Black Clawson International Ltd v. Papierwerke AG [1975] APP.L.R. 03/05

House of Lords before Viscount Dilhorne; Lords Reid; Wilberforce; Diplock; Simon of Glaisdale. 5th March 1975

Lord Reid : My lords,
The main question at issue in this case is the proper interpretation of section 8 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933. The facts are not in dispute: they have been set out by my noble and learned friends and I shall not repeat them. It is sufficient to say at this point that the Respondents, a German company, were sued by the Appellants in Germany in respect of dishonoured bills of exchange. The action was dismissed as being time barred without any enquiry into the merits. The German period of limitation is shorter than in England and the Appellants now seek to raise the same question here. The main issue in this case is whether section 8 entitles the Respondents to rely on the German judgment as conclusive on the merits.

In this case it appears to me to be unusually important to consider as aids to construction all other material which the law allows us to look at, and I shall first state my view on that matter. We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said. In the comparatively few cases where the words of a statutory provision are only capable of having one meaning, that is an end of the matter and no further enquiry is permissible. But that certainly does not apply to section 8.

One must first read the words in the context of the Act read as a whole, but one is entitled to go beyond that. The general rule in construing any document is that one should put oneself "*in the shoes*" of the maker or makers and take into account relevant facts known to them when the document was made. The same must apply to Acts of Parliament subject to one qualification. An Act is addressed to all the lieges and it would seem wrong lo take into account anything that was not public knowledge at the time. That may be common knowledge at the time or it may be some published information which Parliament can be presumed to have had in mind.

It has always been said to be important to consider the "*mischief"* which the Act was apparently intended to remedy. The word "*mischief"* is traditional. I would expand it in this way. In addition to reading the Act you look at the facts presumed to be known to Parliament when the Bill which became the Act in question was before it, and you consider whether there is disclosed some unsatisfactory state of affairs which Parliament can properly be supposed to have intended to remedy by the Act. There is a presumption which can be stated in various ways. One is that in the absence of any clear indication to the contrary Parliament can be presumed not to have altered the common law farther than was necessary to remedy the "mischief". Of course it may and quite often does go farther. But the principle is that it the enactment is ambiguous, that meaning which relates the scope of the Act to the mischief should be taken rather than a different or wider meaning which the contemporary situation did not call for. The mischief which this Act was intended to remedy may have been common knowledge forty years ago. I do not think that it is today. But it so happens that a Committee including many eminent and highly skilled members made a full investigation of the matter and reported some months before the Act was passed (Cmd. 4213K

I think that we can take this Report as accurately stating the *"mischief"* and the law as it was then understood to be, and therefore we are fully entitled to look at those parts of the Report which deal with those matters.

But the Report contains a great deal more than that. It contains recommendations, a draft Bill and other instruments intended to embody those recommendations, and comments on what the Committee thought the Bill achieved. The draft Bill corresponds in all material respects with the Act so it is clear that Parliament adopted the recommendations of the Committee. But nevertheless I do not think that we are entitled to take any of this into account in construing the Act.

Construction of the provisions of an Act is for the Court and for no one else. This may seem technical but it is good sense. Occasionally we can find clear evidence of what was intended, more often any such evidence, if there is any, is vague and uncertain. If we are to take into account evidence of Parliament's intention the first thing we must do is to reverse our present practice with regard to consulting Hansard. I have more than once drawn attention to the practical difficulties that would involve but the difficulty goes deeper. The questions which give rise to debate are rarely those which later have to be decided by the Courts. One might take the views of the promoters of a Bill as an indication of the intention of Parliament but any view the promoters may have had about questions which later come before the Court will not often appear in Hansard and often those questions have never occurred to the promoters. At best we might get material from which a more or less dubious inference might be drawn as to what the promoters intended or would have intended if they had thought about the matter, and it would I think generally be dangerous to attach weight to what some other members of either House may have said. The difficulties in assessing any references there might have been in Parliament to the question before the Court are such that in my view our best course is to adhere to present practice.

If we are to refrain from considering expressions of intention in Parliament it appears to me that a fortiori we should disregard expressions of intention by Committees or Royal Commissions which reported before the Bill was introduced. I may add that we did in fact examine the whole of this Report - it would have been difficult to avoid that - but I am left in some doubt as to how the Committee would have answered some of the questions which we have now to answer, because I do not think that they were ever considered by the Committee.

The Committee in paragraph 2 set out the fact that, whereas we accept foreign judgments as conclusive, foreign Courts do not in effect recognise English judgments, so that a successful plaintiff here has to fight his case over again on the merits. They regarded this as a substantial grievance. This could be avoided by making conventions with foreign countries, but the Committee say that there were two difficulties. First technically we do not enforce the foreign judgment as such, and second that our law depends on case law and is not formulated in the statute book. There is nowhere in the Report any suggestion of any complaint, grievance or difficulty with regard to British or foreign judgments in favour of

the defendant, and I think that it is quite clear that they did not consider that there was any "*mischief*" with regard to such judgments which required the intervention of Parliament.

