The Impeachment of Sister State Judgments for Fraud

Michael Charles Pryles

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by

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THE determination of the effect of fraud in the procurement of a judgment on out-of-state recognition or enforcement is complicated by a number of factors.[1] In the first place the matter has not been conclusively determined by the United States Supreme Court. Further, the many variations in the possible types of fraud and the different facets of a case which fraud can affect has caused some difficulties. Moreover, even if agreement is reached on the availability of fraud as a defense to the recognition and enforcement of sister state judgments, and the circumstances in which the defense lies, the procedure for its invocation varies according to whether law and equity are separately administered.

I. APPROACHES TO THE PROBLEM

The decisions of the state and lower federal courts lack uniformity. There is authority for a wide range of propositions, not all of which, however, are necessarily inconsistent.

(1) Some cases contain broad statements that judgments obtained by fraud are not entitled to full faith and credit. In *In re Nast* a New York court declared: "It is undoubtedly true that a judgment which is fraudulently obtained . . . is not entitled to full faith and credit."[2] Like statements denying full faith and credit are contained in a number of other decisions.[3] Other cases, without referring to full faith and credit, simply hold that judgments obtained by fraud are not conclusive, or hold that fraud is a defense to the enforcement of a sister state judgment. For example, in *Oldham v. McRoberts* another New York court declared:

> Generally, every judgment may be impeached for fraud, be it of this State or another State, but what constitutes sufficient fraud, who can object, under what circumstances fraud may be interposed, are material and difficult questions . . . . The judgment of a sister state procured by fraud may be questioned collaterally therefor in the courts of this State.[4]

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[1] *See generally* A. EHRENZWEIG, A TREATISE ON THE CONFLICT OF LAWS 198 (1962) [hereinafter cited as EHRENZWEIG]; G. STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 114 (3d ed. 1963) [hereinafter cited as STUMBERG]; Fraser, *Reopening of Judgments by the Plaintiff*, 42 IOWA L. REV. 221 (1957); Moore & Rogers, *Federal Relief from Civil Judgments*, 1951 U. ILL. L.F. 121; Woodward, *Collateral Attack upon Judgments on the Ground of Fraud*, 65 U. PA. L. REV. 103 (1916); Note, *Privity of Parties and Attack for Fraud on Judgments of Sister State*, 25 MICH. L. REV. 176 (1926); Note, *Right To Resist a Foreign Judgment for Fraud*, 78 U. PA. L. REV. 239 (1929).

[2] 10 Misc. 2d 133, 166 N.Y.S.2d 43, 50 (Sup. Ct. 1957).

[3] Abercrombie v. Abercrombie, 64 Kan. 29, 67 P. 539 (1902); Keeler v. Elston, 22 Neb. 310, 34 N.W. 891 (1887); Prime v. Hinton, 244 App. Div. 181, 279 N.Y.S. 37 (1935); *In re* Kittinger's Estate, 199 Misc. 2d 377, 101 N.Y.S.2d 844 (Sur. Ct. 1950).

[4] 237 N.Y.S.2d 937, 948 (Sup. Ct. 1963).

Similar statements have been made by other courts over a long period of time continuing to the present.[5]

(2) There is considerable authority for the proposition that a sister state judgment is only impeachable for fraud which affects the jurisdiction of the rendering court. Recently an Illinois appellate court stated:

> Defendant's allegations of fraud all go to the merits of the litigation in New York. He claims that plaintiff's testimony omitted certain facts and misrepresented others. '[T]here are two classes of frauds drawn in question in cases of this kind: First, there is that kind of fraud which prevents the court from acquiring jurisdiction or merely gives it colorable jurisdiction; and the second, that kind of fraud which occurred in the proceedings of the court after jurisdiction had been obtained, such as perjury, concealment, and other chicanery. People v. Sterling, 357 Ill. 354, 192 N.E. 229 (1934). It is this second variety of fraud that defendant has alleged in the instant case. However, only fraud in the procurement of jurisdiction will sustain a collateral attack and preclude enforcement of a foreign judgment.[6]

It may well be that many of the cases cited for the first proposition above are properly limited to fraud affecting the jurisdiction of the rendering court.[7]

(3) In accordance with the wording of the full-faith-and-credit implementing legislation,[8] some courts have held that a sister state judgment is only impeachable for fraud if it is similarly vulnerable in the state of its rendition. In *Stephens v. Thomasson*[9] the Arizona enforcement of a Texas judgment was resisted on the basis of fraud. The court held that the issue was governed by Texas law under which the judgment was impeachable, and, thus, found for the defendants:

> Plaintiffs have quoted from the cases of Simmons v. Saul, . . . and Nicolson v. Citizens & Southern Nat. Bank, D.C. . . . but we believe the language of the case of Williams v. North Carolina . . . also quoted by plaintiffs, embraces the problem and we quote:
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> '. . . the judgment of a state court should have the same credit, validity, and effect, in every other court in the United States, which it had in the state where it was pronounced, and that whatever pleas would be good to a suit thereon in

