 La. 889, 105 So. 2 (1925)] and had a Mississippi attorney testify to the fact Mississippi would apply Louisiana law in such cases?

78. This is a make-weight argument that has been urged in all cases by the petitioner and ignored by the court unless the injunction is to be granted, in which case it is stressed.

79. 188 La. 863, 178 So. 377 (1938).

80. See note 77, *supra*.

81. This was the injunction that gave rise to the case of *Equitable Life Assurance Society v. Gex's Estate*, 184 Miss. 577, 186 So. 659 (1939), noted in (1940) 12 Miss. L. J. 512, where the Mississippi court held that such injunctions issued by Louisiana courts can be used as a special plea in bar in Mississippi.

82. This is the only allegation urged by the petitioner that had not already been turned down by the Louisiana Supreme Court. See note 96, *infra*.

83. *New Orleans and N.E. R.R. v. Bernick*, 178 La. 153, 150 So. 860 (1933); *Natalbany Lumber Co. v. McGraw*, 188 La. 863, 178 So. 377 (1938).

84. 2 Story, *Equity Jurisprudence* (4 ed. 1846) § 899. The policy of limiting injunctions to situations where both parties are local residents has not gained widespread recognition. For a case applying the rule, see *Barrett v. Russell*, 135 N.Y. Supp. 34 (1912).

85. *New Orleans Brewing Co. v. Cahall*, 188 La. 749, 178 So. 339, 115 A.L.R. 231 (1937).

he would not enjoy in Louisiana, it would seem that an injunction would be readily obtainable.⁸⁶

Dictum in one Louisiana case is in accord with the general rule that litigants who prosecute their claims in a foreign jurisdiction solely for harassment or fraudulent purposes will be enjoined.⁸⁷

The Converse Situation

Generally speaking, the issuance of an injunction by a state restraining its citizens from prosecuting an action elsewhere is, in effect, a judicial order to bring the action within that state or not at all. The court takes jurisdiction in personam of the parties and orders the plaintiff bringing the action in another state or country to refrain from further action in regard to that suit. The party so ordered is subject to the usual punishment for contempt of court for non-compliance with the injunction, but such negative enforcement does not determine the issue of the main controversy. If the plaintiff disregards the injunction, its effectiveness will depend upon whether the foreign court will "recognize" the injunction to the extent of dismissing the action.⁸⁸ While, of course, injunctions are entitled to full faith and credit, it is generally held that this does not require one state to "enforce" an injunction issued by another state.⁸⁹ An attempt to establish a duty of enforcement by federal legislation failed.⁹⁰ Some state courts go further, however, and enforce the foreign injunction by sustaining it as a special plea in bar when pleaded

86. Thus, the mere fact that State X does not allow an appellate review of the findings of fact while Louisiana does is not sufficient grounds for an injunction to prevent a Louisiana citizen from litigating his claim in State X. However, if State X goes further and uses a different negligence doctrine than Louisiana, or allows different parties to sue, or has different rules of evidence then sufficient grounds for an injunction exists.

87. *Missouri Pac. Ry. v. Harden*, 158 La. 889, 105 So. 2 (1925).

88. Comment (1930) 39 *Yale L. J.* 719; Wall, *Conflict of Laws—Injunction Restraining Party from Bringing Suit in Another State—Recognition of Decree in Second State* (1940) 12 *Miss. L. J.* 512; Johnston, *Recognition of Foreign Injunction Restraining Proceedings* (1942) 21 *Neb. L. Rev.* 160.

89. See Comment (1930) 39 *Yale L. J.* 719; Note (1933) 31 *Mich. L. Rev.* 963. That equitable decrees are entitled to full faith and credit, see Stumberg, *Conflict of Laws* (1937) 117; Goodrich, *Conflict of Laws* (1938) 556. This point has not been passed on by the United States Supreme Court; however, the Supreme Court denied certiorari in the Missouri case of *Kepner v. C.C.C. and St. Louis R.R.*, 322 Mo. 299, 15 S.W.(2d) 825 (1929), in which the Missouri court refused recognition on ground of full faith and credit. Certiorari was also refused in the Minnesota case of *Frye v. Chicago Ry.*, 157 Minn. 52, 195 N. W. 629 (1923).

