(2) Although the payment in the particular case was after action brought and may not have been an accord and satisfaction of the whole action, as the plaintiffs thereby received all that they were entitled to before the action, viz. 18,035 francs, they had suffered no damage other than nominal damage. Nominal damage is but "a mere peg on which to hang costs."

The question as to whether depreciation of the foreign currency during the period between the date on which payment was due and that of judgment in England may be made subject of a claim for damage has been considered and rejected in *Di Ferdinando* v. *Simon, Smits and Co. Ltd.* It was held that the damage caused by the deterioration of foreign currency is too remote.

The rule above referred to, that the rate of exchange to be taken is that prevailing when the debt should have been paid, has been further complicated by two provisions of the Exchange Control Act, 1947. The Act prohibits in general payment to persons resident outside the sterling area without Treasury permission. It must be borne in mind that the purpose of the Act is *inter alia*, to protect the pound sterling. These provisions were referred to in the Court of Appeal judgment in *Cummings* v. *London Bullion Co. Ltd.* where it was held—

(1) In relation to a debt to be paid in foreign currency two dates have to be considered, namely the date upon which it is due, and the date upon which it is payable.

(2) The date upon which a debt is due is (special terms apart) the date upon which, had it not been for the term implied by section 33(1) of the Act, it ought to have been paid.

(3) The date upon which a debt is payable and, therefore, the date to be taken for fixing the rate of exchange in accordance with Vionnet's case (supra) is (special terms apart) the date when it is lawful for the debtor to pay it.

(4) It is lawful for the debtor to pay the debt—

(a) If the debtor obtains Treasury permission; he may then pay in foreign currency.

(b) If the debtor issues a writ; the creditor may then pay the money in sterling into court.

The date upon which the debt is payable is, therefore, whichever of (a) or (b) (the granting of permission or the issue of the writ) happens first.

(5) The creditor may issue a writ for the debt by action as soon as it is due and before Treasury permission for the payment has been obtained notwithstanding that, by the term implied by section 33(1) of the Act, performance of the contract is dependent upon such permission' this is because para 4 of Schedule IV prevents this implied term being set up as a defence to an action for the debt.

In view of the fluctuation of foreign currency, questions have again recently arisen as to what rate of exchange should be applied. Reference should be made to two cases, namely, *Cummings* v. *London Bullion Co. Ltd.* and *East India Trading Co. Inc.* v. *Carmel Exporters and Importers Ltd.*, which have helped to clarify the position.

In the case *East India Trading Co., Inc.* v. *Carmel Exporters and Importers Ltd.*, where an action was brought upon a foreign judgment and the question was raised as to what rate of exchange was applicable, the court held that—

(1) Where an action is brought upon a foreign judgment, the date at which the rate of exchange should be taken is that of the foreign judgment itself.

(2) It was immaterial that, if the plaintiff has sued upon the original cause of action, the rate at the date of that cause of action would have been taken. It was the plaintiff's right to select the most advantageous course.

Section 2 of the Act provides that a foreign judgment duly registered in an English court shall be recognised as conclusive between the parties thereto and may, in subsequent proceedings, be relied on by way of defence or counterclaim.

The Act specially provides that the expression "action in personam" shall not be deemed to include any matrimonial cause or

any proceedings in connection with the administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy or guardianship of infants.

(4) Conventions with France and Belgium

Under the Foreign Judgments (Reciprocal Enforcement) Act, 1933, provision was made for the Act to be extended by Order-in-Council to judgments given in the superior courts of any foreign country thus permitting such judgments to be registered in accordance with the provisions of the 1933 Act. Extension will only be granted if the foreign country in question extends similar benefit by recognising and enforcing United Kingdom judgments in its courts. In other words, the doctrine of reciprocity is strictly applied.

So far only two conventions have been signed with France on January 18, 1934, and with Belgium on May 2, 1934, the High Contracting Parties thereto "being desirous to provide on the basis of reciprocity for the recognition and enforcement of judgments in civil and commercial matters". These conventions were made effective so far as the United Kingdom was concerned, by Orders-in-Council extending the Foreign Judgments (Reciprocal Enforcement) Act, 1933, to these two countries.

