

## NARAIN SHIPPING COMPANY LIMITED

A

v.

## GOVERNMENT OF AMERICAN SAMOA

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[COURT OF APPEAL, 1979 (Gould, V. P., Henry, J. A., Spring, J. A.), 21st, 28th  
November]

Civil Jurisdiction

*K. Chauhan* for the Appellant.

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*F. G. Keil* for the Respondent.

Appeal against summary judgment entered in the Supreme Court relying upon a judgment of the High Court of American Samoa against the appellant.

*Held:* Actions such as these could be brought in the cases outlined by Buckley L. J. in *Emanuel v. Symon*, assuming conditions referred to by that Court were fulfilled. This is so even though there were no reciprocal arrangements between the two countries and the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 25) did not apply to American Samoa.

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Cases referred to:

*Emanuel v. Symon* (1908) 1 K.B. 302

*McFarlane v. Macartney* (1921) 1 Ch. 522

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Henry J.A.:

## Judgment of the Court

Respondent obtained a judgment in the High Court of American Samoa against appellant for the sum of US\$40,886.76 and costs US\$45.12. Respondent issued a writ of summons in the Supreme Court of Fiji. The above sums, converted into Fiji currency plus interest, were claimed on the basis that judgment had been given as above stated. A Statement of Defence was filed. Respondent issued a summons asking for summary judgment. The contract upon which the action was brought contained the following condition:

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"Article 17. *Law Governing and Jurisdiction*

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This Contract shall be construed, and its performance shall be determined, in accordance with the laws applicable within American Samoa. Any and all litigation on this contract shall be in the High Court of American Samoa, Trial Division, Fagatogo, American Samoa."

The learned judge gave judgment for the amount claimed together with costs of the present action.

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The learned judge in the course of his judgment said that the foreign judgment was final and conclusive and so constituted *res judicata*. We think it better to state the general law which appears sufficiently for the present purposes in *Halsbury's Laws of England* (4th Edn.) Volume 8 in the following paragraphs:

A "715. Subject to certain qualifications, a judgment in personam of a foreign court of competent jurisdiction is capable of recognition and enforcement in England. Apart from statute, it will not be enforced directly by execution or any other process, but will be regarded as creating a debt between the parties to it, the debtor's liability arising on an implied promise to pay the amount of the foreign judgment. The debt so created is a simple contract debt and not a speciality debt, and is subject to the appropriate limitation period.

B 716. As a foreign judgment constitutes a simple contract debt only, there is no merger of the original cause of action, and it is therefore open to the plaintiff to sue either on the foreign judgment or on the original cause of action on which it is based, unless the foreign judgment has been satisfied."

C Such actions may be brought in the following cases, as outlined by Buckley L. J. in *Emanuel v. Symon* (1908) 1 K.B. 302 where he said at page 309:

D "In actions in personam there are five cases in which the Courts of this country will enforce a foreign judgment: (1) where the defendant is a subject of the foreign country in which the judgment has been obtained [I break off to say that that first class now seems to have been sufficiently questioned to be a doubtful authority]; (2) where he was resident in the foreign country when the action began; (3) where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued; (4) where he has voluntarily appeared; and (5) where he has contracted to submit himself to the forum in which the judgment was obtained."

The last condition applied in this case.

The conditions which must be fulfilled are:

E (1) the judgment must be final and conclusive so as to bind the rights and liabilities of the parties and the test is the treatment of the foreign court as a res judicata: *McFarlane v. Macartney* [1921] 1 Ch. 522, 531;

(2) the judgment must not be contrary to public policy or founded on a cause of action not recognisable in Fiji... it must rest on principles of universal acceptance, and,

F (3) the foreign court must be competent to entertain the sort of case which it did deal with, namely, require the defendant to appear before it and it must not offend against accepted views of substantial justice,

(4) a judgment given in a "penal" action must be remedial in its nature and not one of punishment.

G The sole point taken by counsel for appellant was that, in the absence of reciprocal provisions between Fiji and American Samoa, the judgment was unenforceable in Fiji. It is common ground that there are no reciprocal arrangements between the two countries, and, in particular that the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 25) does not apply to American Samoa.

Reliance was placed on Section 8 of Cap. 25 which reads:

H "8. No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Ordinance applies, other than proceedings by way of registration of the judgment shall be entertained by any court in Fiji."

But it is common ground the judgment in question not one to which the Ordinance applied.

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Section 11 gives power to the Governor-General to make foreign judgments unenforceable in Fiji if there is no reciprocity but it is agreed that American Samoa does not come within any exercise of this power.

The result is that the common law right to sue on a judgment given by a competent court in American Samoa still remains. The action in question was therefore competent—all requirements in accordance with the law as set out earlier having been found by the learned judge.

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The appeal is dismissed. The judgment in the court below is affirmed. Appellant will pay costs of the appeal as fixed by the Registrar.

*Appeal dismissed.*