COMMENTS ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

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Traditionally, Swedish law has on the whole been averse from recognizing and enforcing foreign judgments in actions pertaining to rights of property. True, particularly in recent years, a considerable number of rules for the recognition of foreign judgments in specific fields of law were issued in connection with the ratification by Sweden of various international conventions. Rules of general scope exist, however, only in respect of judicial decisions rendered in other Nordic countries and Switzerland. It is indisputable that an immediate enforcement of a foreign judgment will not be granted outside the area thus determined. Admittedly, however, in practice more or less weight as evidence would be attached to decisions of a foreign court in proceedings concerning the same claim before a Swedish court. For all that, there is in the reports from the Swedish Supreme Court no clear case where a foreign jugment has been recognized as conclusive when there is no statutory provision to that effect.

Formerly legal writers, too, were mainly opposed to the idea of recognizing foreign judgments. Since the nineteen-thirties, however, writers on this question have shown a tendency in the opposite direction, even if opinion is hardly unanimous about the length to which one should go.

In 1960 the Swedish Minister of Justice obtained authority to appoint an expert to inquire into the enforcement of foreign judgments in civil actions and into correlated matters. The inquiry was entrusted to the author of the present article. The findings are contained in a report submitted in October 1968.[1] In his terms of reference the Minister of Justice stated that a change towards an extended recognition of foreign judgments was certainly desirable, adding, *inter alia*:

> Evidently it is important in civil lawsuits of this kind to avoid as far as possible all double proceedings, with all the costs and

[1] *S.O.U.* 1968: 40.

> waste of time they entail. It should be made feasible to recognize in this country the judgments rendered in a foreign country where in our opinion the judicial system presents sufficient guarantees of a satisfactory administration of justice, and to enforce these judgments here when it is a matter of payment of money or specific performance. The attraction for Sweden of such a procedure has been increased through our participation in the European Free Trade Association and through the growth of commerce and general intercourse with other countries. The foregoing seems to make it appropriate to reconsider the negative attitude taken in principle by Swedish law towards a recognition and enforcement of foreign judicial decisions. The current procedure implies that upon the conclusion of a treaty with a foreign country enforcement is made possible by a special act of legislation. This cannot be satisfactory in the long run. Under such a system legislation must necessarily lose in clarity and consistency. Therefore the possibility should be investigated of replacing this system by general provisions for the recognition and enforcement of foreign judgments. Such provisions could be made operative and applicable to a foreign country either by virtue of a treaty for reciprocal recognition and enforcement of judgments rendered there or possibly, in certain circumstances, even in the absence of such an agreement.

In these words the Minister of Justice clearly expressed his opinion that legislation should move towards an extended recognition of foreign judgments. Not only does this opinion agree with modern Swedish legal writing, as indicated above, but legal writers of other countries, too, as well as those who have otherwise dealt with the matter in international relations seem—at least in general—to take the same view. Looking at the matter on its own merits it might consequently have been natural to base the findings on the corresponding views expressed in the terms of reference. In the course of my inquiry it appeared, however, that the opinion of the Minister of Justice was by no means unchallenged in Sweden. Thus, a proposal for a convention on the subject, drafted by a committee of experts at the Hague Conference on Private International Law in 1963, was circulated to a large number of Swedish business organizations. In their observations these organizations endorsed a memorandum dated April 30, 1964, which had been prepared by a delegation (hereinafter called "the delegation") formed by these organizations.[2] This memo-

[2] These organizations were: the National Committee of the International Chamber of Commerce, the Kooperativa Förbundet (top organization of cooperative societies), the Stockholm Chamber of Commerce, the Swedish Banks' Association, the Swedish Bar Association, the General Export Association of

randum sets forth views on decisions rendered by foreign courts which are distinctly at variance with the opinion of the Minister of Justice and seem in essence to reject that opinion.

The views of important Swedish business circles revealed in this way deflected me as reporter towards an attempted exhaustive analysis of the need for and the effect of an extended recognition of foreign decisions in the field of property rights. In the main, the following account reproduces the arguments put forward in my report to the Minister. After the publication of my report some of the recommendations therein were in their turn criticized in the statements of bodies to which it had been referred for comment. Such criticism occurred above all in a new memorandum, dated February 17, 1969, by a specially formed delegation of business organizations.[3] In the following exposition the delegation's criticism is used as a basis for discussion, a method of presentation which the present author finds most suitable for explaining his own point of view.