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[5] *See* Phillips v. Phillips, 224 Ark. 225, 272 S.W.2d 433 (1954); Coffee v. National Equip. Rental, Ltd., 451 P.2d 329 (Ariz. Ct. App. 1969); Mullenax v. Lighthouse Realty Corp., 402 S.W.2d 437 (Ky. 1966); *In re* Clay, 261 S.W.2d 301 (Ky. 1953); Nelson v. Browning, 391 S.W.2d 873 (Mo. 1965); Gibson v. Epps, 352 S.W.2d 45 (Mo. Ct. App. 1961); Wood v. Wood, 241 Mo. App. 367, 231 S.W.2d 882 (1950); Todd v. Policemen's & Firemen's Pension Fund, 14 N.J. Super. 508, 82 A.2d 233 (1951); Chase v. Chase, 58 Misc. 2d 507, 296 N.Y.S.2d 229 (Fam. Ct. 1968); Howland v. Stitzer, 231 N.C. 528, 58 S.E.2d 104 (1950); Thrasher v. Thrasher, 167 S.E.2d 549 (N.C. Ct. App. 1969); Britton v. Gannon, 285 P.2d 407 (Okla.), *cert. denied*, 350 U.S. 886 (1955); Rodda v. Rodda, 184 Ore. 140, 200 P.2d 616 (1949); Ogletree v. Crates, 359 S.W.2d 54 (Tex. Civ. App.—Eastland 1962); State *ex rel.* Lynn v. Eddy, 152 W. Va. 345, 163 S.E.2d 472 (1968).

[6] La Verne v. Jackman, 84 Ill. App. 2d 445, 228 N.E.2d 249, 255 (1967). *See also* Fox v. Mick, 20 Cal. App. 599, 129 P. 972 (Dist. Ct. App. 1912); *In re* Roedell's Estate, 253 Iowa 438, 112 N.W.2d 842 (1962); Miller v. Acme Feed, Inc., 228 Iowa 861, 293 N.W. 637 (1940); Marx v. Fore, 51 Mo. 69, 11 Am. R. 432 (1872); Klaiber v. Frank, 9 N.J. 1, 86 A.2d 679 (1951); Second Nat'l Bank v. Thompson, 141 N.J. Eq. 188, 56 A.2d 492 (Ch. 1947); *In re* Blalock, 233 N.C. 493, 64 S.E.2d 848 (1951); Pilcher v. Graham, 18 Ohio C.C.R. 5, 9 Ohio C. Dec. 825 (Cir. Ct. 1899); Allard v. LaPlain, 147 Wash. 497, 266 P. 688 (1928). *See generally* EHRENZWEIG 110; Annot., 115 A.L.R. 464 (1938).

[7] *See* Annot., 55 A.L.R.2d 673, 688 (1957).

[8] 28 U.S.C. § 1738 (1964).

[9] 63 Ariz. 187, 160 P.2d 338 (1945).

such state, and none others, could be pleaded in any other court in the United States.'

From the testimony we find that the fraud alleged could have been asserted against the Texas judgment in the court where it was rendered.[10]

The Arizona court cited the 1942 decision of *Williams v. North Carolina*[11] for the proposition. But some courts had accepted this view long before *Williams*. In 1914 one court said that fraud could be pleaded as a defense to a judgment when it constituted a defense in the rendering court,[12] and there are similar statements to the same effect in other cases.[13]

(4) Some courts have made broad statements declaring that one cannot plead fraud as a defense to the enforcement of a sister state judgment. In 1889 the Supreme Court of Pennsylvania, in answer to a contention that a West Virginia judgment upon which an action was brought had been obtained by fraud, said: "If the judgment was entered in West Virginia by fraud or collusion, the court in which it was entered is the proper one to redress that wrong. It is a matter with which we have nothing to do."[14] However, most courts adopting this view have relied upon the series of Supreme Court decisions commencing with *Mills v. Duryee*[15] and are not recent.[16]

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[10] 160 P.2d at 341.

[11] 317 U.S. 287, 293-94 (1942).

[12] In Bonfils v. Gillespie, 25 Colo. App. 496, 139 P. 1054, 1056 (1914), the Court of Appeals of Colorado stated:

> There is no sufficient pleading or tender of proof in the record tending to show that the original judgment was obtained by such fraud as would entitle appellant to relief in the Denver district court. In Hanley v. Donoghue . . . the court drew the distinction between foreign judgments and judgments of sister states, and, in connection therewith, on the question of fraud, said: 'Judgments recovered in one state of the Union, when proved in the courts of another, differ from judgments recovered in a foreign country in no other respect than that of not being re-examinable upon the merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties.'
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> Under the foregoing rule, the injured party is required to resort to the court that rendered the judgment, except in cases where the original court would itself allow the defense of fraud in an action upon the judgment.

[13] In Sportservice Corp. v. Grande, 54 Misc. 2d 229, 282 N.Y.S.2d 63 (Sup. Ct. 1967), an action was brought in New York to enforce a Florida judgment. One defense raised was that the judgment was rendered on false and fraudulent statements. The court rejected this argument, saying:

> Where suit is brought in one state on a judgment rendered in another state, which has jurisdiction of the parties and subject matter, the defendants can raise only such defenses as would have been available to them in an action to enforce the judgment in the state where the judgment was rendered . . . .
>
> A collateral attack on a judgment on the ground it was rendered on false testimony is not permitted in the State of Florida . . . . Therefore, such an attack is barred here, where the party attacking would not be permitted to make a collateral attack in the courts of the granting state.