Since the two conventions are on almost identical lines, they may conveniently be considered together.

Under both conventions, only judgments of the superior courts of the United Kingdom, Belgium and French courts may be registered. The superior courts of France comprise:—

> La Court de Cassation, less Cours d' Appel, Les Tribunaux de premiere instance at les Tribunaux de commerce, and in the case of judgments for the payment of compensation to a "partie civile" in criminal proceedings, les Tribunaux correctionnels and les Cours d' Assises;
>
> And, in the case of Belgium:—
>
> the Court of Cassation, all Courts of Appeal, Tribunals of First Instance and Tribunals of Commerce.

> Superior courts in the case of the United Kingdom are—the House of Lords; and for England and Wales, the Supreme Court of Judicature (Court of Appeal and High Court of Justice) and the Courts of Chancery of the Counties of Palatine of Lancaster and Durham; for Scotland, the Court of Session, and for Northern Ireland, the Supreme Court of Judicature.

All other courts are deemed to be inferior courts.

Recognition and enforcement of a French or Belgian judgment is accorded whatever may be the nationality of the judgment creditor or debtor. The conventions do not, however, apply—

(a) To judgments given on appeal from inferior courts; and

(b) To judgments given in matters of status or family law (including judgments in matrimonial causes or concerning the pecuniary relations between the spouses as such); to judgments in matters of succession or administration of estates of deceased persons or judgments in bankruptcy proceedings or proceedings relating to the winding up of companies or other bodies corporate.

Any French or Belgian judgment will be recognised unless, as provided under the 1933 Act, it can be established that the judgment was contrary to public policy or natural justice or was obtained by fraud, or unless it can be shown that the original court did not have jurisdiction. The various aspects of these defences have already been fully discussed above.

No French or Belgian judgment can be executed in the United Kingdom unless it bears the executory formula prescribed by French or Belgian law. A certified copy of the judgment issued by the original court, including the reasons therefor, must accompany the application for registration. The issue of the certified copy of the judgment by the original court is conclusive evidence that such judgment was capable of execution in the country of the original court at the time when the certified copy was issued.

As soon as the judgment is registered, the English court has the same control and jurisdiction over the execution of the judg-

ment as if it had been a judgment emanating from an English court. Any copy of a judgment certified by the original court and attested with its seal is accepted in England without further legalization.

Both conventions provide that no security for costs or *cautic judicatum solvi* shall be required of any person who makes application for registration or for the grant of *exequatur*. Registration must be made within six years from the date of the judgment of the original court.

Any difficulties which may arise in connection with the interpretation or application of the conventions shall be settled through the diplomatic channel without allowing, however, that the decisions of their respective courts shall be reopened.

The conventions were ratified by the High Contracting Parties in 1936 and were thereafter deemed to remain in force for three years after which either party may give six months' notice to terminate them".

AUSTRALIA

(4) The Australian Service and Execution of Process Act, 1901-1934.

In 1901, the Australian Parliament enacted the Service and Execution of Process Act, Part IV of which provides for direct enforcement of the judgments of all courts of record of the Australian States in sister States of the Commonwealth. Procedure under the Act is simple. Suppose 'A' secures a judgment against 'B' in New South Wales and desires to enforce it in Victoria. On 'A's demand the proper officer of the New South Wales court must issue a certificate of judgment signed by him and bearing the seal of the court. Within twelve months after the date of the judgment, 'A' can have his certificate registered by the proper officer of the Victoria Court in a book kept by him known as "The Australian Register of Judgments". Registration is merely a ministerial act and the officer is bound to register the judgment, and has no power to inquire into the validity of the judgment. After twelve months have elapsed 'A' must get leave to register his certificate from the Victoria Court. Such a proceeding being judicial, the validity of the New South Wales judgment may be put in issue, and if the

judgment is found to be invalid, it will be denied registration. After the certificate is registered, 'A' upon filing in the Victoria court an affidavit stating that the amount for which he desires execution is unpaid, will be issued an execution for the amount to which he has sworn, unless 'B' meanwhile has secured a stay of proceedings from that court.