In the 1964 memorandum the delegation stated, *inter alia:*

> To be sure, Sweden's business contacts with foreign judicial systems have increased and will continue to increase owing to participation in the European Free Trade Association, expanding external trade and, generally, growing international intercourse. Nevertheless, a substantially greater need of recognizing and enforcing foreign judgments should not be immediately inferred from this development. In the delegation's experience no inconvenience has been caused—at any rate so far—by the inability of a Swedish party to obtain the enforcement in Sweden or a third country of a foreign decision in a civil lawsuit. On the contrary, in disputes with parties in some countries it may have been thought advantageous when judgments rendered there were not directly valid or enforceable in Sweden against a Swedish party. To some extent the present situation has actually encouraged parties to settle their disputes by arbitration, or at least to agree on the applicable jurisdiction or bridge over the differences by negotiation. On the whole,

Sweden, the Federation of Swedish Wholesale Merchants and Exporters, and the Federation of Swedish Industries. The chairman of the delegation was Professor Lars Hjerner.

[3] This delegation was set up by the same organizations as appointed the first-mentioned delegation but the two delegations were not identical in membership. The chairman of the second delegation was Mr. Bengt Lassen, a former Judge of Appeal. *Vide* 35 *T.S.A.*, pp. 165 ff. (1969). Although the two delegations differed somewhat in composition, it seems permissible for the purposes of the present essay not to treat them as two bodies and to refer to them jointly as "the delegation".

> such a situation should be preferred to a system under which one party can involve the other side against its will in a suit before a foreign court where their dispute is decided in a final manner.

It is not surprising that the delegation is able to assert that no inconvenience has been caused by the inability of a Swedish party to obtain the enforcement in Sweden of a foreign decision in a civil lawsuit. Property that may be seized in execution may usually be presumed to be situated in the country with which the losing party is linked by reason of nationality, habitual residence, or both. This being so, in the matter of enforcing in Sweden the decision of a foreign court in a civil suit the winning party is most likely to be an alien and the losing party a Swedish national and/or resident. Consequently the recognition of foreign judicial decisions will materially interfere with the interests of those persons who above all can claim Sweden's protection. From a nationalistic point of view it is therefore scarcely in the Swedish interest to recognize and enforce foreign decisions in Sweden. By the same reasoning, on the other hand, it must be in the interest of Sweden that Swedish decisions be recognized and enforced abroad. The recommendations in my report (similarly to the draft of a Hague convention to which the delegation's memorandum related) start from the assumption that any recognition and enforcement of judgments shall be reciprocal. By considering merely what may be termed the import side, half of the field of vision is screened off; and with a nationalistic way of looking at the problem one sees only the reverse of the medal.

To be sure, in the 1969 memorandum the delegation does deal with the principle of reciprocity. It is there described as of doubtful value. The delegation continues:

> It is therefore scarcely reasonable to represent, as a basis for enforcing in Sweden decisions rendered by courts in some foreign country, that Swedish decisions are or will be enforceable in this foreign country. Instead, the principle should apply that a foreign decision is accepted as materially correct provided that the losing party was afforded satisfactory procedural remedies for vindicating his rights. These are the qualities of a decision that justify its enforcement, not a possible reciprocity. The belief is probably widespread here that from the point of view of our legal system Swedish judgments are satisfactory in this respect. Obviously, however, the exportation—for enforcement—of such judgments cannot justify the importation—also for enforcement—of foreign decisions in whose comparable qualities no confidence is felt.

To this it must be rejoined in the first place that in my report it was stated expressly that a reciprocal recognition of judicial decisions is admissible only with countries where administration of justice seems to be on a satisfactory level. This is so for the reason, *inter alia,* that countries where the administration of justice generally does not merit any particular confidence may, it is feared, fail to fulfil loyally an undertaking to recognize and enforce the decisions of Swedish courts. The clause of *ordre public* (public policy) must necessarily be included as an escape device among the terms of the recognition of foreign judgments. However, on the one hand this clause may prove an insufficient remedy against particularly unfortunate products of the administration of justice. On the other, it may be apprehended that the foreign state could render more or less illusory the enforcement of Swedish judgments by making unwarranted use of a corresponding clause or by other means. Still, if the reasoning is applied only to states with a highly developed culture in the administration of law, I venture to maintain that the drawbacks attaching to the importation of judgments must be weighed against the advantages which the exportation of judgments may present according to Swedish nationalistic views.