282 N.Y.S.2d at 64-65. *See also* Dow v. Blake, 148 Ill. 76, 35 N.E. 761 (1893); Ambler v. Whipple, 139 Ill. 311, 28 N.E. 841 (1891); Baker v. Erbert, 199 Kan. 59, 427 P.2d 461 (1967); Anderson-Prichard Oil Corp. v. Unknown Successors, 167 Kan. 432, 207 P.2d 417 (1949); Anderson v. Lyons, 226 Minn. 330, 32 N.W.2d 849 (1948); Levin v. Gladstein, 142 N.C. 482, 55 S.E. 371 (1906); Marsh v. Millword, 381 S.W.2d 110 (Tex. Civ. App.—Austin 1964); Allard v. LaPlain, 147 Wash. 497, 266 P. 688 (1928); Bank of Chadron v. Anderson, 6 Wyo. 518, 48 P. 197 (1897). *See generally* EHRENZWEIG 198; STUMBERG 114.

[14] Wyoming Mfg. Co. v. Mohler, 17 A. 31 (Pa. 1889).

[15] 11 U.S. (7 Cranch) 481 (1813).

[16] *See, e.g.*, Barancik v. Schreiber, 246 Mich. 361, 224 N.W. 348 (1929); McDonald v. Drew, 64 N.H. 547, 15 A. 148 (1888); Union Trust Co. v. Rochester & P.R.R., 29 F. 609 (C.C.W.D. Pa. 1886).

(5) Some courts have held that whatever the rule respecting fraud, an issue of fraud cannot be litigated if it was previously litigated in the rendering court,[17] or if it could have been so litigated.[18] Closely related to this view is the proposition that when the defense of fraud lies, it is necessary that the objecting party show extrinsic or collateral, rather than intrinsic, fraud. This is based on the Supreme Court's decision in *United States v. Throckmorton*,[19] and has frequently been imposed as a limitation on the principle that judgments procured by fraud are not entitled to full faith and credit.[20] In *Throckmorton* the Court held that a bill in chancery would only lie to set aside a judgment or decree for fraud if the acts of fraud were extrinsic or collateral such that they prevented a genuine adversary trial and a decision on the facts in issue. Intrinsic fraud, practiced in the trial, which could have been litigated therein, would not suffice.[21]

The requirement that fraud be extrinsic or collateral would operate as a substantial limitation on the first proposition above. It would not greatly affect the second proposition because fraud going to jurisdiction will usually be collateral or extrinsic anyway. It should only be relevant under the third proposition if the law of the rendering state can find collateral attacks on its judgments for fraud to extrinsic or collateral fraud.[22] If proposition four were to be applied

[17] Haas v. Haas, 59 So. 2d 640 (Fla. 1952).

[18] *Ex parte* Aufill, 268 Ala. 43, 104 So. 2d 897 (1958); Superior Distrib. Corp. v. White, 146 Colo. 595, 362 P.2d 196 (1961); Albert v. Albert, 86 Ga. App. 560, 71 S.E.2d 904 (1952); *cf.* the position adopted in New Jersey, in EHRENZWEIG 254.

[19] 98 U.S. 61 (1878).

[20] Mackay v. McAlexander, 268 F.2d 35 (9th Cir. 1959); Stephens v. Thomasson, 63 Ariz. 187, 160 P.2d 338 (1945); Mahoney v. State Ins. Co., 133 Iowa 570, 110 N.W. 1041 (1907); Clark v. Ogilvie, 111 Ky. 181, 63 S.W. 429 (1901); Crescent Hat Co. v. Chizik, 223 N.C. 371, 26 S.E.2d 871 (1943). The rationale of requiring extrinsic fraud was well stated in Pico v. Cohn, 91 Cal. 129, 25 P. 970, 971 (1891):

> That a former judgment or decree may be set aside and annulled for some frauds there can be no question, but it must be a fraud extrinsic or collateral to the questions examined and determined in the action. And we think it is settled beyond controversy that a decree will not be vacated merely because it was obtained by forged documents or perjured testimony. The reason of this rule is that there must be an end of litigation; and when parties have once submitted a matter, or have had the opportunity of submitting it, for investigation and determination, and when they have exhausted every means for reviewing such determination in the same proceeding, it must be regarded as final and conclusive, unless it can be shown that the jurisdiction of the court has been imposed upon, or that the prevailing party, by some extrinsic or collateral fraud, has prevented a fair submission of the controversy.

