there has been great diversity of opinion. On the one hand it is said, that, by the recovery of judgment in trespass for the full value, the title to the property is vested in the defendant, the judgment being a security for the price; and that the plaintiff cannot take them again, and therefore cannot recover the value of another.[1] On the other hand, it is argued, that the rule of *transit in rem judicatam*, extends no farther than to bar another action for the same cause against the same party;[2] that, on principle, the original judgment can imply nothing more than a promise by the defendant to pay the amount, and an agreement by the plaintiff, that, upon payment of the money by the defendant, the chattel shall be his own; and that it is contrary to justice, and the analogies of the law, to deprive a man of his property without satisfaction, unless by his express consent. *Solutio pretii emptionis loco habetur.* The weight of authority seems in favor of the latter opinion.[3]

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[1] Broome *v.* Wooton, Yelv. 67; Adams *v.* Broughton, 2 Stra. 1078; Andrews, 18, S. C.; White *v.* Philbrick, 5 Greenl. 147; Rogers *v.* Thompson, 1 Rice, 60.

[2] Drake *v.* Mitchell, 3 East, 258; Campbell *v.* Phelps, 1 Pick. 70, per Wilde, J.

[3] Putt *v.* Rawstern, 3 Mod. 1; Jenk. Cent. p. 189; 1 Shep. Touchst. 227; More *v.* Watts, 12 Mod. 428; 1 Ld. Raym. 614, S. C.; Luttrell *v.* Reynell, 1 Mod. 282; Bro. Abr. tit. *Judgm.* pl. 98; Moreton's case, Cro. El. 30; Cooke *v.* Jenner, Hob. 66; Livingston *v.* Bishop, 1 Johns. 290; Rawson *v.* Turner, 4 Johns. 425; 2 Kent, Comm. 388; Curtis *v.* Groat, 6 Johns. 168; Corbett et al. *v.* Barnes, W. Jones, 377; Cro. Car. 443; 7 Vin. Abr. 341, pl. 10, S. C.; Barb *v.* Fish, 5 West. Law Journ. 278. The foregoing authorities are cited as establishing *principles* in opposition to the doctrine of Broome *v.* Wooton. The following cases are *direct adjudications* to the contrary of that case. Sanderson *v.* Caldwell, 2 Aiken, 195; Osterhout *v.* Roberts, 8 Cowen, 43; Elliot *v.* Porter, 5 Dana, 299. See also Campbell *v.* Phelps, 1 Pick. 70, per Wilde, J.; Claxton *v.* Swift, 2 Show. 441, 494; Jones *v.* McNeil, 2 Bail. 466; Cooper *v.* Shepherd, 3 M. G. & S. 266. The just deduction from all the authorities, as well as the right conclusion upon principle, seems to be this; that the judgment in trespass or trover will not *transfer the title* of the goods to the defendant, although it is pleadable in bar of any action afterwards brought by the same plaintiff, or those in

§ 534. It is not necessary, to the conclusiveness of the former judgment, that *issue* should have been *taken upon the precise point*, which is controverted in the second trial; it is sufficient, if that point was essential to the finding of the former verdict. Thus, where the parish of Islington was indicted and convicted for not repairing a certain highway, and afterwards the parish of St. Pancras was indicted for not repairing the same highway, on the ground, that the line dividing the two parishes ran along the middle of the road; it was held, that the former record was admissible and conclusive evidence for the defendants in the latter case, to show that the road was wholly in Islington; for the Jury must have found that it was so, in order to find a verdict against the defendants.[1]

§ 535. We have already observed, in general, that *parties in the larger legal sense*, are all persons having a right to control the proceedings, to make defence, to adduce and cross-examine witnesses, and to appeal from the decision, if any appeal lies. Upon this ground, the lessor of the plaintiff in

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privity with him, against the same defendant, or those in privity with him. See 3 Am Law Mag. p. 49–57. And as to the original parties, it seems a just rule, applicable to all personal actions, that wherever two or more are liable *jointly*, and *not severally*, a judgment against one, though without satisfaction, is a bar to another action against any of the others for the same cause; but it is not a bar to an action against a stranger As far as an action in the form of tort can be said to be exclusively joint in its nature, this rule may govern it; but no farther. This doctrine, as applicable to joint contracts, has been recently discussed in England, in the case of King *v.* Hoare, 13 M. & W. 494, in which it was held that the judgment against one alone was a bar to a subsequent action against the other.