I will shortly revert to the more immediate consequences on the substantive and procedural level of a reciprocal recognition or non-recognition of judicial decisions. Let us first assume for argument's sake that enforcement of judgments rendered in a certain country is regarded as increasing the risk of results in Sweden which from the Swedish point of view are materially wrong and directed against Swedish nationals. If this is assumed, then a corresponding risk must also be assumed that, if forced to bring his action to a court in the foreign country instead of to a Swedish court, a Swedish party would obtain in that country a result materially faulty in the Swedish view. Consequently, both systems—reciprocal recognition and non-recognition—have advantages and disadvantages of exactly the same kind and the advantages of each cannot be considered without reference to its disadvantages. Perhaps the delegation wanted to argue that since the parties in Sweden profiting from a reciprocal recognition and those losing from it are not identical, one group should not be satisfied, as it were, at the expense of the other. Such an argument, however, disregards the fact that precisely this is being done when support for the recognition abroad of Swedish judgments is withheld because of objections to the possible adverse consequences

for some parties of agreements on reciprocal recognition. From a strictly nationalistic point of view it could indeed be claimed that in the case of reciprocal recognition the second group of parties is being sacrificed for the benefit of the first group. However, with equally good reason a passive attitude may be said to sacrifice the first group for the benefit of the second. Actually, no matter how desirable it may be to satisfy both groups, it seems inescapable that they will have to be offset against each other. Restricted to a purely nationalistic outlook, the problem is to decide which alternative is likely to produce an ultimate effect predominantly advantageous to the Swedish side.

I will examine this problem later on, but I should first like to say, a few words on another point. Paradoxically enough, the delegation criticized the report for embodying a nationalistic reasoning about reciprocal recognition. If "nationalistic" is here intended to mean (according to what is probably a widely accepted usage) an *exaggerated* devotion to one's country's interests, I cannot find any justification to this criticism. Here we do not face a question of promoting Swedish interests above or against those of foreign countries, but one of trying to the utmost possible extent to satisfy all interests equally. The idea that the demand for reciprocity in recognizing judgments could be relinquished at all may arise chiefly from the fact that, strictly speaking, a country can control by ordinary legislation only the import side. This being so, it is permissible to say that Sweden has to regulate the enforcement here of foreign decisions in a way that is satisfactory in itself. Let then the foreign legislators regularize the recognition abroad of Swedish judgments! Admittedly, the idealism of this argument is attractive. I believe, however, that foreign states should not be confidently expected to recognize Swedish judgments unless they have something to gain by so doing. In my opinion, therefore, a Swedish demand for reciprocity is realistic, but cannot in all fairness be termed nationalistic.

We must now revert to the general effect of a reciprocal recognition of decisions from the nationalistic point of view. It will be recalled that from this angle the enforcement of Swedish judgments abroad is an advantage but the recognition of foreign decisions in Sweden is a disadvantage. In its memoranda of 1964 and 1969, the delegation states that in the business world arbitration is generally preferred to the bringing of an action in a court of law. Besides, says the delegation, mercantile pressure can induce a reluctant debtor to execute his obligations. Un-

doubtedly, these two points play a role in estimating the practical importance of the reciprocal recognition and enforcement of judicial decisions. However, I submit that they are not relevant to the question whether reciprocal recognition would have a predominantly favourable or a predominantly adverse effect. The frequency with which mercantile pressure leads to results can hardly depend on the recognition or non-recognition of foreign judgments. When arbitration clauses are inserted in international contracts the outcome is not only that according to the law of some foreign countries a winning Swedish party can secure enforcement abroad. There is also the effect that a party to the contract does not run the risk of seeing a foreign court decision being enforced here. The situation is simply that the question of a recognition and enforcement of judicial decisions is not pertinent in such parts of the business sector, where arbitration clauses are and will presumably continue to be in use. It is quite another matter that the present frequency of arbitration agreements may in some degree be due to the possibility of enforcing outside the state of origin an arbitral award but not the decision of a court of law. In so far as this is the case, rules for reciprocal enforcement of court decisions give the parties more freedom to disregard the enforcement question and choose the manner of settling disputes that is most likely to serve their interests best from other points of view.