Moreover when they set out the existing law as they understood it, they do so in a way which was entirely correct if one only has regard to a judgment in favour of the plaintiff or a judgment for costs in favour of a successful defendant, but was clearly not correct with regard to a judgment dismissing the plaintiff's action. A Committee of such eminence could not have been mistaken about the law so the only possible inference is that the Committee intended only to deal with plaintiffs' judgments.

The difficulty with regard to judgments for defendants is that an action may be dismissed for a variety of reasons: the case may have been decided against the plaintiff on the merits or for some quite different reason such as a time bar or some other preliminary plea.

That matter was dealt with by a strong Court in ***Harris v. Quine*** (1869) L.R. 4 Q.B. 653 when it was held that dismissal of an action in the Isle of Man because of a short period of limitation which did not destroy the plaintiff's right but merely made it unenforceable, was not a bar to subsequent proceedings in England on the same cause of action.

There is not much reference to the case in subsequent authorities but it was noted in the text books and in the sixty odd years which elapsed before the Committee's Report there is no indication of any disapproval of it. But the Committee never mentioned it or its subject matter. The only possible inference is that they did not think it relevant to their enquiry.

It has been said that it would be strange that the Act should only deal with judgments in favour of a plaintiff and omit dealing with judgments in favour of a defendant. Looking to the matters which I have dealt with I do not find that in the least strange.

It is clear that the Act did not intend to codify the whole law as to the effect of foreign judgments. Section 8(3) is only one proof of that. So I approach section 8 with the expectation that it has a limited scope.

I now turn to the Act. Clearly its principal purpose - dealt with in Part I - was to facilitate the enforcement here of rights given by foreign judgments to recover sums of money. Besides rights given to plaintiffs in foreign actions, such rights might be given to defendants on counterclaims or under orders for costs in favour of a successful defendant. These I may call plaintiffs' judgments. But Part I has no application to defendants' judgments which entitle them to nothing but merely protects them against claims made against them. It would I think be a misuse of language to say that such a judgment can be enforced. It can only be used as a shield or defence.

I think that section 8 is ambiguous so this is a case where it is permissible to look at the long title. It states that the Act makes provision for the enforcement here of certain foreign judgments, for facilitating the enforcement abroad of judgments given here and "*for other purposes in connection with the matters aforesaid* ". The matters aforesaid all refer to plaintiffs' judgments which are enforceable. I do not see here any indication of an intention to deal with judgments which are not enforceable.

Section 8 is in Part II under the heading "*Miscellaneous and General* ". I do not think that the other sections in Part II throw any light on its scope.

The first question which arises is whether section 8 has any application at all to defendants' judgments. There is provision in the Act for severance and no doubt it applies to those parts of defendants' judgments which entitle the defendant to some remedy. But does the section apply at all to a judgment or part of a judgment which merely absolves the defendant or dismisses the action against him? Looking to all the matters I have mentioned they seem to me to make it probable that section 8 was not intended to deal with such judgments at all.

Section 8 provides as follows:

8. (1) Subject to the provisions of this section, a judgment to which Part I of this Act applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in the United Kingdom as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter claim in any such proceedings.

(2) This section shall not apply in the case of any judgment: —

(a) where the judgment has been registered and the registration thereof has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied ; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court: or

(b) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in the United Kingdom recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act."

I find the first few lines very obscure. The section sets out to deal with a judgment to which Part I applies *"or would have applied if a sum of money had been payable thereunder "*. A plaintiff's judgment may order specific performance or it may

be merely a declaration. It is easy to apply these words in such cases. But I find it extremely difficult to apply them to defendants' judgments. The essence of such a judgment is that the defendant has succeeded and that he has no liability to pay or do anything. No sum of money could possibly have been payable under such a judgment. It is only by putting an unnatural meaning on these words that defendants' judgments can be brought within the section at all.

I cannot believe that good draftsmen - as this Committee certainly were - would have employed such an obscure expression if the intention had been to deal with defendants' judgments. It was argued that it throws us back to section 1 (2) which is in these terms:

(2) Any judgment of a superior court of a foreign country to which this Part of this Act extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part of this Act applies, if—

(a) it is final and conclusive as between the parties thereto; and

(b) there is payable thereunder a sum of money, 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 ; and

(c) it is given after the coming into operation of the Order in Council directing that this Part of this Act shall extend to that foreign country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court."