[1] Rex *v.* St. Pancras, Peake's Cas 219; 2 Saund. 159, note (10), by Williams. So, where upon a complaint for flowing the plaintiff's lands, under a particular statute, damages were awarded for the past, and a prospective assessment of damages made, for the future flowage; upon a subsequent application for an increase of the assessment, the defendant was precluded from setting up a right in himself to flow the land, for the right must necessarily have been determined in the previous proceedings. Adams *v.* Pearson, 7 Pick. 341.

ejectment, and the tenant, are the real parties to the suit, and are concluded in any future action in their own names, by the judgment in that suit.[1] So, if there be a trial between B.'s lessee and E., who recovers judgment; and afterwards another trial of title to the same lands, between E.'s lessee and B., the former verdict and judgment will be admissible in evidence in favor of E.'s lessee against B.; for the real parties in both cases were B. and E.[2]

§ 536. The case of *privies*, which has already been mentioned, is governed by similar principles to those which have been stated in regard to admissions;[3] the general doctrine being this, that the person who represents another, and the person who is represented, have a legal identity, so that whatever binds the one in relation to the subject of their common interest, binds the other also. Thus, a verdict and judgment for or against the ancestor bind the heir.[4] So, if several successive remainders are limited in the same deed, a judgment for one remainder man is evidence for the next in succession.[5] But a judgment, to which a tenant for life was a party, is not evidence for or against the reversioner, unless he came into the suit upon *aid prayer*.[6] So, an assignee is bound by a judgment against the assignor, prior to the assignment.[7] There is the like privity between the ancestor and all claiming under him, not only as heir, but as tenant in dower,

[1] Doe *v.* Huddart, 2 Cr. M. & R. 316, 322; Doe *v.* Preece, 1 Tyrw. 410; Aslin *v.* Parkin, 2 Burr. 665; Wright *v.* Tatham, 1 Ad. & El. 3, 19; Bull. N. P. 232; Graves *v* Joice, 5 Cowen, 261, and cases there cited.

[2] Bull. N. P. 232; Calhoun *v.* Dunning, 4 Dall. 120. So a judgment in trespass against one who justifies as the servant of J. S., is evidence against another defendant in another action, it appearing that he also acted by the command of J. S, who was considered the real party in both cases. Kinnersley *v.* Orpe, 2 Doug. 517; 1 Doug. 56.

[3] Ante, § 180, 189, 523.

[4] Locke *v.* Norborne, 3 Mod. 141.

[5] Bull. N. P. 232; Pyke *v.* Crouch, 1 Ld. Raym. 730.

[6] Bull. N. P. 232.

[7] Adams *v.* Barnes, 17 Mass. 365.

tenant by the curtesy, legatee, devisee, &c.[1] A judgment of ouster, in a *quo warranto*, against the incumbent of an office, is conclusive evidence against those who derive their title to office under him.[2] Where one sued for diverting water from his works, and had judgment; and afterwards he and another sued the same defendants for a similar injury; the former judgment was held admissible in evidence for the plaintiffs, being *primâ facie* evidence of their privity in estate with the plaintiff in the former action.[3] The same rule applies to all grantees, they being in like manner bound by a judgment concerning the same land, recovered by or against their grantor, prior to the conveyance.[4]

§ 537. Upon the foregoing principles, it is obvious that, as a general rule, a verdict and judgment in a *criminal case* cannot be given in evidence in a civil action, to establish the facts on which it was rendered.[5] If the defendant was convicted, it may have been upon the evidence of the very plaintiff in the civil action; and if he was acquitted, it may have been by collusion with the prosecutor. But besides this, and upon more general grounds, there is no mutuality; the parties are not the same; neither are the rules of decision and the course of proceeding the same. The defendant could not avail himself, in the criminal trial, of any admissions of the plaintiff in the civil action; and, on the other hand, the Jury in the civil action must decide upon the mere preponderance of evidence, whereas, in order to a criminal conviction, they

[1] Locke *v.* Norborne, 3 Mod. 141; Outram *v.* Morewood, 353.

