or unfounded. *It is otherwise however where the defendant* sets up a foreign judgment as a bar to proceedings. The party dissatisfied with a foreign judgment, if in all respects legal and binding, has no right simply because of dissatisfaction to bring the matter into controversy elsewhere.

These doctrines are subject to the following limitations: 1. That the judgment has not been obtained by fraud. 2. That the proceedings to obtain it have been regular. 3. That the parties interested have had notice, or an opportunity to appear and defend their interests. (*McPherson et al* v. *McMillan*, 8 U. C. Q. B. 30; *Reynolds et al* v. *Fenton*, 3 C. B. 187; *Warrener et al* v. *Kingsmill et al*, 8 U. C. Q. B. 428, Burns, J.; *Meuus* v. *Thellusson*, 8 Ex. 638.)

Supposing the judgment to be correct on these several heads, the next question, and the one as to which so much difficulty exists, is as to its effect when produced in a country other than where recovered. Is it to be deemed conclusive? If not, is defendant at liberty to go into its original merits? If yea, what manner and to what extent *are the original merits to be inquired into?*

Here we find ourselves plunged into the troubled waters of judicial strife. On one side we hear yes, on another no; and on all sides the uncertain sounds of hesitation and doubt.

It is said that the common law recognizes no distinction whatever as to the effect of a foreign judgment, whether it is betwee citizens or between foreigners, or between citizens and foreigners. (Story's Conflict. s. 610.) The following distinctions drawn by Boullenois, an eminent foreign writer, are however deserving of much attention. He says, if the foreign judgment is in a suit between natives of the same country in which pronounced and rendered by a competent tribunal, it ought to be executed in every other country without any new inquiry into merits. His reasoning is to the effect that the judgment, having emanated from a lawful authority and been rendered between persons subject to that authority, ought not to be submitted to discussion in any other tribunal, which for such a purpose must necessarily be incompetent. He also argues that if the judgment be rendered in a suit between mere strangers found within the territorial authority of the Court rendering it, and the jurisdiction be in all respects rightfully exercised over the parties, that it should be equally conclusive; but that the jurisdiction cannot be rightfully exercised merely because the foreigners are there, unless domiciled there.

The inclination of the English Courts is to sustain the conclusiveness of foreign judgments (*Reimer* v. *O'Niel*, 23 Beav. 145, 3 Jur. N. S. 147, 26 L. J. Ch. 196); while *that of the American Courts is to make them prima facie* evidence only, and so impeachable. (Story's Conflict. s. 608.)

It is for us to examine the question from an Upper Canada point of view, by the light of our own adjudged cases.

As early as 1835, we find the late Chief Justice of the Common Pleas (Sir J. B. Macaulay) reported as using the following language:

"It may fairly be inferred from all the cases, that a foreign judgment had in a court of competent jurisdiction is conclusive upon the parties *inter se prima facie*, subject to be drawn in question by the party sought to be charged or estopped by such judgment. They seem to possess a validity equivalent at least to a promissory note, or a receipt in full. They afford sufficient foundation for an action of debt or assumpsit in favour of creditors obtaining them, and ought to be equally available in favour of a defendant. In the plaintiff's case, they are regarded as more than mere evidence of a debt, for they are declared on as upon awards, promissory notes, &c. They import or *constitute in themselves sufficient consideration or evidence* thereof to raise an implied promise. In other words, they clothe the plaintiff with a *prima facie* right of action thereon, and are so far *per se* conclusive upon the defendant. The latter may shew a want of jurisdiction, fraud, injustice, or irregularity in the recovery; but until assailed by him, they are conclusive and sufficient ground of action. Being more than evidence in favour of the plaintiff, namely, the substratum of an action of debt or assumpsit, conclusive upon the defendant until impeached, they would by analogy seem more than evidence in favour of a defendant when sued a second time, and pleaded in bar, though requiring perhaps more technical precision than when declared upon; and conclusive upon the plaintiff until avoided by him, upon grounds *dehors* the record, or apparent upon the face thereof. Yet they do not merge or change the nature of the original demand; a remark equally applicable, however to negotiable securities, awards under parol submissions, and other proceedings that might be named." (*McPhedran* v. *Lusher*, 3 U. C. O. S. 603.)

The Chief Justice of Upper Canada (Sir J. B. Robinson, Bart.), in *Warren et al* v. *Kingsmill et al*, 8 U.C.Q.B. 414, speaking of the foreign judgment sued upon in that case, says, "The judgment of the foreign court cannot be conclusive except as to *persons* and *things* within its jurisdiction."

In the same case in appeal, 13 U. C. Q. B. 60, Mr. Justice McLean is reported as follows:

"A foreign judgment is *prima facie* evidence only, and liable to be impeached, if the foreign law or any part of