90. The American Bar Association caused a bill to be introduced in Congress providing for the recognition of all equitable decrees under the full faith and credit clause, 52 *Am. Bar Rep.* 292, 319 (1927).

as a defense in litigation pending in that state.⁹¹ The majority of the courts which give such effect to the foreign injunction view all the factors giving rise to the restraining order as if they were passing on a plea of *forum non conveniens* rather than merely deciding whether to give effect to a foreign injunction. There are more cases disregarding the injunction than there are ones giving it force and effect by sustaining it as a special plea in bar; however, it is suggested that a critical analysis of the cases reveals that this is misleading, because the decisions show the effect of other considerations, and hence they are not the result of a simple election between either recognizing or disregarding the foreign injunction.⁹² The principal argument against recognition is that the court is forced by the privileges and immunity clause of the Federal Constitution to permit the foreign resident to bring and prosecute to a conclusion his action in the local court.⁹³

Among the states that do give effect to foreign injunctions is Mississippi, with her liberal juries and limited appellate power.⁹⁴ In the case of *Equitable Life Assurance Society v. Gex's Estate*,⁹⁵ a Louisiana resident, Mrs. Kathryn Gillin, brought an action in the circuit court of Hancock County, Mississippi. She assigned a half interest in her claim to a firm of Mississippi attorneys. The

91. Among the cases giving recognition to the injunction are *Allen v. Chicago, Great Western R.R.*, 229 Ill. App. 38 (1925), noted in (1926) 20 Ill. L. Rev. 816; *Equitable Life Assurance Society v. Gex's Estate*, 184 Miss. 577, 186 So. 659 (1939), noted in (1940) 12 Miss. L. J. 512; *Fisher v. Pacific Mutual Life Ins. Co.*, 112 Miss. 30, 72 So. 846 (1916).

92. Comment (1930) 39 Yale L. J. 719.

93. The leading case so holding is *State ex rel. Bossung v. District Court*, 140 Minn. 494, 168 N.W. 539, 1 A.L.R. 145 (1918). In this case both parties were residents of Iowa. The cause of action arose out of a death in Nebraska; an action was commenced in rem in Minnesota; a Nebraska court issued a temporary injunction. The lower Minnesota court then stayed the proceedings, but the plaintiff was successful in a mandamus suit to compel further proceeding with the case. The United States Supreme Court has since killed the contention that a court is bound to permit foreign litigants to use the local courts by distinguishing between a "citizen" and a "resident" insofar as the privileges and immunity clause is concerned in *Douglas v. N.Y., N.H. and H. R.R.*, 279 U.S. 377, 49 S.Ct. 355, 73 L.Ed. 747 (1929), noted in (1929) 18 Calif. L. Rev. 159, (1930) 24 Ill. L. Rev. 826, (1929) 39 Yale L. J. 388. Other cases rejecting an injunction as a special defense are *Nichols and Shepard Co. v. Wheeler*, 150 Ky. 169, 150 S.W. 33 (1912) (no reasons were stated); *Frye v. Chicago R.I. and P. Ry.*, 157 Minn. 52, 195 N.W. 629 (1923); *Union Pacific R.R. v. Rule*, 155 Minn. 302, 193 N.W. 161 (1923); *Kepner v. Cleveland, C.C. and St. Louis Ry.*, 322 Mo. 299, 15 S.W.(2d) 825 (1929); *Chicago, R.I. and Pac. Ry. v. Lundquist*, 206 Iowa 499, 221 N.W. 288 (1928).

94. Although it is never cited as a sufficient reason standing by itself to support an injunction, the Louisiana court always points out that the party who sues in a foreign jurisdiction, usually Mississippi, has the advantage of a trial before a jury whose findings of fact are not subject to correction by an appellate court.

95. 184 Miss. 577, 186 So. 659 (1939), noted in (1940) 12 Miss. L. J. 512.

insurance company secured a preliminary injunction from the District Court for the Parish of Orleans, State of Louisiana, restraining Mrs. Gillin from further prosecution of the Mississippi suit.⁹⁶ This injunction, even though it had expired, was honored as a plea in abatement against the heirs of one of the Mississippi attorneys who brought a partition suit as to the assigned one-half interest of Mrs. Gillin's claim. The court recognized that the injunction would apply to any Mississippi suit seeking to litigate the insurer's alleged liability. The court stated that Mississippi residents who had personal knowledge of the injunction were bound to honor it even though the Louisiana court did not have jurisdiction to render such an injunction against them personally.