In a New South Wales case where, twelve months having elapsed after the date of the judgment of a sister state, an *ex parte* order giving leave to register a certificate of judgment was issued. The order was set aside on appeal on the ground that the judgment was invalid for want of jurisdiction in the sister state. In this case the defendant resided in New South Wales and was served there under the provisions of Parts I and II of the Act. He had neither entered an appearance nor in any way assented to the jurisdiction of the sister state. There does not appear to have been a decision on the point, but it seems inevitably to follow that if a certificate of a similarly invalid judgment is registered within the twelve-month period by the clerical officer of the court, the defendant should be able to secure a stay of proceedings at any time prior to execution. Lack of jurisdiction in the sister state would seem to be a sufficient cause to move a court to exercise the discretion which the Act confers to order a permanent stay.

(5) New South Wales Administration of Justice Act, 1924, Part II.

Typical of the legislation enacted by the Australian states to enable them to be brought under the reciprocal operation of the English Administration of Justice Act, 1920, is the New South Wales Act of similar title. It is in substance and procedure a copy of the corresponding English Act, with modification to suit local exigencies and peculiarities of administration. It is made expressly applicable or self-executory to judgments of courts of the United Kingdom, which for this purpose is declared not to include either the Irish Free State or Northern Ireland. It does not apply to sister States or territories or mandatories of the dominion of Australia, and applies to dominions, colonies' protectorates, and mandated territories of the British Empire only when declared by executive proclamation to do so. New Zealand was proclaimed within the Act in 1925, as having enacted a corresponding statute in 1922. It is interesting to observe that in any action in any court

in New South Wales on any foreign judgment which might be registered under this Act, the plaintiff is, in the discretion of the court, not to have costs unless he has previously been refused its registration.

CANADA

(6) The Uniform Reciprocal Enforcement of Judgments Act

A draft Uniform Reciprocal Enforcement of Judgments Act was approved by the Conference of Commissioners on uniformity of legislation in Canada in 1924 and amended in 1925 providing for the reciprocal direct enforcement of the money judgments of the courts of the Canadian provinces and territories *inter se*. It has since been enacted by the provincial legislatures of Saskatchewan, British Columbia, New Brunswick, Ontario and Alberta. The Alberta statute was amended in 1935 with a view to taking advantage of the English Foreign Judgments (Reciprocal Enforcement) Act, 1933, by enabling that statute to be extended not only to the courts of other provinces but to those "in the United Kingdom of Great Britain and Northern Ireland or in any of His Majesty's protection in any territory in respect of which mandate has bee accepted by His Majesty or in any foreign country". It should be noted that by its terms the Uniform Act does not, on enactment by a provincial legislature, become *ipso facto* operative with respect to judgments of other provinces where the Act is in force. The Act provides that when satisfied that reciprocal provision has been or will be made by another province the Lieutenant-Governor may, by order in council, direct that it shall apply to that province.

Registration under this Act, like that under the English Act of 1920, must be secured by applying to the court of the province in which registration is sought, for an order. The judgment may be registered by filing with the proper officer of the registering court an exemplification or a certified copy of the judgment, together with the order for such registration, whereupon the same shall be entered as a judgment of the registering court and be of the same force and effect.

Like the earlier English acts, but unlike the Foreign Judgments (Reciprocal Enforcement) Act, 1933, this uniform Canadian Act

does not provide for an exclusive method of enforcement. Registerable judgments of sister provinces may still be enforced by action. Further, this Act contains a provision not found in the English Act, Section 4 reads as follows:—

4. No judgment shall be ordered to be registered under this Act if it is shown to the registering court that—

(a) The original court acted without jurisdiction; or

(b) The judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; or

(c) The judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

(d) The judgment was obtained by fraud; or

(e) An appeal is pending, or the judgment debtor is entitled and intends to appeal, against the judgment; or

(f) The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason would not have been entertained by the registering court; or

(g) The judgment debtor would have a good defence if an action were brought on the original judgment."

Clause (g) is the one peculiar to the Canadian statutes, and the Supreme Courts of both Alberta and Ontario have held that unless a foreign (in both cases British Columbia) judgment is one which would be enforced by action thereon at common law, it cannot be registered under the Act. In both cases the British Columbia judgments were refused because the judgments were rendered without jurisdiction in the international sense over the defendants.