It follows that the points just discussed cannot serve as an argument against the reciprocal recognition of judgments. They may show, on the other hand, that the matter is of minor importance in organized international trade. However, as the Svea Court of Appeals remarked in its observations on my report, there is a growing number of persons who are somewhat accidentally involved in international litigation; for them a reciprocal recognition of judicial decisions may be of appreciable importance. Assuming again that Sweden's interests call for the exportation of Swedish decisions, reciprocal recognition agreed upon treatywise with different states may prove predominantly advantageous or predominantly disadvantageous. This will depend, for instance, on the volume of exports and imports of workers, tourists and other temporary migrants. Grounds can scarcely be shown for assuming that Sweden would generally be the recipient country; nor can a contrary assumption be substantiated.

It may then be asked whether the foregoing reasoning should not lead to the conclusion that no predominant advantage

would follow from a reciprocal recognition of decisions conceded in treaties even with countries where administration of law is on a high level. In other words, the question arises whether on the whole nothing would be gained or lost (in the Swedish view) from an extended reciprocal recognition. It would appear that the reply should be in the affirmative, provided we assume those cases where (under the proposed convention) a Swedish party would have to submit to the enforcement of a foreign judgment to be equivalent to the cases where a Swedish party would be able to obtain (under that convention) the enforcement abroad of a Swedish judgment. However, in my opinion such an assumption is wrong even from a nationalistic point of view. Its unsoundness becomes still more apparent if extreme nationalistic views are abandoned and the matter of reciprocal recognition treated—in my opinion properly—as a problem to be solved in principle in such a way that *the various parties' conflicting interests are reasonably balanced irrespective of nationality and residence.* I shall develop my argument further in what follows.

In the first place, the essential effect of a convention on reciprocal recognition would scarcely be the prevention of double lawsuits. It is unlikely that a plaintiff will bring an action in his own country if he knows that the property of the defendant that by its nature might be seized for enforcement is situated in another country where the judgment would be unenforceable. At present double lawsuits probably occur in the rather exceptional instances when the plaintiff is mistaken about the actual possibility of enforcing the judgment in the country from which it originates. When rules for the recognition and enforcement of foreign decisions are lacking the likely effect is that the plaintiff will bring an action in the country where the defendant owns property; after that the question of enforcement in another country does not arise. Expressed otherwise: typically, at present the possession of property by the defendant in an international dispute determines the country where the action is brought which is intended to settle the parties' differences definitively. Obviously, in a dispute in which each party wants to bring an action into a court of his own country and only one party can get his wish, the essential effect of a convention on recognition and enforcement of judgments is to define which party's interest shall come before the other's. The fact that the defendant owns property outside his home country may imply that a court of that country considers itself competent to take jurisdiction and that its decision can be

enforced by seizure of that property. A convention aiming solely at the international recognition and enforcement of judicial decisions can never prevent the occurrence of such incidents. Nevertheless, I consider the chief aim of a convention to be that the conflicting interests of the two parties to bring lawsuits each to a court of his own country shall be taken into consideration on another and more rational basis than merely the location of the defendant's property.

With these considerations in mind let us now examine the following example. Suppose in the one case a German living in Bonn to have been run over and bodily injured by a Swedish tourist cycling there; and in the other case a German tourist in Stockholm to have similarly hurt a local inhabitant. For our argument we shall disregard the possibility that the tourist's property, being of sufficient value, is attached as security for damages (for various reasons, hardly a recommendable procedure). As matters are at present, to obtain an effectively enforceable award of damages the German in the first case has to sue the Swedish tourist in Sweden; likewise, in the second case the Swede must sue the German in Germany. On the other hand, a Swedish-German convention on the reciprocal recognition and enforcement of judgments might accept the jurisdiction by the place where the accident occurred. If so, then the injured parties could in both cases obtain in their respective countries judgments enforceable in the defendant's country. In this manner the effect of the convention would be in the first case the surrender of the Swedish party's supposed interest in having the action, if any, brought in Sweden. In the second case its effect would be the compliance with this party's interest in obtaining in Sweden a judgment enforceable in Germany.

