LEGAL IMPLICATIONS OF PROCEEDINGS ON JUDGMENTS

The process of reducing a claim to a judgment of a court of law is certainly among the most familiar to the practitioner, and the consequences of such process may be said to be completely within the understanding of at least those who are likely to indulge in the perusal of legal periodicals. The process of proceeding on such judgment in a second state may be almost equally familiar; though perhaps the legal consequences of the latter process may not have been subject to such complete analysis and scrutiny. It is certainly fair to assume, however, that the experience and the consequent intellectual curiosity of the average lawyer rarely extends beyond this stage of litigation, and that the incidental problems may therefore warrant independent consideration and analysis. It is proposed in this article to express a few thoughts on this relatively rare but occasionally confusing subject.

A possible source of confusion may arise out of a lack of perception of the inherent nature of the action on a claim reduced to judgment. Every legal action is and purports to be essentially a determination by the tribunal of rights or liabilities previously existing and established by law.[1] Yet there are two distinct types of judicial functioning inherently different in nature and having notably distinct juridical results. They may fairly be characterized as judgments which simply declare the existence of the rights of the parties and provide mechanics for their enforcement, and judgments which translate previously existing rights into new and previously nonexistent forms. Thus a decree in equity granting relief on a creditor's bill does no more than to ascertain the existing obligation of the defendant, and to command his execution of the

[1] "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist." Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 29 Sup. Ct. 67 (1908).

obligation;[2] while a judgment at law for damages resulting from a battery not only determines that the plaintiff has a cause of action against the defendant, but changes the character of that cause of action from an unliquidated claim for damages into a liquidated right to collect money.[3]

When any claim, whether founded on a judgment or otherwise, is presented to a court for its adjudication, the task of the court is to determine the rights of the parties.[4] If the transaction asserted as a basis of those rights has occurred in a state other than the forum, the court must of necessity determine the rights in accordance with the law properly applicable; for, as it has been expressed by Mr. Justice Story, "It would be as unjust to apply a different law, as it would be to determine the rights of the parties by a different transaction."[5] The function of the court being to determine rights, its task, whether by way of determination or translation, can be done only where rights exist and have come into being by operation of law.[6] It follows then that the process of entering a judgment is not basically different whether the claim asserted be one founded on a simple cause of action or on one reduced to a prior judgment elsewhere.

There is, however, one significant distinction. Ordinarily a cause of action is merged in a judgment thereon,[7] but a judgment on a prior judgment does not merge the original judg-

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[2] Davis v. Sanders, 25 App. (D.C.) 26, 31 (1905).

[3] Hamer v. N. Y. R. Co., 244 U. S. 266, 37 Sup. Ct. 511 (1916); English v. Brown, 229 Fed. 34 (C.C.A. 1916); Coles v. McKenna, 80 N.J.L. 48, 76 Atl. 344 (Sup. Ct. 1910); N. Y. Mut. Life Ins. Co. v. Newton, 50 N.J.L. 571, 14 Atl. 756 (Sup. Ct. 1888).

[4] Puette v. Mull, 175 N. C. 535, 95 S. E. 881 (1918); Brakefield v. Lucas, 10 Okla. 584, 64 Pac. 10 (1901); Hart v. Nonpareil Printing, etc., Co., 109 Iowa 82, 80 N. W. 217 (1899).

[5] Story, Conflict of Laws, p. 38.

[6] Fuller v. Colfax County, 14 Fed. 177, 178 (C.C. 1882).

[7] See cases cited *supra*, note 4.

ment.[8] This principle would seem to mark a difference in character between the two types of judicial action. Insofar as a judgment is the creation of a right it is certainly of no less judicial importance than a simple cause of action, and ought to meet with at least equal judicial welcome when it is asserted from without the state.[9] But if the judgment does not create rights, it does nothing which will warrant a court in acting on it as a basis for further judicial action.[10]

Now it appears that the process of creating rights, at least rights of the character of a judgment, involves a coincident destruction of prior rights.[11] The doctrine of merger involves the concept that when a court of competent jurisdiction renders a judgment on a cause of action, that cause of action ceases to exist, and can no longer be the basis of any action anywhere.[12] So by analogy, in cases of garnishment, the only serious difficulty to be encountered in compelling a debtor to satisfy his claim to a creditor of his creditor is the question

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[8] Hay v. Alexandria, etc., R. Co., 20 Fed. 15 (1884); Springs v. Pharr, 131 N. C. 191, 42 S. E. 590 (1902); Kelly v. Hamblen, 98 Va. 383, 36 S.E. 491 (1900). *Contra,* Price v. Atchison First Nat. Bank, 62 Kan. 735, 64 Pac. 637 (1901), Gould v. Hayden, 63 Ind. 443 (1878).