[21] *See* Annot., 88 A.L.R. 1201 (1934). In Annot., 55 A.L.R.2d 673, 689 (1957), the matter is elaborated upon:

> Extrinsic fraud has been defined as including fraud collateral to the question examined and determined in the action; fraud practiced in obtaining the judgment which may have prevented the defendant from having an adversary trial of the issue, or preventing the defendant from presenting fully and fairly his side of the cause; fraud in the method of acquiring jurisdiction; and fraud rendering the judgment absolutely void. Included in such definition are false representations that the defendant party is merely a nominal party against whom no relief is sought, false promises of compromise, concealment of the suit, kidnaping of witnesses, and the like.
>
> On the other hand, intrinsic fraud has been defined as including fraud attendant upon the cause of action itself or the procurement of a judgment by false evidence, or by any other form of fraud against which the injured party might have protected himself at the trial.

[22] But this should be compared to the view of Ehrenzweig, who seems to imply that the judgment must be impeachable where rendered *and* the fraud must be collateral or extrinsic. EHRENZWEIG 198. Presumably then if a judgment could be collaterally attacked for intrinsic fraud where rendered it nevertheless could not be attacked in sister states, in Ehrenzweig's view.

literally, fraud would never be applicable as a defense, whether it was collateral or extrinsic. If it were to be limited to extrinsic fraud, it would only be another way of stating the first proposition, providing that was limited to extrinsic or collateral fraud.

The Supreme Court excluded intrinsic fraud in *Throckmorton* because such fraud could have been properly litigated in the rendering court.[23] But a Florida court has held that if questions of extrinsic fraud, normally pleadable defenses, were actually litigated in the rendering court they too would become res judicata.[24]

As the discussion of the fifth proposition indicates, the above propositions are not all mutually exclusive. For example, propositions two, three, and five are all reconcilable. It is possible to contend that the question of fraud is determined by the law of the rendering state except when fraud affects the jurisdiction of the rendering court (because there is a jurisdictional inquiry in the United States) unless the matter was actually litigated. It should also be noted that propositions three and four involve a divergence from the position adopted for application to judgments of foreign countries in which the defense of fraud is not similarly confined.[25] Finally, how is a sister state judgment attacked on the grounds of fraud? No difficulties are encountered in those states in which law and equity are administered in the same courts. In such jurisdictions fraud will be available as a direct defense in enforcement proceedings.[26] But where equity is separately administered the only resort may be to a court of equity.[27]

II. THE GUIDANCE OF THE SUPREME COURT

The uncertainty in state and lower federal court decisions exists largely because of the absence of a clear lead from the Supreme Court and the inherent complexity of the area, and such a state of affairs has unfortunately enabled decisions to turn on many different points. The remarks made by the Supreme Court can frequently be interpreted consistently with several different propositions, and the opinions themselves often fail to indicate clearly the precise ground upon which the case was decided.

In *Christmas v. Russell*[28] a plaintiff, having obtained a judgment on a promissory note in Kentucky, sought to enforce it in Mississippi. One of the defenses was that the plaintiff had procured the judgment by fraud. The Supreme Court rejected the contention and held that the judgment was conclusive until set aside, provided the rendering court had jurisdiction. The necessity for jurisdiction leads to the speculation that if the character of the fraud was such that the jurisdiction of the rendering court was affected, it may have been pleadable by way of defense.

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[23] *See also* Caldwell v. Taylor, 218 Cal. 471, 476, 23 P.2d 758, 769 (1933).

[24] Haas v. Haas, 59 So. 2d 640 (Fla. 1952).

[25] *See* EHRENZWEIG 199; 25 MICH. L. REV. 176, 177 (1926-27).

[26] *E.g.*, Wyman v. Newhouse, 93 F.2d 313 (2d Cir. 1937), *cert. denied*, 303 U.S. 664 (1938); Shary v. Eszlinger, 45 N.D. 133, 176 N.W. 938 (1920); Babcock v. Marshall, 21 Tex. Civ. App. 145, 50 S.W. 728 (1899).

[27] Allison v. Chapman, 19 F. 488 (C.C.D.N.J. 1884); Peel v. January, 35 Ark. 331, 37 Am. R. 27 (1880); Anderson v. Anderson, 8 Ohio 109 (1837). *See generally* Annot., 55 A.L.R.2d 673, 683 (1957).

[28] 72 U.S. (5 Wall.) 290 (1866).

Professor Stumberg thinks the precise holding in *Christmas* was that fraud did not constitute a legal defense, and thus is of the opinion that the case would not rule out a somewhat wider defense based on fraud in equity, providing it was available under the law of the rendering state.[29] It is interesting to note the remarks of the Court in *Christmas* concerning another defense raised by the defendant which was not based on fraud. In rejecting the defense the Court stressed the validity of the judgment where rendered and cited its earlier decisions in *Mills v. Duryee*[30] and *Hampton v. McConnel*,[31] wherein it was held that:

> The judgment of a state court should have the same credit, validity, and effect, in every other court in the United States, which it had in the state where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any other court in the United States.[32]

In *Maxwell v. Stewart*[33] enforcement in New Mexico of a Kansas judgment was resisted on several grounds, including fraud. It was asserted that "the judgment . . . was obtained by false and fraudulent assertion of a contract, and by means of false and interested testimony."[34] Chief Justice Waite, delivering the opinion of the Court, tersely dismissed the argument, declaring: "In *Christmas v. Russell* . . . this Court held that fraud could not be pleaded to an action in one State upon the judgment of another. With this we are satisfied."[35] Whether this statement should be construed to deny fraud as a legal defense entirely or to merely deny that status to fraud which does not affect the rendering court's jurisdiction, both possible limitations of the *Christmas* decision, is a matter for speculation. Further, the fraud alleged in *Maxwell* was intrinsic, not extrinsic or collateral; hence, the proposition could be further confined to that type of fraud, though the Court did not expressly say so.