In my opinion, even from a nationalistic Swedish point of view it is inadmissible to put the two cases on an equal footing and to assert that the gain made in the one is cancelled by the loss in the other. In fact, it is far more proper not to compel a Swedish national to bring action in a court abroad just because he has been run down by a foreigner than to make a Swedish tourist expect not to become responsible abroad for damages caused there. It we compare the interest which the Swedes involved in these two cases attach to not being placed in situations where they are forced to be parties to litigations abroad, the interests of the man run down in Stockholm must surely weigh much more heavily than those of the tourist tortfeasor in Bonn. In abandoning

the nationalistic outlook and seeing the parties as individuals entitled to have their conflicting interests reasonably balanced, one must conclude that in both of the cases examined above the projected convention would preceptibly ameliorate the present conditions. The recognition of the German judgment in the first case can be viewed not only as a price worth paying for the recognition of the Swedish judgment in the second case. Moreover, it can be viewed as a fully justified compliance with a German citizen's disinclination for litigation here when the case is not at all materially connected with Sweden but is obviously very much connected with his own country.

As one of the reasons for deprecating in principle judgments rendered in some countries, the delegation stresses above all the differences between those countries and Sweden as regards rules of substantive law and private international law. However, a case brought before the court in a country is by no means inevitably decided according to the substantive law of the *forum*. In principle, the questions of the applicable law and of the jurisdiction of the court are entirely independent of each other. It is quite another matter that every court determines the applicable law on the strength of its own country's rules of private international law. Consequently, we have first to scrutinize the significance of the differences between the states' internal substantive laws. To begin with, both states' private international laws will be assumed to require the application of the law of the same country; the foreign decision to be recognized is therefore taken to have settled the dispute by the very law that a Swedish court would have applied.

In situations where the *lex fori* and the *lex causae* are identical, there would in principle be no reason to refuse recognition because this law happens to differ from relevant Swedish legal provisions. It could, of course, scarcely be pretended that courts in Sweden would be better qualified to apply a certain foreign state's law than would the courts of this particular state.

Still, not even where the *lex causae* is the law of the state of origin can differences between the substantive laws of various states be said to lack all importance. The delegation criticized a provision in the draft of the Hague convention to the effect that the place where a tort was caused shall determine the matter of jurisdiction. In addition to its other arguments the delegation asserts that the amount of damages in cases of traffic accidents and other personal injuries awarded in some countries seem quite

incompatible with the Swedish conception of justice. On the face of it, in most of the cases the delegation had in view the law of the country of origin appears to have been the *lex causae* according to Swedish private international law also. I maintain that the quantum of damages awarded by the courts of a country must be regarded as a part of the country's substantive law. The delegation's suggestion that in some instances awards of damages attaining the level in question should be disallowed in Sweden implies in fact that the application of what in Swedish international private law is the *lex causae* should not be loyally accepted.

In my opinion there may well be grounds for refusing, to some extent, to accept such a recognition when the outcome is likely to be unreasonable in the Swedish view. Still, the problem is not disposed of by simply rejecting the foreign judgment, or—to put it in another way—the problem is not one specific to the recognition of decisions rendered by courts abroad. For also when an action is brought before a Swedish court and foreign law is assumed to be the *lex causae,* the question arises how to avoid the consequences to which this law in itself leads. When the amount of damages is not exactly indicated in statute law a Swedish court can easily avoid an application of the foreign law in the true spirit of that law by adjudicating an amount considered equitable according to Swedish conceptions of justice, without its appearing as a formal deviation. On the other hand, where in principle a foreign judgment has to be recognized, it becomes necessary (to the extent permitted by law) to express openly the refusal to accept the substantive law of a foreign country. Looked at objectively it seems scarcely desirable that it should be possible to depart from the *lex causae,* as it were, only by stealth. In respect of both the application of foreign law by Swedish courts and the recognition of foreign decisions it should be possible to make quite overtly the reserves necessary in order not to be forced to accept any objectionable consequences. The *ordre public* clause is assumed to be always included and, I think, should be a sufficient safeguard in most of the extreme instances here considered. Perhaps one might question whether this clause is a tool supple enough when the meting out of damages is the matter of concern. On the one hand, it may be especially difficult to fix for this purpose the bounds beyond which public policy shall be deemed to have been offended. On the other, it may seem unsatisfactory that the defendant may perhaps entirely escape tort liability in Sweden when the *ordre public* clause is invoked on account of the

size of damages. One way to meet these two points would be to make it feasible to mitigate damages in Sweden. However, the necessity of a general rule to this end may be doubted. On the face of it, the problem should relate merely to a few of the states with which agreements on the recognition of judgments might be concluded. At most, a special rule applicable to the laws of some particular state or states could be introduced.