[9] Pennington v. Gibson, 16 How. 65, 14 L. ed. 847 (U. S. Sup. Ct. 1853); Bullock v. Bullock, 57 N.J.L. 508, 31 Atl. 1024 (Sup. Ct. 1895). Within the United States, this principle is made obligatory on the states by force of Article IV, Section 1 of the Federal Constitution, the "Full Faith and Credit" clause. This clause is of course merely declaratory of a sound common law principle; but it has two additional attributes:—it operates, through the authentication Act of Congress, as a rule of evidence for state courts; and it enables federal courts to deal with questions which would otherwise be confined solely to state tribunals. Hilton v. Guyot, 159 U. S. 113, 16 Sup. Ct. 139 (1894); Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. 269 (1889); Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 8 Sup. Ct. 1370 (1887).

[10] The judgment sued on must be of a nature to create a definite and absolute indebtedness against the judgment defendant. Israel v. Israel, 148 Fed. 576, 79 C. C. A. 32 (C.C.A. 1906); Thorner v. Batory, 41 Md. 593, 20 Am. Rep. 74 (1875); Swecker v. Reynolds, 246 Pa. 197, 92 Atl. 76 (1914).

[11] Sweet v. Brackley, 53 Me. 346 (1865).

[12] See cases cited, *supra,* note 3.

whether a court requiring such satisfaction is competent to discharge the original obligation, destroying the original right in the process of creating the new right.[13] However, it would seem apparent that the judgment of one state cannot vitiate a prior judgment of another state.[14] It follows inescapably that, lacking the power to destroy the fundamental basis of the adjudication, a judgment founded on a prior judgment does not operate as the creation of a new right.[15]

It is the purpose of this paper to suggest that such secondary judgment is therefore a creature of the law having different characteristics than its appearance would indicate; that its function is essentially to make operative within the state the judgment first rendered; that it is not a creative process, but primarily a remedial device; that, serving not as a transformation and destruction of a right, it is merely a declaration in the forum that rights exist and will here be enforced; and finally that, being of such a nature, it has in itself no right to further extrastate recognition or enforcement except for such limited force by way of *res adjudicata* as the issues presented by its entry may have raised.[16]

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[13] Chicago, etc., R. Co. v. Sturm, 174 U. S. 710, 19 Sup. Ct. 797 (1898); Hull v. Blake, 13 Mass. 153 (1816); Western Assur. Co. v. Walden, 238 Mo. 49, 141 S. W. 595 (1911); Harris v. Balk, 198 U. S. 215 (1904).

[14] RESTATEMENT, CONFLICTS OF LAWS, Sec. 450, Note 5.

[15] This result must follow if a destruction of the old debt is essential to the creation of a new right. The destruction of the former claim is the main concept upon which the doctrine of merger rests. Thus if *A* sues *B* on an account stated, and recovers judgment, the account is extinguished by reason of its merger in the judgment, and if suit is thereafter instituted to collect the old indebtedness it must be on the judgment in which the account is merged, and not upon the account itself. Wyckoff v. Epworth Hotel Construction Co., 146 Mo. App. 554, 125 S. W. 550 (1910). So, if a secondary judgment has been secured, further suit in a third state must be on the first judgment, which merged the cause of action, and cannot be predicated on the secondary judgment if it does not merge the first. See Lilly-Brackett Co. v. Sonnemann, 163 Cal. 632, 126 Pac. 483 (1912); *In re* Williams, 208 N. Y. 32, 101 N. E. 853 (1913).