Another broad statement was made in *Hanley v. Donoghue*:

> Judgments recovered in one State of the Union, when proved in the courts of another, differ from judgments recovered in a foreign country in no other respect than that of not being re-examinable upon the merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties.[36]

That statement was subsquently reiterated in *Wisconsin v. Pelican Insurance Co.*[37] Its broad generality does not indicate any limitations except perhaps the stated requirement that the rendering court possess jurisdiction, a statement which could be taken to mean that fraud affecting jurisdiction is impeachable.

In contrast to the above cases, *Cole v. Cunningham*[38] indicates a different stance taken by the Supreme Court. In connection with insolvency proceedings

[29] STUMBERG 114.
[30] 11 U.S. (7 Cranch) 481 (1813).
[31] 16 U.S. (3 Wheat.) 234 (1818).
[32] *Id.* at 235. *See also* Michaels v. Post, 88 U.S. (21 Wall.) 398 (1874).
[33] 88 U.S. (21 Wall.) 71, 89 U.S. (22 Wall.) 77 (1875).
[34] 89 U.S. at 79.
[35] *Id.* at 81.
[36] 116 U.S. 1, 4 (1885).
[37] 127 U.S. 265, 292 (1888).
[38] 133 U.S. 107 (1890).

instituted in Massachusetts, the Court held that a court of that state could enjoin a Massachusetts creditor from continuing an action in New York to attach a debt due from a New York citizen to the insolvent debtor so as to prevent the creditor's obtaining a preference contrary to Massachusetts laws. In the course of its opinion the Court spoke of the effect of sister state judgments under the full-faith-and-credit provisions. Whereas in *Mills v. Duryee*[39] and *Hampton v. McConnel*[40] the Court had stressed the substantive operation of the full-faith-and-credit provisions, in *Cole* the Court indicated a slight retreat in emphasis. Justice Fuller, for the Court, stated that the Constitution did not mean to confer any new power on the states, but simply intended to regulate the effect of their acknowledged jurisdiction. Moreover, the Constitution did not intend to make sister state judgments domestic judgments for all purposes.[41] In relation to the congressional implementing legislation the Court noted that it "does not prevent an inquiry into the jurisdiction of the court, in which a judgment is rendered, to pronounce the judgment, nor into the right of the State to exercise authority over the parties or the subject matter, nor whether the judgment is found in, and impeachable for, a manifest fraud."[42] The reference to fraud stands in contrast to the Court's prior general statements in *Maxwell*, *Hanley*, and *Wisconsin*. The Court did not say whether judgments were impeachable for "manifest fraud" under lex fori, federal law, or under the law of the rendering state. Certainly the latter cannot be assumed, for the Court stated that both jurisdiction and manifest fraud were examinable, and it is clear that the former is not governed by the law of the rendering state. Indeed both jurisdiction and fraud were stated as exceptions to the full-faith-and-credit implementing act, which provides for judgments to be effectuated in accordance with the law of the rendering state.[43]

Christmas, *Maxwell*, and *Hanley* were referred to in *Simmons v. Saul*.[44] In *Simmons* the Court held that equity would not set aside a decree of a sister state probate court on the ground of fraud. The Court expressly followed its earlier decision in *Broderick's Will*,[45] considering the two cases "as much alike as two photographs of the same person." In *Broderick's Will* it had been held that a court of equity would not set aside probate of a will on the basis of fraud, that being within the exclusive jurisdiction of the probate court, and would not give relief by charging the purchasers at the executor's sale as trustees in favor of a third, allegedly defrauded person, when the court of probate could afford relief.

In *Simmons* the complainants, the heirs of a deceased Louisiana domiciliary, sought equitable relief in Pennsylvania with respect to a tract of land in Wisconsin. It appeared that a number of persons had conspired to have the deceased's estate declared vacant in Louisiana, an administrator appointed, and the estate sold. All of this was done via proceedings in Louisiana. Subsequently the

[39] 11 U.S. (7 Cranch) 481 (1813).
[40] 16 U.S. (3 Wheat.) 234 (1818).
[41] 133 U.S. 107, 112 (1890).
[42] *Id.*
[43] 28 U.S.C. § 1738 (1964).
[44] 138 U.S. 439 (1891).
[45] 88 U.S. (21 Wall.) 503 (1875).

purchaser of the estate, which included a land claim, obtained a tract of land in Wisconsin as personal representative of the deceased. It was later sold and conveyed to a number of persons. The complainants, as heirs, sought to be adjudged the true legal representatives of the deceased and to have the court declare the defendant, a former owner of the land, their constructive trustee. The Supreme Court held that full faith and credit had to be given to the Louisiana proceedings because the Louisiana court had jurisdiction and fraud did not furnish grounds for annulment of its judgment. The *ratio decidendi* of the case is simple—fraud cannot be the basis of an action for affirmative equitable relief from an in rem sister state decree when relief is available in the rendering state.[46]