It was in the Ontario case that section 4, clause (g) was given especially restrictive force. The applicant for registration had

secured a default money judgment against the defendant in British Columbia, who had been personally served with the British Columbia writ in Ontario, but had never appeared. The defendant had never resided in British Columbia, but had made periodic selling trips to that province on behalf of the firm of which he was the sole proprietor. The court was of opinion that this was not "carrying on business" within Section 4, Clause (b) of the Act, and that even if it were , it would not be a valid answer to a defence of lack of jurisdiction raised under the terms of clause (g). The Court expressed itself as follows:—

> The Act is modelled to some extent upon Part 2 of the English Administration of Justice Act, 1920, (10-11 Geo V., Ch. 81, secs. 9-14) except that there are not provisions in that Act corresponding to clause (g) of sec. 4 of the Ontario Statute. Subject to that, as pointed out in Dicey's *Conflict of Laws*, 5th ed., p. 482, the cases in which registration is forbidden agree in general with those in which recognition would be refused to judgments of foreign courts. The author is of the opinion that under the English Act it is sufficient if the foreign court had exercised jurisdiction against an absentee defendant on the ground of his carrying on business. That would appear to be the meaning of the Ontario Act were it not for clause (g) of sec. 4, as, wherever reciprocal legislation has been enacted and made applicable, it seems to have been the intention that the ordinary rules of international law as to the recognition to be given to foreign judgments should be relaxed in cases where a non-appearing defendant in the foreign court had carried on business within the jurisdiction of such court. As "carrying on business" is not a basis of jurisdiction *in personam* over an individual at common law, registration of the judgment was refused. The question of jurisdiction is now governed in Saskatchewan by the Uniform Foreign Judgments Act, which is supplementary to the Reciprocal Enforcement Act concerning the validity of all foreign judgments. In other provinces, the Alberta and Ontario decisions should be followed.

Finally, emphasis should be put upon (a) the reciprocal nature of this legislation and (b) the fact that it does not affect either the existing common law or legislation of a province with regard to: (i) actions brought there upon non-registerable judgments, obtained in provinces which have not been brought within the Act or in other foreign law districts; and (ii) actions brought upon registerable judgments, secured in provinces which have come within the Act, as distinguished from applications for their registration.

NEW ZEALAND

(7) New Zealand Reciprocal Enforcement of Judgments Act, 1934.

New Zealand, which had been within the scope of the English Administration of Justice Act, 1920, by virtue of enacting its own statute of like name and effect passed in 1922, was the first dominion to copy and bring itself under the English Foreign Judgments (Reciprocal Enforcement) Act, 1933. The Dominion Parliament expressly made its Reciprocal Enforcement of Judgments Act, 1934, applicable to judgments of courts of the United Kingdom. It likewise, while repealing the Act of 1922, brought within the operation of the new statute those units of the British Empire which had been previously proclaimed to be within that Act. Otherwise the substance of the purview of the New Zealand legislation is the same as that of the English Act of 1933. It, too, may be extended to include reciprocally the judgments of law districts politically as well as legally foreign to the British Empire, in addition to those merely legally foreign within the Empire.

THE RECORDING OF EVIDENCE AND THE SERVICE OF PROCESS IN CIVIL SUITS IN EACH OTHER'S COUNTRIES

Recording of Evidence

Evidence may be taken without the intervention of the legal authorities by examiners, consular authorities or by any person. There is no legal bar or objection to evidence being taken in this country for use abroad without intervention of the authorities here. Any foreign court is, therefore, at liberty in accordance with the laws of its country to appoint a Examiner, Diplomatic Agent or any other person who takes evidence provided the witnesses are willing to attend to give evidence. The evidence so recorded should be returned to the foreign court without any assistance from the local authorities.

There is provision in the Foreign Tribunals Evidence Act, 1856, which enables any court or tribunal of competent jurisdiction in a foreign country before which a civil or commercial matter is pending to obtain testimony of any witness in Ceylon by application to the Supreme Court. The Supreme Court is empowered to command the attendance of the witness, to order his examination and to order the production of documents. The examination can take place before any person nominated in the order of the court.