[2] Rex *v.* Mayor, &c. of York, 5 T. R. 66, 72, 76; Bull. N. P. 231; Rex *v* Hebden, 2 Stra. 1109, n. (1).

[3] Blakemore *v.* Glamorganshire Canal Co. 2 C. M. & R. 133.

[4] Foster *v.* E. of Derby, 1 Ad. & El. 787, per Littledale, J.

[5] In one case it was held, that the deposition of a witness, taken before the coroner, on an inquiry touching the death of a person killed by a collision between two vessels, was receivable in evidence, in an action for the negligent management of one of them, if the witness be shown to be beyond sea. Sills *v.* Brown, 9 C. & P. 601, per Coleridge, J. But *quære*, and see 2 Phil. Evid. 74, 75; Post, § 553.

must satisfied of the party's guilt, beyond any reasonable doubt. The same principles render a judgment in a *civil action* inadmissible evidence in a criminal prosecution.[1]

538. But, as we have before remarked,[2] the verdict and judgment in any case are always admissible to *prove the fact*, that the *judgment was rendered*, or the *verdict given;* for there is a material difference between proving the existence of the record and its tenor, and using the record as the medium of proof of the matters of facts recited in it. In the former

[1] 1 Stark. Evid. 231; 2 Phil. Evid. 23; Jones *v.* White, 1 Stra. 68, per Pratt, J. Some of the older authorities have laid much stress upon the question whether the plaintiff in the civil action was or was not a witness on the indictment. Upon which Parke, B., in Blakemore *v.* Glamorganshire Canal Co., 2 C. M. & R. 139, remarked as follows; — "The case being brought within the general rule, that a verdict on the matter in issue is evidence for and against parties and privies, no exception can be allowed in the particular action, on the ground, that a circumstance occurs in it, which forms one of the reasons why verdicts between different parties are held to be inadmissible; any more than the absence of all such circumstances, in a particular case, would be allowed to form an exception to the general rule, that verdicts between other parties cannot be received. It is much wiser and more convenient for the administration of justice, to abide as much as possible by general rules" A record of judgment in a criminal case, upon a plea of guilty, is admissible in a civil action against the party, as a solemn judicial confession of the fact; and, according to some authorities, it is conclusive. But its conclusiveness has since been doubted; for the plea may have been made to avoid expense. See Phil. & Am. on Evid. 523, n. (4); 2 Phil. Evid. 25; Bradley *v.* Bradley, 2 Fairf. 367. But the plea of *nolo contendere* is an admission for that trial only; and is not admissible in a subsequent action. Commonwealth *v.* Horton, 9 Pick. 206; Guild *v.* Lee, 3 Law Reporter, p. 433; Ante, § 179, 216. In Regina *v.* Moreau, 36 Leg. Obs. 69, which was an indictment for perjury in an affidavit, in which the defendant had sworn that the prosecutor was indebted to him in £40, and the civil suit being submitted to arbitration, the arbitrator awarded that nothing was due, the award was offered in evidence against the prisoner as proof of the falsity of his affidavit; but the Court held it as merely the declaration of the arbitrator's opinion, and therefore not admissible in a criminal proceeding.