In *Jaster v. Currie*[47] the Supreme Court of Nebraska had refused to enforce an Ohio judgment which it considered to have been obtained by fraud. The *Christmas* case was distinguished on the ground that it applied only to legal defenses, and the court considered that the plea of fraud was available in the rendering state. It fell to the Supreme Court to determine whether Nebraska had denied full faith and credit to the Ohio judgment. Justice Holmes, who delivered the Court's opinion, was prepared to assume that fraud could be pleaded,[48] but did not have to decide the question because the Court found that the judgment had not in fact been obtained by fraud. Had Justice Holmes come to a contrary conclusion and found that there had been fraud, three possibilities would have been open. First, the Court could have held that fraud was not a defense. However, the fraud alleged was of the type affecting the jurisdiction of the rendering court;[49] hence, this would have required the holding that fraud is *never* a defense. Secondly, the Court could have decided that fraud was a defense only when it affected the jurisdiciton of the rendering court. Finally, the court could have determined that fraud constituted an equitable defense when it was invocable under the law of the rendering state. This is the ground upon which the Nebraska court rested its decision.[50]

It is unrewarding to attempt to ascertain general principles from these Supreme Court decisions. The Court's statements have been too general, and the resultant possibilities multitudinous. The Court has acknowledged that the availability of fraud as a defense to the enforcement of sister state judgments is

[46] The Supreme Court considered that relief was available in the rendering court as it had been in *Broderick's Will*. This was apparently important to the decision for in following *Broderick's Will* the Court stated: "[A]nd in both cases according to the averments of the bill in each, the probate court had adequate power to afford relief." 138 U.S. at 460.

[47] 198 U.S. 144 (1905).

[48] *Id.* at 147:

> The supreme court of Nebraska affirmed the judgment on the ground that in that state the distinction between actions at law and suits in equity had been abolished, that the decision in Christmas v. Russell . . . was limited to legal defenses . . . and that fraud would have been an equitable defense to the judgment in Ohio, and therefore was in Nebraska. We take up the question on this footing, without stopping to discuss the premises, which we find it unnecessary to do, and we will assume that, on general demurrer, a plea that the judgment was obtained by fraud would be a good equitable plea.

[49] The alleged fraud in question was causing the defendant to come within the rendering jurisdiction by a trick so as to give it in personam competence. This affects the rendering court's jurisdiction. *See, e.g.*, Wyman v. Newhouse, 93 F.2d 313 (2d Cir. 1937), *cert. denied*, 303 U.S. 664 (1938).

[50] *See* note 48 *supra.*

a much discussed question. This is true, primarily because the Court has failed to indicate the path to be followed.

III. Some Future Guidelines

Although it is difficult and perhaps imprudent to attempt to ascertain all-embracing rules, certain guidelines can be drawn. The federal interests of assuring full faith and credit, the protection of rights previously established in litigation, throughout the nation, and the avoidance of the duplication and multiplication of litigation, which are the very core of the full-faith-and-credit provisions, generally require that a sister state judgment be given nation-wide effect. But the effect of a judgment where rendered, and thus its possible out-of-state status, can be most complex. Therefore, it is necessary to consider the matter in greater detail.

A judgment that is attacked as being fraudulently obtained could have one of four possible operations in the state where it was rendered. It may be a nullity, or void *ab initio*. It may be valid, but not conclusive in the rendering court, the defect constituting a defense to enforcement or a ground for setting aside the judgment there. It may be valid and conclusive in the rendering court, with the defect constituting a basis for reversal by an appellate tribunal. Finally, it may be valid and conclusive in the rendering court with the alleged defect not constituting a ground for appeal and reversal. As to the first and last possibilities, the wording of the federal implementing statute and federal interests in assuring full faith and credit lead to a clear result. If the judgment is a nullity where rendered, federal interests and the protection of individual rights beyond the rendering state through the nation require that it not be enforced or recognized. Conversely, when the judgment is in all respects valid in the state of rendition these same federal considerations require it to be recognized and enforced. The second and third possibilities are, however, not free from difficulty.

When a judgment is not a nullity, but is collaterally impeachable in the rendering court, or a coordinate court, should an attack in a sister state court be allowed on the same grounds? The first consideration is the manner in which a judgment may be collaterally attacked in the rendering (or a coordinate) court. When the judgment is not directly enforceable where rendered, by execution or otherwise, but it is necessary to bring an action upon it in the rendering or a coordinate court, the defendant may be allowed to plead the defect by way of defense. In such an instance federal interests and the protection of individual rights would seem to require the defense, available in the rendering or coordinate court, to be similarly available in sister states. It would hardly be promoting the cause of federalism or the protection of rights as they stand in the rendering state if a sister state court were to enforce a judgment to which the defendant had a good defense under the law of the rendering state and which he could raise in similar proceedings there. Thus, in one American case in which the question of fraud was held to be governed by the law of the rendering state, it was expressly stated that "fraud could be pleaded in cases where the original court would itself allow the defense of fraud in an action upon the