It is said that the effect of these obscure words in section 8(1) is to make the section apply to all judgments which would come within the terms of section 1(2) if condition (b) were omitted. Besides the fact that this would be a very odd way of bringing in another section of the Act, that cannot be right. If (b) is omitted then section 1(2) would apply to every kind of judgment including judgments on status, family matters and in rem. No one suggests that section 8 was meant to deal with them. I am not at all clear what meaning the Respondents would attach to these obscure words if mere reference back to section 1 (2) will not do.

Then it is said that the references in the last lines of section 8(1) to defence and counterclaim shew that the section must have been intended to deal with defendants' judgments. I do not agree.

It is necessary to look closely at the preceding words in the section. It makes judgments to which it applies conclusive *"in all proceedings founded n the same cause of action"*. I think that cause of action normally means a right alleged to flow from the facts pleaded. But often cause of action is used to denote those facts, for example, a statute may provide that the cause of action must arise within a particular area: that must mean the facts and not the right.

Here I think it must mean the facts. Suppose that the defendant abroad raises proceedings here on the same facts as those in the foreign case. If cause of action meant right only one person has the cause of action and the section would not apply at all because the proceedings here would not be founded on the same cause of action. That could not have been intended.

But if cause of action refers to the facts there is no difficulty in applying this part of the section even if the section has no application to defendants' judgments. A successful plaintiff abroad is entitled to disregard his foreign judgment and sue here again on his original right because a right does not merge in a foreign judgment. It might pay him to do that because he thinks that he could get here an even more favourable judgment than he got abroad. But this section would prevent that. The original defendant could plead the foreign plaintiff's judgment as a defence to prevent the plaintiff's attempt to do better for himself here. Similarly if the successful plaintiff abroad held an unsatisfied foreign judgment and he were sued here in some other cause of action, he could counterclaim in respect of his unsatisfied foreign judgment. So there is ample scope for the operation of the last part of the subsection even if the section applies solely to plaintiffs' judgments.

I am therefore of opinion that section 8 has no application to the present case and does not entitle the Respondent to rely on the foreign judgment on a preliminary point to prevent enquiry into the merits here. If further justification for my view be needed, it would I think be unjust if a foreign judgment on a preliminary point were in itself sufficient to prevent enquiry into the merits here.

I may add that if it were held that the section does apply to defendants' judgments, I would, perhaps with difficulty, agree with those of your Lordships who think that the Appellant should succeed.

Then the Respondents maintain that ***Harris v. Quine*** was wrongly decided. I am clearly of opinion for reasons given by your Lordships that the decision was right.

Finally I agree with your Lordships in the matter of discretion. I would therefore allow the appeal.

Viscount Dilhorne My lords,

Under a contract made in December 1961 the Appellants agreed to sell paper making machinery to a German company, whose rights and liabilities were acquired by the Respondents as a result of a merger in 1970. It will be convenient to refer to both companies as the Respondents. The price to be paid was £1,210,162. As part payment of the purchase price the Respondents accepted 20 Bills of Exchange drawn on them by the Appellants. Each Bill had a face value of £48,406 and was drawn, negotiated and payable in London. Two Bills were to mature every six months between August 1963 and February 1968.

In 1965 the Respondents complained of delays in delivery and of defects in the machinery delivered. This was referred to arbitration and despite the time that has elapsed, that arbitration has not yet been concluded and is not likely to be for a considerable time.

Thereafter the Respondents refused to honour any of the Bills which matured.

Two Bills which had been dishonoured when presented by Barclays Bank by whom they had been discounted, were the subject of litigation in this country and in Germany. The Bank's claim was strenuously resisted at every stage. When judgment was given in this country for the Bank, it was not satisfied. When the Bank sought to enforce the judgment in Germany, that was resisted on the ground that the Respondents had had no opportunity of stating their case. This plea was finally rejected by the Federal Supreme Court of Germany on the 25th March, 1970.

In view of the difficulties that the Bank had encountered in getting payment of the amounts due on these two Bills, when two Bills due for payment on the 31st August, 1966 were dishonoured, the Bank called on the Export Credit Guarantee Department to implement a guarantee they had given to the Bank and that Department in turn called on the Appellants to implement their undertaking to indemnify the Department against any monies the Department had to pay the Bank. In accordance with their agreement with the Bank, the Appellants bought these Bills in August 1972 and so became holders of them for value.

In the same month, on the 24th August, 1972 the Appellants began proceedings against the Respondents in the District Court of Munich. Five days later the Appellants applied ex parte in this country for leave to issue a writ against the Respondents claiming the amount due on the two Bills and interest and also asking leave to serve notice of the writ on the Respondents in Germany. They feared that the proceedings in Germany might be held to be time barred in Germany ; and if the writ was not issued, their claim would shortly have become statute barred in this country. They were given the leave for which they asked.