[2] Ante, § 527.

case, the record can never be considered as *res inter alios acta;* the judgment being a public transaction, rendered by public authority, and being presumed to be faithfully recorded. It is therefore the only proper legal evidence of itself, and is conclusive evidence of the fact of the rendition of the judgment, and of all the legal consequences resulting from that fact, whoever may be the parties to the suit, in which it is offered in evidence. Thus, if one indicted for an assault and battery has been acquitted, and sues the prosecutor for malicious prosecution, the record of acquittal is evidence for the plaintiff, to establish that fact, notwithstanding the parties are not the same. But if he were convicted of the offence, and then is sued in trespass for the assault, the record in the former case would not be evidence to establish the fact of the assault; for as to the matters involved in the issue, it is *res inter alios acta.*[1]

§ 539. The *distinction* between the admissibility of a judgment *as a fact*, and as *evidence of ulterior facts*, may be farther *illustrated* by the instances in which it has been recognised. Thus, a judgment against the sheriff for the misconduct of his deputy, is evidence against the latter of the fact that the sheriff has been compelled to pay the amount awarded, and for the cause alleged; but it is not evidence of the fact upon which it was founded, namely, the misconduct of the deputy, unless he was notified of the suit and required to defend it.[2] So it is in other cases, where the officer or party has a remedy over.[3] So, where the record is matter of inducement, or necessarily introductory to other evidence; as, in an action against the sheriff for neglect in regard to an execution;[4] or, to show the testimony of a witness upon a

[1] 1 Stark. Evid. 213.

[2] Tyler *v.* Ulmer, 12 Mass. 166, per Parker, C. J.

[3] Kip *v.* Brigham, 6 Johns. 158; 7 Johns. 168; Griffin *v.* Brown, 2 Pick. 304.

[4] Adams *v.* Balch, 5 Greenl. 188.

former trial;[1] or, where the judgment constitutes one of the muniments of the party's title to an estate; as, where a deed was made under a decree in Chancery,[2] or, a sale was made by a sheriff, upon an execution.[3] So, where a party has concurrent remedies against several, and has obtained satisfaction upon a judgment against one, it is evidence for the others.[4] So, if one be sued alone, upon a joint note by two, it has been held, that the judgment against him may be shown by the defendants, in bar of a second suit against both, for the same cause, to prove that as to the former defendant the note is extinct.[5] So, a judgment *inter alios* is admissible to show the character in which the possessor holds his lands.[6]

§ 539 *a*. But where the *contract is several as well as joint*, it seems that the judgment in an action against one is no bar to a subsequent action against all; nor is the judgment against all, jointly, a bar to a subsequent action against one alone. For when a party enters into a joint and several obligation, he in effect agrees that he will be liable to a joint action, and to a several action for the debt. In either case, therefore, the bar of a former judgment would not seem to apply; for in a legal sense it was not a judgment between the same parties, nor upon the same contract. The contract, it is said, does not merely give the obligee an election of the one remedy or the other, but entitles him at once to both, though he can have but one satisfaction.[7]

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[1] Clarges *v.* Sherwin, 12 Mod. 343; Foster *v.* Shaw, 7 S. & R. 156.

[2] Barr *v.* Gratz, 4 Wheat. 213.

[3] Witmer *v.* Schlatter, 2 Rawle, 359; Jackson *v.* Wood, 3 Wend. 27, 34; Fowler *v.* Savage, 3 Conn. 90, 96.

[4] Farwell *v.* Hilliard, 3 N. Hamp. 318.

[5] Ward *v.* Johnson, 13 Mass. 148. See also Lechmere *v.* Fletcher, 1 C. & M. 623, 634, 635, per Bayley, B.

[6] Davis *v.* Loundes, 1 Bing. N. C. 607, per Tindal, C. J. See further, Ante, § 527 *a*; Wells *v.* Compton, 3 Rob. Louis. R. 171.

[7] The United States *v.* Cushman, 2 Sumn. R. 426, 437–441, per Story, J. See also Sheehy *v.* Mandeville, 6 Cranch, 253, 265; Lechmere *v.* Fletcher, 1 C. & M. 623, 634, 635, per Bayley, B.