Although at least two other states have granted injunctions restraining a resident from prosecuting a suit in the Louisiana courts,⁹⁷ there are no cases or dicta, either by the Louisiana courts or the federal courts sitting in Louisiana, as to what effect would be given to such a foreign injunction. There is an indication that Louisiana would, for comity reasons, refuse to proceed further with a lawsuit when the plaintiff had been enjoined by the courts of a foreign state or a federal court sitting in a foreign state.⁹⁸

It could hardly be consistent or logical for a state court to refuse to honor an injunction granted by a foreign state court and yet honor an injunction issued by a federal court sitting in the same state. Although it is now easy to obtain jurisdiction over corporate defendants in the federal courts,⁹⁹ it would seem illogical, in view of the newly granted power of transfer,¹⁰⁰ for one federal court to restrain a litigant from prosecuting an action

96. The grounds alleged for the injunction were (1) all the witnesses resided in Louisiana; (2) suit was filed in Mississippi to subject the defendant to extra expense and inconvenience; (3) suit was filed in Mississippi to secure a trial by a jury whose findings of fact would be final; (4) the plaintiff was seeking to take advantage of the Mississippi "Privileged Communication Statute" (between doctor and patient).

97. In *Davis v. Natchez Hotel Co.*, 158 Miss. 43, 128 So. 871 (1930), Mrs. Davis, the plaintiff in a suit instituted in New Orleans for the purpose of harassing the defendant and forcing a compromise, was enjoined by Mississippi court. *Allen v. Buchanan*, 97 Ala. 399 (1893).

98. The sole basis for this statement is the implications arising out of New Orleans and N.E. R.R. v. Bernick, 178 La. 153, 150 So. 860 (1933).

99. A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes, 28 U.S.C. § 1391(c).

100. For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought, 28 U.S.C. § 1404(a). This is at the discretion of the district judge and may not be controlled by a circuit court of appeals, *Schoen v. Mountain Producers Corp.*, 170 F. (2d) 707, 5 A.L.R. (2d) 1226 (C.C.A. 3rd, 1949). See note 63, supra.

in another federal court. Even if such an injunction were issued by another federal court, it would appear that the federal court in which the litigation was pending would transfer the case rather than honor the injunction by sustaining it as a special plea in bar. If the court felt that it had sufficient reasons to refuse to transfer the case, surely the same reasons would be sufficient for the court to disregard the injunction. Likewise, it would seem that if a state court issued an injunction directed at parties to a suit in a federal court, the federal court would transfer the case to the federal district court for the district in which the state court granting the injunction is located or to some other, more convenient, federal court. Further, if the federal court felt there were sufficient reasons to refuse transfer of the case, then the same reasons should be sufficient for the federal court to disregard the injunction.

JACK J. ROGERS*

ENFORCEMENT OF FOREIGN JUDGMENTS IN PERSONAM: RECIPROCITY

P procures a personal judgment in a foreign country against *A* and then attempts to enforce it in *B*, a member state of the United States of America. Is this judgment, when *P* seeks to enforce it in State *B*, prima facie evidence only and hence examinable upon the merits or is it conclusive in its res judicata effects and in an action for its enforcement? What difference does it make whether or not the courts of foreign country *A* regard the judgments of State *B* as conclusive proof of the merits? Will the result be the same if the suit is brought in a state court or in a federal court? The scope of this comment is to resolve, if possible, these questions regarding the enforcement of judgments of foreign countries.

At early common law, both in England¹ and in this country,² the large majority of cases in which foreign judgments were

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1. Phillips v. Hunter, 2 H. Bl. 402, 126 Eng. Reprint 618 (1795); Hall v. Odber, 11 East. 118, 103 Eng. Reprint 949 (1809); Walker v. Witter, 1 Doug. 1, 99 Eng. Reprint 1 (1813); Arnott v. Redfern, 3 Bing. 353, 130 Eng. Reprint 549 (1826); Houlditch v. Donegal, 8 Bligh N.S. 301, 5 Eng. Reprint 955 (1834). 2 Black, The Law of Judgments (2 ed. 1902) 1234, § 325.

2. Burnham v. Webster, 1 Wood. & M. (U.S.) 172, Fed. Cas. No. 2,179 (C. C. D. Maine 1846); Bartlett v. Knight, 1 Mass. 401, 2 Am. Dec. 36 (1805). See Aldrich v. Kinney, 4 Conn. 380, 10 Am. Dec. 151 (1822); Bissell v. Briggs, 9 Mass. 462, 6 Am. Dec. 88 (1812); Benton v. Burgot, 10 Serg. & R. 240 (Pa. 1823); Boston India Rubber Factory v. Hoit, 14 Vt. 92 (1842); Story, Conflict of Laws (5 ed. 1857) 973, § 608.