judgment."[51] When direct execution may be made upon the judgment in the rendering state, and it is not necessary to bring an action upon it, any defense of fraud, error, or the like, available in the rendering court can only be invoked by the defendant commencing proceedings there to set aside the judgment. In this event should the fraud or other irregularity constitute a defense in sister states? The case of *Allard v. LaPlain*[52] suggests a negative response. There the Supreme Court of Washington held: "Manifestly, a judgment, subject to be so reviewed by the court in which it was rendered, stands as any other final judgment until, by the exercise of the further jurisdiction of that court, it is suspended or set aside. . . . We do not think the courts of this state can lawfully take notice of any such fraud . . . ."[53] On the other hand, the significance, from the federal point of view, of allowing a defendant to raise a plea of fraud in the rendering (or coordinate) court as a defense to an action on the judgment or by commencing proceedings to set it aside may be doubted. The reason is that in either instance the defendant has a defense to the final enforcement of the judgment *in the rendering (or a coordinate) court.* The procedure for invoking such a defense does not affect the federal interest in making that defense available in sister states. The principle, then, is that if a judgment can be collaterally attacked in the rendering court it should be similarly vulnerable in sister states.[54] This was recognized by the Supreme Court of Arizona in *Stephens v. Thomasson* in which the court considered that the inquiry should be whether "the fraud . . . could have been asserted against the . . . judgment *in the court where it was rendered.*"[55]

In the situation in which a judgment is valid and conclusive (that is, the judgment is not collaterally impeachable) in the rendering court, but the defect constitutes a ground for appeal and a setting aside of the judgment in an appellate tribunal, it is submitted that sister states should be required to recognize and enforce the judgment until it is set aside in the rendering state.[56] In appro-

[51] Bonfils v. Gillespie, 25 Colo. App. 496, 139 P. 1054, 1056 (1914).

[52] 147 Wash. 497, 266 P. 688 (1928).

[53] 266 P.2d at 695.

[54] This principle was expressly recognized by the Supreme Court in Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 439 (1943):

> These consequences flow from the clear purpose of the full faith and credit clause to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered.

The inquiry, in any particular case, then, is whether the matter is conclusive in the rendering court. *See also* R. LEFLAR, AMERICAN CONFLICTS LAW 190 (1968), in which a like view is stated.

[55] 63 Ariz. 187, 160 P.2d 338, 341 (1945) (emphasis added).

[56] R. LEFLAR, *supra* note 54, at 188, adopts a similar position:

> The result thus reached is sound, since otherwise a judgment invalid where rendered would be valid and enforceable everywhere else. Neither the common-law rule of res judicata nor the full faith and credit clause require that an F^1 judgment be given any greater finality in F^2 than F^1 would give it. On the other hand there is danger that courts of second states will improperly decide that particular judgments are invalid under the law of the state of rendition when actually they are valid under that law. There are many procedural errors which, when committed in the trial of a case, cannot thereafter be raised in collateral attack on the judgment in the state where it was rendered, but only by appeal. Unless appeal is taken the judgment remains valid and is entitled to full faith and credit. They may not be collaterally attacked for errors which, in the state of rendition, were grounds for appeal only. So long as this

priate cases a sister state forum should be permitted to stay proceedings to allow the defendant to seek an appeal in the rendering state or to await the outcome of a pending appeal there. However, it should not finally refuse to recognize or enforce a sister state judgment on the ground of fraud, error, or lack of domestic jurisdiction even though an appellate tribunal in the rendering state can set it aside on these grounds until such a tribunal has in fact done so. To allow a sister state court to deny recognition or enforcement of a judgment valid and conclusive in the rendering court on grounds open to appellate courts in the rendering state would be tantamount to making that sister state court an appellate court of the rendering court. Were the position otherwise, a judgment could be attacked in sister states on any conceivable ground upon which an appeal could be brought in the rendering state, be it evidential, procedural, or substantive. This would unduly burden courts throughout the nation. It would force a court of one state to acquire a commanding knowledge of the laws of all states and would infringe the state interests of rendering forums which could well lose control of their own adjudications. Moreover, the interests of federalism and the protection of individual rights which require a currently valid and conclusive adjudication to be enforced and recognized out-of-state do not appear to require a sister state to determine whether grounds for appeal exist under the law of the rendering state.

Having thus generally examined the four possibilities to ascertain what the federal interests require, attention will be directed at the one which is likely to cause the most problems. The requirements of the federal interests in relation to three of the four possibilities are relatively clear. However, the position of a judgment not void *ab initio* but collaterally impeachable in the rendering court requires further examination. Some of the terms used in relation to such a judgment will be explained and some of the difficulties which are likely to arise will be investigated.