§ 540. In regard to *foreign judgments*, they are usually considered in two general aspects; first, as to judgments *in rem*, and secondly, as to judgments *in personam*. The latter are again considered under several heads; first, where the judgment is set up by way of defence to a suit in a foreign tribunal; secondly, where it is sought to be enforced in a foreign tribunal against the original defendant, or his property; and thirdly, where the judgment is either between subjects, or between foreigners, or between foreigners and subjects.[1] But in order to found a proper ground of recognition of a foreign judgment, under whichsoever of these aspects it may come to be considered, it is indispensable to establish, that the Court which pronounced it had a lawful jurisdiction over the cause, over the thing, and over the parties. If the jurisdiction fails as to either, it is treated as a mere nullity, having no obligation, and entitled to no respect beyond the domestic tribunals.[2]

§ 541. As to *foreign judgments in rem*, if the matter in controversy is land, or other *immovable property*, the judgment pronounced in the *forum res sitæ* is held to be of universal obligation, as to all the matters of right and title which it professes to decide in relation thereto.[3] "The same principle," observes Mr. Justice Story,[4] "is applied to all other cases of proceedings *in rem*, where the subject is *movable property*, within the jurisdiction of the Court pronouncing the judgment.[5] Whatever the Court settles as to the right or title, or whatever disposition it makes of the property by sale, revendication, transfer, or other act, will be held valid in every

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[1] In what follows on the subject of foreign judgments, I have simply transcribed and abridged what has recently been written by Mr. Justice Story, in his learned Commentaries on the Conflict of Laws, ch. 15, (2d Ed.)

[2] Story, Confl. Laws, § 584, 586; Rose *v.* Himely, 4 Cranch, 269, 270, per Marshall, C. J.; Smith *v.* Knowlton, 11 N. Hamp. R. 191; Rangely *v.* Webster, Ibid. 299.

[3] Story, Confl. Laws, § 532, 545, 551, 591.

[4] Story, Confl. Laws, § 592. See also Ib. § 597.

[5] See Kaims on Equity, B. 3, ch. 8, § 4.

other country where the same question comes directly or indirectly in judgment before any other foreign tribunal. This is very familiarly known in the cases of proceedings *in rem* in foreign Courts of Admiralty, whether they are causes of prize, or of bottomry, or of salvage, or of forfeiture, or of any the like nature, over which such Courts have a rightful jurisdiction, founded on the actual or constructive possession of the subject-matter.[1] The same rule is applied to other Courts proceeding *in rem*, such as to the Court of Exchequer in England, and to other Courts exercising a like jurisdiction *in rem* upon seizures.[2] And in cases of this sort it is wholly immaterial, whether the judgment be of acquittal or of condemnation. In both cases it is equally conclusive.[3] But the doctrine, however, is always to be understood with this limitation, that the judgment has been obtained *bonâ fide* and without fraud; for if fraud has intervened, it will doubtless avoid the force and validity of the sentence.[4] So it must appear that there have

[1] Croudson *v.* Leonard, 4 Cranch, 434; Williams *v.* Armroyd, 7 Cranch, 423; Rose *v.* Himely, 4 Cranch, 241; Hudson *v.* Guestier, 4 Cranch, 293; The Mary, 9 Cranch, 126, 142–146; 1 Stark. Evid. p. 246, 247, 248; Marshall on Insur. B. 1, ch. 9, § 6, p. 412, 435; Cases cited in 4 Cowen, 520, n. 3; Grant *v.* McLachlin, 4 Johns. 34; Peters *v.* The Warren Ins. Co. 3 Sumner, 389; Blad *v.* Bamfield, 3 Swanst. 604, 605; Bradstreet *v.* Neptune Insur. Co. 3 Sumner, 600; Magoun *v.* New England Insur. Co. 1 Story, R. 157. The different degrees of credit given to foreign sentences of condemnation in prize causes, by the American State Courts, are stated in Cowen & Hill's note 626, to 1 Phil. Evid. 348. See also 2 Kent, Comm. 121. If a foreign sentence of condemnation as prize is manifestly erroneous, as if it professes to be made on particular grounds, which are set forth, but which plainly do not warrant the decree; Calvert *v.* Bovil, 7 T. R. 523; Pollard *v.* Bell, 8 T. R. 444; or, on grounds contrary to the law of nations; 3 B. & P. 215, per Ld. Alvanley, C. J.; or, if there be any ambiguity as to what was the ground of condemnation; it is not conclusive. Dalgleish *v.* Hodgson, 7 Bing. 495, 504; 2 Phil. Evid. 52.