[16] The primary and perhaps the sole issue which is likely to come within

This analysis of the situation should result in the treatment as of one characteristic of judgments at law on causes of action other than judgments and of decrees in equity for the payment of money;[17] and as of an entirely distinct characteristic of decrees in equity for the doing of acts other than the payment of money,[18] of judgments founded on prior judgments,[19] and of declaratory judgments and decrees generally. Thus an action at law is maintainable on a judgment or a money decree[20] and the original cause of action in each case will no longer serve as the basis for further action.[21] But no direct

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this sphere is the question whether the first court had jurisdiction, or some similar question as to the competence of the original court to pass on the action. For, if its jurisdiction exists, its action settles, not only by way of merger, but also within the scope of *res adjudicata*, any meritorious question involved. Washington Steam Packet Co. v. Sickles, 24 How. 333, 16 L. ed. 650 (1860); Hopkins v. Lee, 6 Wheat. 109, 5 L. ed. 218 (1821); Hoffmeier v. Trost, 83 N.J.L. 358, 85 Atl. 221 (Sup. Ct. 1912); Wooster v. Cooper, 59 N.J.Eq. 204, 45 Atl. 381 (Ch. 1899).

[17] It would seem, in view of this analysis of the situation, that a further differentiation may be made between decrees in equity for the payment of money. Such decrees as modify the form of the original obligation may be properly said to be creative, while those which merely declare a previous obligation to pay money would be declaratory. Thus incidental damages in the abatement of a nuisance or the translation of the husband's obligation to support the wife into a decree for alimony should support an action at law in a second state, and should coincidentally determine the original right; while a decree against a purchaser for the purchase price of land due under his contract would not give rise to an action at law nor merge the contract. (*Cf.* N. Y. Mutual Life Ins. Co. v. Newton, *supra* note 3.) However, it may be suggested that a decree against a purchaser partakes of the same nature as a judgment at law on a liquidated claim, establishing in more solemn form the exact extent of an obligation previously exact, but not previously exactly established. Nations v. Johnson, 24 How. 195, 16 L. ed. 628 (1860); Pennington v. Gibson, 16 How. 65, 14 L. ed. 847 (1853); N. Y. Mutual Life Ins. Co. v. Newton, 50 N.J.L. 571, 14 Atl. 756 (Sup. Ct. 1888), *overruling* Van Buskirk v. Mulock, 18 N.J.L. 184 (Sup. Ct. 1840).

[18] Green v. Rembert, 108 S. C. 203, 93 S. E. 769 (1917).

[19] *Supra*, note 15.

[20] *Supra*, note 17.

[21] Plaintiff may sue on the foreign judgment, the cause of action being the foreign judgment and not the same cause of action that was litigated in the original action. Merritt v. Fowler, 76 Hun. 424, 27 N. Y. Supp. 1047 (1894); N. Y.

action is maintainable on a decree not for money,[22] a secondary judgment,[23] or a declaratory judgment, the remedy is such cases being available on the original claim. So if *A* recovers a judgment against *B* in a court of New Jersey, and then pursues a remedy on the judgment to a New York judgment, his further proceedings in Pennsylvania should be on the New Jersey judgment and *not* on the New York judgment.[24] Again, if the New Jersey judgment is subsequently reversed, its effect is terminated everywhere and for all purposes except in New York,[25] the New York judgment not being available as the foundation of any further action; while in New York its effect may be readily minimized in the same fashion that satisfaction of the New Jersey judgment would operate to discharge the New York judgment obligation.[26]

It is submitted that this approach to the problems raised by secondary judgments disposes of many of the difficulties and presents no logical objection; and further, that it is consistent with the results in the cases and provides a rule more easy of application than the more familiar method of attack.

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Mutual Life Ins. Co. v. Newton, 50 N. J. L. 571, 14 Atl. 756 (Sup. Ct. 1888).

[22] *Supra*, notes 2, 10, 18.

[23] *Supra*, note 15.

[24] *Supra*, note 15.

[25] *Cf.* Ellis v. Delafield, 156 App. Div. 26, 137 N. Y. Supp. 1029 (1912), where defendant attempted to counterclaim a California judgment against plaintiff founded on a Wisconsin judgment subsequently reversed. The court rejected the counterclaim on the dubious ground that reversal of the Wisconsin judgment presents a defense to an action on the California judgment. The view here suggested would reach the same result (even without the Wisconsin reversal) on the ground that the California judgment, being secondary, has no standing in the courts of New York. See note 26 HARV. L. REV. 437 (1913).

[26] Where suit is brought on a judgment which is thereafter set aside or reversed on appeal, the judgment debtor is entitled to have the second judgment set aside as of record and as of right. Heckling v. Allen, 15 Fed. 196 (1882); Gordon v. Hillman, 47 Cal. App. 571, 191 Pac. 62 (1920).