There is provision in the Evidence by Commission Act, 1859, which provides that where a court or tribunal of competent jurisdiction in Her Majesty's Dominion has issued a commission, order or other process for obtaining a testimony of any witness in Ceylon, our Court is empowered to order the examination of the witness before the person appointed. Our court is also given the power to command his attendance and to order the production of documents.

There is also provision in the Evidence by Commission Act of 1885 which states that where, in any civil proceedings in any court of competent jurisdiction an order for the examination of any witness or person has been made and a commission, *mandamus*, order or request of said examination is addressed to any court in Ceylon, it shall be lawful for our courts to nominate such fit person to take such examination.

The procedure for applications under these provisions are set out in the rules called "Rules under the Tribunals Evidence Act". Application could be made by Commission Rogatoire or Letters of Request or by the Certificate of an Ambassador or Diplomatic Agent and it should be made on an application of any person shown to be duly authorised to make on application on behalf of such foreign court or tribunal and on production of the Commission Rogatoire or Letter of Request or of the Certificate referred to above. The rules also permit the Attorney-General to make such an application when it is desirable that the request should be given effect to without requiring an application to be made to the court by agents in Ceylon of any of the parties to the action or matter in the foreign country.

The provisions in our Civil Procedure Code relating to Commissions to examine witnesses locally are made applicable by Section 427 of the said Code to commission issued by—

(a) Court situate within the limits of the Republic of India.

(b) Court situate in any country in the Commonwealth other than the Republic of India.

(c) Courts of any foreign country that the.....being in alliance of Her Majesty.

SERVICE OF FOREIGN PROCESS

This has been a subject which has been dealt with from time to time by the Hague Conferences on Private International Law. The General Convention on Civil Procedure of 1954 dealt partly with this problem, and it was considered in greater detail by the Ninth Conference held in October 1960. At this Conference the International Union of Huyssiers De Justice and Judicial Officers had presented a memorandum which set out some of the present difficulties and proposed certain practical solutions. One of the difficulties, for example, is the procedure which is adopted in France and certain other countries whereby service of process can be made from a foreign defendant by giving notice of the proceedings with the French Parquet. The Memorandum of the Process Servers cited several instances to support their contention that a formal technical service of this kind was sufficient to bind the defendant even though notice of the proceedings never reached him until after judgment. The judgment was unimpeachable on the ground that the defendant had never been properly notified. This and other cases persuaded to permit the whole question of service of process to be stated to the Permanent Bureau of the Conference. This appears to be a case in which a good deal of useful work could be done by direct negotiation between the countries concerned. The solution proposed for service of process not only by diplomatic means but also by the transmission of copies direct to process servers in the defendants' countries of residence would seem to indicate a sensible and practical solution. Section 69 of our Civil Procedure Code states that a service of summons may be allowed in all cases where the court has jurisdiction. The court can describe the mode of service where

summons is allowed. The usual modes of service are the following depending whether or not they are available in each country.

(1) Service by an Agent for National Intervention.

(2) Service by the Government of the foreign country:

(3) Service in terms of any convention.

Provisions in our law relating to service abroad are contained in the "Rules of Court relating to execution of Letters of Request for Service of Foreign Process". It provides that in any civil or criminal matter, a court or tribunal of a foreign country can send to the Supreme Court a Letter of Request of any process or citation for service of any person in Ceylon.

The Rules state that the service of process of citation, unless... the Supreme Court otherwise directs shall be effected by the Fiscal. Process would be served in accordance with the provision of the Civil Procedure Code regulating the service of process as far as they are practicable.

ANNEXURE II

BURMESE LAW

I. ENFORCEMENT OF FOREIGN JUDGMENTS

Section 13 of the Civil Procedure Code is in the following terms:—

"A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties, or between parties under whom they or any of them claim, litigating under the same title, except—

(a) where it has not been pronounced by a court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of the Union of Burma in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in the Union of Burma.

Section 14 provides that "The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record, but such presumption may be displaced by proving want of jurisdiction."