It was suggested that if a judgment was impeachable in a coordinate court in the rendering state, it should be treated as being impeachable in the rendering court itself. The purpose of this is to prevent differences in the modes of procedure for raising the plea of fraud (or other defense) in the rendering state from affecting the availability of the plea in sister states. In particular, two situations are envisaged. The first concerns a domestic judgment which might be enforceable by bringing an action thereon not in the rendering court but in another court whose procedure is preferable or more appropriate for enforcement. For example, the court of King's Bench in England used to enforce money judgments of Common Pleas by permitting the action of debt to be brought upon them.[57] In such a situation the domestic enforcing court is not really an appellate court, rather it is essentially a collateral or coordinate court to the rendering court. From the point of view of the federal interests the defenses available to the defendant in such coordinate court should be no different in substance from those situations in which judgments are enforced in the ren-

attitude is maintained, extrastate judgments are being given the same faith and credit they would receive in the state where they were rendered, which is what both the law and good sense call for.

[57] *See* H. READ, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS 115 (1938).

dering court by actions brought upon them there. Any defense invocable under the law of the rendering state in an action upon the judgment in either the rendering court or a coordinate court is a direct *collateral* defense to enforcement and not a ground for appeal from a valid and conclusive judgment.

When the defense is equitable, such as fraud, it may not be possible to raise it in the rendering court because the court does not possess equitable jurisdiction. The defendant may thus be unable to plead an equitable defense either in an action on the judgment, or, where the rendering court's judgments are directly enforced, by commencing proceedings in the rendering court to set the judgment aside. The only resort available may be to a court of equity. Hence, in those states in which law and equity are separately administered resort to a court of equity, permitted under the law of the rendering state, may be properly classified as collateral or coordinate relief rather than as relief by way of appeal. Therefore, when a court of equity sits as a coordinate court of the rendering court and not as an appellate tribunal, any defense properly pleadable therein should be similarly pleadable in sister states.

Although a sister state must recognize defenses available in the rendering or coordinate courts, it would appear that federal interests do not invariably require sister state courts to necessarily examine allegations of fraud, or other defects, and determine whether the defense has been sufficiently made out. In appropriate cases it may be proper for the enforcing forum merely to stay proceedings to allow the defendant to apply to the rendering court for an order setting the judgment aside. This would be a particularly desirable manner of proceeding when the evidence necessary to the defense is situated in the rendering state. The important thing is that sister states should give a defendant an opportunity to raise these defenses, whether in the forum, rendering, or coordinate court.

Finally, it is necessary to consider how an equitable defense available in the rendering court can be invoked in a sister state in which law and equity are separately administered. Presumably the action on the judgment will be commenced in a common-law court, and it would thus seem that equitable defenses, even if available in the rendering court, could not be raised. There are two possibilities. First, it could be considered that in these circumstances fraud constitutes the equivalent of a legal defense. Such an argument could be predicated on the fact that the plea of fraud is not a defense because the forum's principles of equity render it such, but because the law of another state, required to be applied by the federal constitution and implementing statute, provides it is. Hence, it could be posited that any defense arising by virtue of the law (including equity) of another state could, when necessary, be treated as a defense at law. Of course, alternatively the plea could be raised in the forum's equity courts.

Up to now the discussion has centered on the requirements of the federal or national interests. But often there exists a local state interest against being bound by a sister state judgment. This will commonly be the situation when the facts of the case or the parties have roots in the forum, and when an application of that state's law would have a different result. In such cases recognition

or enforcement may be sought to be denied in terms of local "public policy."[58] In general the federal interest in full faith and credit is required to prevail and recognition or enforcement is directed. Still, any local interest against being bound by a sister state judgment is more likely to control when the forum considers that a particular judgment has been obtained by fraud. Of course, when the judgment is a nullity or is collaterally impeachable in the rendering court, full faith and credit is not required. But when the judgment is binding and conclusive when rendered, a conflict can arise between the federal interest in full faith and credit and a local state interest against being bound. In such a situation it is submitted that the considerations of full faith and credit and the protection of previously litigated rights are strong enough to override inconsistent local interests, and require that the judgment be enforced or given res judicata effect even though under the local domestic law the fraud in question may render the judgment collaterally impeachable. But there is an important exception with regard to fraud which goes to the jurisdiction of the rendering court.[59] It is clear that a sister state judgment obtained ex parte is not entitled to full faith and credit if the rendering court lacked jurisdiction.[60] Thus it might well be that an enforcing court, upon a determination that the jurisdiction of the rendering court was fraudulently procured, may allow its own "public policy" to control and deny enforcement (or recognition) even though the judgment was unimpeachable where rendered.

[58] *See, e.g.*, McElreath v. McElreath, 162 Tex. 190, 345 S.W.2d 722 (1961) (dictum).

[59] This will not always be easy to determine. *See* Annot., 55 A.L.R.2d 673, 679 (1957). It would appear that fraud causing the defendant to come within the jurisdiction in in personam actions is one instance. *See* Wyman v. Newhouse, 93 F.2d 313 (2d Cir. 1937), *cert. denied*, 303 U.S. 664 (1938), *noted in* 115 A.L.R. 460 (1938); Miller v. Acme Feed, Inc., 228 Iowa 861, 293 N.W. 637 (1940); Klaiber v. Frank, 9 N.J. 1, 86 A.2d 679 (1952).

[60] *See, e.g.*, Williams v. North Carolina, 325 U.S. 226 (1945).