[2] Ibid.; 1 Stark. on Evid. p. 228–232, 246, 247, 248; Gelston *v.* Hoyt, 3 Wheaton, 246; Williams *v.* Armroyd, 7 Cranch, 423.

[3] Ibid.

[4] Duchess of Kingston's case, 11 State Trials, p. 261, 262; S. C. 20 Howell, State Trials, p. 355; Id. p. 538, the opinion of the Judges; Brad-

been regular proceedings to found the judgment or decree; and that the parties in interest *in rem* have had notice, or an opportunity to appear and defend their interests, either personally, or by their proper representatives, before it was pronounced; for the common justice of all nations requires that no condemnation should be pronounced, before the party has an opportunity to be heard."[1]

§ 542. Proceedings also by creditors against the personal property of their debtor, in the hands of third persons, or against debts due to him by such third persons, (commonly called the process of *foreign attachment*, or *garnishment*, or *trustee process*,) are treated as in some sense proceedings *in rem*, and are deemed entitled to the same consideration.[2] But in this last class of cases we are especially to bear in mind, that, to make any judgment effectual, the Court must possess and exercise a rightful jurisdiction over the *Res*, and also over the person, at least so far as the *Res* is concerned; otherwise it will be disregarded. And if the jurisdiction over the *Res* be well founded, but not over the person, except as to the *Res*, the judgment will not be either conclusive or binding upon the party *in personam*, although it may be *in rem*.[3]

§ 543. In all these cases the same principle prevails, that the judgment, acting *in rem*, shall be held *conclusive upon the*

street *v.* The Neptune Insur. Co. 3 Sumner, 600; Magoun *v.* The New England Insur. Co. 1 Story, R. 157. If the foreign Court is constituted by persons interested in the matter in dispute, the judgment is not binding. Price *v.* Dewhurst, 8 Sim. 279.

[1] Sawyer *v.* Maine Fire and Mar. Insur. Co. 12 Mass. 291; Bradstreet *v.* The Neptune Insur. Co. 3 Sumner, 600; Magoun *v.* N. England Insur. Co. 1 Story, R. 157.

[2] See cases cited in 4 Cowen, 520, 521, n.; Story, Confl. Laws, § 549; Holmes *v.* Remsen, 20 Johns. 229; Hull *v.* Blake, 13 Mass. 153; McDaniel *v.* Hughes, 3 East, 366; Phillips *v.* Hunter, 2 H. Black. 402, 410.

[3] Story, Confl. Laws, § 592 *a*. See also Ibid. § 549, and note; Bissell *v.* Briggs, 9 Mass. 468; 3 Burge, Comm. on Col. & For. Law, Pt. 2, ch. 24, p. 1014–1019.

title and transfer and disposition of the property itself, in whatever place the same property may afterwards be found, and by whomsoever the latter may be questioned; and whether it be directly or incidentally brought in question. But it is not so universally settled, that the judgment is conclusive of all the points which are *incidentally* disposed of by the judgment, or of the facts or allegations upon which it professes to be founded. In this respect, *different rules* are adopted by different States, both in Europe and in America. In England, such judgments are held conclusive, not only *in rem*, but also as to all the points and facts which they professedly or incidentally decide.[1] In some of the American States the same doctrine prevails. While in other American States the judgments are held conclusive only *in rem*, and may be controverted as to all the incidental grounds and facts on which they profess to be founded.[2]

§ 544. A similar doctrine has been contended for, and in many cases successfully, in favor of sentences which touch the general *capacity of persons*, and those which concern *marriage* and *divorce*. Foreign Jurists strongly contend that the decree of a foreign Court, declaring the state (*status*) of a person, and placing him, as an idiot, or a minor, or a prodigal, under guardianship, ought to be deemed of universal authority and obligation. So it doubtless would be deemed,

[1] In Blad *v.* Bamfield, decided by Lord Nottingham, and reported in 3 Swanst. 604, a perpetual injunction was awarded to restrain certain suits of trespass and trover for seizing the goods of the defendant (Bamfield) for trading in Ireland, contrary to certain privileges granted to the plaintiff and others. The property was seized and condemned in the Danish Courts. Lord Nottingham held the sentence conclusive against the suits, and awarded the injunction accordingly.