HOW A FOREIGN JUDGMENT MAY BE ENFORCED

A foreign judgment may be enforced by proceedings in execution in cases specified in section 44A of the Code of Civil Procedure. The section is as follows:—

"44A-Execution of decrees passed by Courts in reciprocating territory.

(1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in the Union of Burma as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1—'Reciprocating territory' means any country or territory, which the President may, from time to time, by notification in the Gazettee, declare to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such courts as may be specified in the said notification.

Explanation 2—'Decree', with reference to a superior court, means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such award is enforceable as a decree or judgment."

In all other cases, a foreign judgment can be enforced by a suit upon the judgment. The suit must be brought within 6 years from the date of the judgment (Limitation Act—Article 117). If a decree is passed in favour of the plaintiff, he may proceed to execute it by attachment and sale of the defendant's property. The court will not enquire whether the foreign judgment is correct in fact or in law [1951 B.L.R. (H.C.) 399]. The general rule is that a

court which entertains a suit on a foreign judgment cannot enquire into the merits of the original action or the propriety of the decision.

II. SERVICE OF SUMMONS ISSUED BY A FOREIGN COURT

Section 29 of the Civil Procedure Code is as follows:—

"Summonses issued by any civil or revenue court situate beyond the limits of the Union of Burma may be sent to the courts in the Union of Burma and served as if they had been issued by such courts.

Provided that the President of the Union has, by notification in the Gazette, declared the provisions of this section to apply to such courts. There is a reciprocal arrangement between Burma and Pakistan. In respect of India, arrangements are being negotiated.

III. RECORDING OF EVIDENCE REQUIRED IN FOREIGN JUDICIAL PROCEEDINGS IN CIVIL AND CRIMINAL CASES

The provisions as to the execution and return of commissions for the examination of witnesses issued by the courts in Burma apply to commissions issued by or at the instance of courts of any foreign country.

Order XXVI Rule 27 of the Civil Procedure Code deals with the subject of commissions issued at the instance of Foreign Tribunals in Civil matters. It reads:—

"27.(1) If the High Court is satisfied—

(a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,

(b) that the proceeding is of a civil nature, and

(c) that the witness is residing within the limits of the High Court's appellate jurisdiction,

it may issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)—

(a) by a certificate signed by the consular officer of the foreign country of the highest rank in the Union of Burma and transmitted to the High Court through the President of the Union, or

(b) by a letter of request issued by the foreign court and transmitted to the High Court through the President of the Union, or

(c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceeding."

ANNEXURE—III

INDIAN LAW*

1. RECOGNITION AND RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS

A foreign judgment, as such, has no force or authority in India. But it can be the subject-matter of a suit if the same is filed within the period of limitation provided in Article 117 of the Indian Limitation Act. The effect of a foreign judgment is stated in Section 13 of the Civil Procedure Code, 1908. A party who has obtained a judgment in a foreign court can sue upon it in the Indian courts, and the foreign judgment will be conclusive in the Indian courts unless it comes within the exceptions mentioned in clauses (a) to (f) of Section 13 of the Civil Procedure Code. The procedure for obtaining relief is by way of a suit on the original side and not by way of an application unless the judgment is one to which Section 44-A of the Civil Procedure Code applies. Section 44-A of the Civil Procedure Code provides for the enforcement of judgments of certain countries known as reciprocating territories—countries who have entered into arrangements with the Government of India for reciprocal enforcement of judjments. No suit is necessary for the enforcement of judgments rendered by the courts of reciprocating territories. The procedure of enforcing them is the same as that for enforcing a decree of an Indian court. The plaintiff files an application for execution under section 44-A. But, in this case also, the foreign judgment, in order to be enforceable, must satisfy Section 13 of the Civil Procedure Code. If the judgment comes under the exceptions (a) to (f) of Section 13, it will be refused execution by the Indian courts.

Therefore, a foreign judgment, in order to obtain recognition and enforcement in the Indian courts, must satisfy certain conditions specified in Section 13 of the Civil Procedure Code. If such a judgment is from a reciprocating territory, it can be enforced directly, i.e. by filing an application for execution under Section 44-A. A judgment from any other foreign country can be enforced, not directly, but by bringing an action making the foreign judgment

*Prepared by the Secretariat of the Committee.