We will now examine the converse situation, namely when Swedish law is the *lex causae* applied in a foreign judgment. It is always difficult to administer foreign law and there is a serious risk of rendering a materially inaccurate decision in such instances.

First of all, does reciprocal recognition of foreign judgments at all increase the danger of wrong decisions when the court has to apply foreign law? To my way of thinking, the reply is in the negative. There is no reason to suppose that reciprocal recognition would increase to any extent whatever the number of cases in which a Swedish or foreign court of law must apply the law of another country than its own. As the Svea Court of Appeals surmised in its observations on my report, the frequency of such cases is, on the contrary, likely to decline. Unless the plaintiff, too, is domiciled in the country of origin, the defendant's being domiciled there does not support very strongly the argument that the *lex fori* is also the *lex causae*. On the other hand, as is probable in an agreement on reciprocal recognition, the determination of the court jurisdiction to be internationally recognized may be linked with the nature of the dispute. For instance, the place where the damaging action took place may be made an internationally recognized criterion of proper jurisdiction. It is not improbable that under such circumstances the *lex fori* and the *lex causae* will more often melt into one.

Against this, on the not too well-founded assumption that erroneous judgments in the application of foreign law are chiefly in favour of the local party, the present system may be considered more advantageous for a Swedish party in cases where this party is the defendant. However, the matter has its reverse side: on the same assumption a Swedish plaintiff is in a worse situation than he would be under a convention.

Above all, in my opinion the risk that the distribution of misinterpretations when foreign law is applied may be uneven and chiefly benefit the local party cannot be a legitimate reason for refusing to recognize decisions rendered abroad.

The picture becomes somewhat different when we pass on to the differences between the respective states' rules of private international law. Admittedly, in cases where Sweden recognizes a foreign decision based on another law than that which is applicable according to Swedish private international law, the possible disadvantages for a Swedish party have their counterpart when a Swedish decision given according to Swedish private international law is recognized abroad. On the other hand, considering only the recognition in Sweden, disparities in the field of private international law are liable to increase the number of judgments that are enforceable here but are materially wrong from the Swedish point of view. Evidently, such judgments will be the more numerous the greater the disparities in the substantive contents of the legal systems from which the *lex causae* is selected. Still, from this it cannot be reasonably concluded that judgments rendered in some countries must be refused recognition here altogether because the private international law of those countries differs from that of Sweden. In so far as such disparities are thought worthy of notice at all, a less drastic measure could be taken. At least where the choice of applicable law may be thought decisive for the judgment, recognition could be granted on condition that the dispute is settled by applying only the law which is *lex causae* in Swedish private international law. At any rate, in respect of most of the states concerned even such a condition might be dispensed with in the field of property rights.

The delegation has argued that as a necessary condition for a possible recognition of decisions rendered in a foreign country the latter should be closely akin to Sweden as regards law of procedure, language and culture. There is no doubt that a party involved in an action abroad must invariably have recourse to a foreign lawyer, usually in addition to one at home, and that also his personal appearance before the foreign court may be advisable. Typically, then, such difficulties are likely to increase with the geographical distance between the states and with the differences in language and rules of procedure.

The point to decide is whether the above-mentioned factors must be given particular attention when selecting the countries whose decisions should be recognized. For my part, I am inclined to reply in the negative. In substance the argument would be the same as in supporting the opinion that in principle an extended reciprocal recognition of foreign judgments should not be rejected. True, geographical distance and differences in

language and rules of procedure make it burdensome for a Swedish defendant to have to be involved in litigation abroad. But for a Swedish plaintiff it is just as important that under a convention he can avoid proceedings in a foreign state, where a Swedish decision is considered enforceable. Further, it must be recalled that the determination of the jurisdiction of the foreign court in the convention as a condition of recognition is supposed to express a fair balancing of the parties' conflicting interest in eschewing proceedings abroad. When a foreign decision is entitled to recognition here, the foreign plaintiff's interest in not having to bring a lawsuit abroad must be presumed, considering the connecting facts of the case, to have weighed more than the corresponding interests of the Swedish defendant. Whilst to relinquish the Swedish defendant's interests is to lay on him a great burden, not to give way to the plaintiff's more justified interests will mean a yet heavier burden for the latter. The circumstance that a great distance between countries makes the question in which country the action has to be brought into court highly important for the parties, would seem to make it even more desirable to solve the problem by aiming at a fair balance of the parties' conflicting interests.