[2] Story, Confl. Laws, § 593. See 4 Cowen, 522, n., and cases there cited; Vandenheuvel *v.* U. Insur. Co. 2 Cain. Cases in Err. 217; 2 Johns. Cases, 451; Id. 481; Robinson *v.* Jones, 8 Mass. 536; Mayley *v.* Shattuck, 3 Cranch, 488; 2 Kent, Comm. Lect. 37, p. 120, 121, 4th edit., and cases there cited; Tarleton *v.* Tarleton, 4 M. & Selw. 20. See Peters *v.* Warren Insur. Co. 3 Sumn. p. 389; Gelston *v.* Hoyt, 3 Wheat. 246.

in regard to all acts done within the jurisdiction of the sovereign whose tribunals pronounced the sentence. But in the United States the rights and powers of *guardians* are considered as strictly local; and no guardian is admitted to have any right to receive the profits, or to assume the possession of the real estate, or to control the person of his ward, or to maintain any action for the personalty, out of the State, under whose authority he was appointed, without having received a due appointment from the proper authority of the State, within which the property is situated, or the act is to be done, or to whose tribunals resort is to be had. The same rule is also applied to the case of *executors* and *administrators*.[1]

§ 545. In regard to *marriages*, the general principle is, that between persons *sui juris*, marriage is to be decided by the law of the place where it is celebrated. If valid there, it is valid every where. It has a legal ubiquity of obligation. If invalid there, it is invalid every where. The most prominent, if not the only known exceptions to this rule, are marriages involving polygamy and incest; those prohibited by the public law of a country from motives of policy; and those celebrated in foreign countries by subjects entitling themselves, under special circumstances, to the benefit of the laws of their own country.[2] As to *sentences confirming marriages*, some English Jurists seem disposed to concur with those of Scotland and America, in giving to them the same conclusiveness, force, and effect. If it were not so, as Lord Hardwicke observed, the rights of mankind would be very precarious. But others, conceding that a judgment of a third country, on the validity of a marriage not within its territories, nor had between subjects of that country, would be entitled to credit

[1] Story, Confl. Laws, § 499, 504, 594; Morrell *v.* Dickey, 1 Johns. Ch. 153; Kraft *v.* Wickey, 4 G. & J. 332. See, as to foreign executors and administrators, cases in Cowen & Hill's note 621, to 1 Phil. Evid. p. 344.

[2] Story, Confl. Laws, § 80, 81, 113.

and attention, deny that it would be universally binding.[1] In the United States, however, as well as in Scotland, it is firmly held, that a *sentence of divorce*, obtained *bonâ fide* and without fraud, pronounced between parties actually domiciled in the country, whether natives or foreigners, by a competent tribunal, having jurisdiction over the case, is valid, and ought to be every where held a complete dissolution of the marriage, in whatever country it may have been originally celebrated.[2]

§ 546. "In the next place, as to *judgments in personam*, which are *sought to be enforced* by a suit in a foreign tribunal. There has certainly been no inconsiderable fluctuation of opinion in the English Courts upon this subject. It is admitted on all sides, that, in such cases, the foreign judgments are *primâ facie* evidence to sustain the action, and are to be deemed right, until the contrary is established;[3] and of course they may be avoided, if they are founded in fraud, or are pronounced by a Court, not having any competent jurisdiction over the cause.[4] But the question is, whether they are not deemed conclusive; or whether the defendant is at liberty to go at large into the original merits, to show that the judgment

[1] Roach *v.* Garvan, 1 Ves. 157; Story, Confl. Laws, § 595, 596; Sinclair *v.* Sinclair, 1 Hagg. Consist. R. 297; Scrimshire *v.* Scrimshire, 2 Hagg. Consist. R. 395, 410.

[2] Story, Confl. Laws, § 597. See also the lucid judgment delivered by Gibson, C. J. in Dorsey *v.* Dorsey, 7 Watts, 350. The whole subject of foreign divorces has received a masterly discussion by Mr. Justice Story, in his Commentaries on the Conflict of Laws, ch. vii. § 200–230 *b*.

[3] See Walker *v.* Witter, 1 Doug. 1, and cases there cited; Arnold *v.* Redfern, 3 Bing. 353; Sinclair *v.* Fraser, cited 1 Doug. 4, 5, note; Houlditch *v.* Donegal, 2 Clark & Finnell. 470; S. C. 8 Bligh, 301; Don *v.* Lippmann, 5 Clark & Finn. 1, 19, 20; Price *v.* Dewhurst, 8 Sim. 279; Alivon *v.* Furnival, 1 Cromp. Mees. & Rosc. 277; Hall *v.* Odber, 11 East, 118; Ripple *v.* Ripple, 1 Rawle, 386.

[4] See Bowles *v.* Orr, 1 Younge & Coll. 464; Story, Confl. Laws, § 544, 545–550; Ferguson *v.* Mahon, 3 Perry & Dav. 143; Price *v.* Dewhurst, 8 Simons, 279, 302; Don *v.* Lippmann, 5 Clark & Finn. 1, 19, 20, 21.

ought to have been different upon the merits, although obtained *bonâ fide*. If the latter course be the correct one, then a still more embarrassing consideration is, to what extent, and in what manner, the original merits can be properly inquired into."[1] But though there remains no inconsiderable diversity of opinion among the learned Judges of the different tribunals, yet the present inclination of the English Courts seems to be to sustain the conclusiveness of foreign judgments.[2]

[1] Story, Confl. Laws, § 603.

[2] Ibid. § 604, 605, 606. See Guinness *v.* Carroll, 1 Barn. & Adolph. 459; Becquet *v.* McCarthy, 2 B. & A. 951. In Houlditch *v.* Donegal, 8 Bligh, 301, 337–340, Lord Brougham held a foreign judgment to be only primâ facie evidence, and gave his reasons at large for that opinion. On the other hand, Sir L. Shadwell, in Martin *v.* Nicolls, 3 Sim. 458, held the contrary opinion, that it was conclusive; and also gave a very elaborate judgment on the point, in which he reviewed the principal authorities. Of course, the learned Judge meant to except, and did except, in a later case, (Price *v.* Dewhurst, 8 Sim. 279, 302,) judgments which were produced by fraud. See also Don *v.* Lippmann, 5 Clark & Finnell. 1, 20, 21; Story, Confl. Laws, § 545–550, 605; Alivon *v.* Furnival, 1 Cromp. Mees. & Rosc. 277, 284. "It is indeed very difficult," observes Mr. Justice Story, "to perceive what could be done, if a different doctrine were maintainable to the full extent of opening all the evidence and merits of the cause anew, on a suit upon the foreign judgment. Some of the witnesses may be since dead; some of the vouchers may be lost or destroyed. The merits of the case, as formerly before the Court upon the whole evidence, may have been decidedly in favor of the judgment; upon a partial possession of the original evidence, they may now appear otherwise. Suppose a case purely sounding in damages, such as an action for an assault, for slander, for conversion of property, for a malicious prosecution, or for a criminal conversation; is the defendant to be at liberty to re-try the whole merits, and to make out, if he can, a new case, upon new evidence? Or is the Court to review the former decision, like a Court of appeal, upon the old evidence? In a case of covenant, or of debt, or of a breach of contract, are all the circumstances to be re-examined anew? If they are, by what laws and rules of evidence and principles of justice is the validity of the original judgment to be tried? Is the Court to open the judgment, and to proceed ex æquo et bono? Or is it to administer strict law, and stand to the doctrines of the local administration of justice? Is it to act upon the rules of evidence acknowledged in its own jurisprudence, or upon those of the foreign jurisprudence? These and many more questions might be put to