On the 30th November, 1972 the District Court of Munich dismissed the Appellants' claim, holding that under German law the applicable period of limitation was three years and so that the Appellants' claim was time barred.

Notice of the issue of the writ was served on the Respondents on the 14th August, 1973.

The Respondents did not enter an appearance but by summons sought an order that the writ, service of notice thereof and all subsequent proceedings thereon should be set aside. The Master refused to make that order and the Respondents' appeal to Talbot J., The Judge in Chambers, was dismissed. The Respondents then appealed to the Court of Appeal which gave judgment in their favour on the 19th March 1974.

On the 27th March, 1974 the Munich Court of Appeal allowed the Appellants' appeal against the decision of the District Court on the ground that the English period of limitation, namely six years, was applicable to their claim. The Appeal Court referred the case back to the District Court for continuation of the proceedings and in those proceedings the Respondents are entitled to put forward any defence they may have to the claim.

The Respondents have appealed against the decision of the Munich Court of Appeal to the Federal Supreme Court but that appeal has not yet been heard.

In the Court of Appeal the Respondents put forward a new point based on section 8(1) of the Foreign Judgments (Reciprocal Enforcement) Act 1933, and it was on this ground that the Court (Lord Denning M.R., Megaw and Scarman L.JJ.) allowed the appeal.

The long title of that Act reads as follows: *"An Act to make provision for the enforcement in the United Kingdom of judgments given in foreign countries which accord reciprocal treatment to judgments given in the United Kingdom, for facilitating the enforcement in foreign countries of judgments given in the United Kingdom, and for other purposes in connection with the matters aforesaid."*

Part I of the Act is headed "*Registration of Foreign Judgments*" and is directed to securing the enforcement of foreign judgments in this country. Part II is headed "*Miscellaneous and General*". Section 8 is the first section in this Part and reads as follows:

8. *(1) Subject to the provisions of this section, a judgment to which Part I of this Act applies or would have applied if a sum of money. had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in the United Kingdom as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counterclaim in any such proceedings.*

(2) This section shall not apply in the case of any judgment: -

(a) where the judgment has been registered and the registration thereof has been set aside on some ground other than: -

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied ; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or

(b) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in the United Kingdom recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act."

The judgments to which Part I of the Act applies are defined in section 1(2) and (3) of the Act which read as follows:

(2) Any judgment of a superior court of a foreign country to which this Part of this Act extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part of this Act applies, if—

(a) it is final and conclusive as between the parties thereto ; and

(b) there is payable thereunder a sum of money, 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 ; and

(c) it is given after the coming into operation of the Order in Council directing that this Part of this Act shall extend to that foreign country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court."

Such a judgment may be registered if it has not been wholly satisfied and if it is not one which could not have been enforced by execution in the country of the original court. If a judgment of a foreign court is registered, then for the purposes of execution, if it is not competent to a party to apply for the registration to be set aside or such an application has been finally determined, the registered judgment is to be of the same force and effect as a judgment originally given by the registering court. Proceedings may be taken on it as if it were a judgment of that court and the judgment is to carry interest as if it were a judgment of that court (section 2(2)).

Part I of the Act only applies to judgments under which a sum of money is payable. Section 8(1) applies to all judgments to which Part I applies and also to judgments to which that Part does not apply but would have applied if money had been payable under them, that is to say judgments which are final and conclusive and given after the Order in Council applying Part I to the foreign country concerned has been made (section I (2)(a) and (c)).

I cannot therefore see that there is any ground for concluding, as was contended by the Appellants, that section 8(1) only applies to judgments which can be enforced. Section 8(1) does not deal at all with enforcement. That is dealt with in Part I.

As it was not disputed that in this case section I(2)(a) and (c) were satisfied, in my opinion the judgment of the District Court of Munich was one to which section 8(1) applies.

That subsection goes on to provide that such a judgment shall be recognised in any court in the United Kingdom as "*conclusive between the parties thereto",* and to state when it is to be so recognised, namely *"in all proceedings founded on the same cause of action".* It concludes by saying that it may be relied on by way of defence or counterclaim in any such proceedings.

The subsection does not expressly state of what the judgment is to be conclusive and the controversy in this appeal is as to that.

In ***Thoday v. Thoday*** [1964] P. 181 Diplock L.J., as he then was. said at p. 197 that there were two species of estoppel per rent judicatam. The first, which he called "*cause of action estoppel*" was that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. The second, which my noble and learned friend called "*issue estoppel*" arises where in previous litigation one of the matters in issue between the parties has already been decided by a competent court.

Lord Denning M.R. in the Court of Appeal held that section 8(1) dealt with "*cause of action estoppel*" and section 8(3) with *"issue estoppel";* and that as the proceedings in England would be founded on the same cause of action as those in Germany, the judgment in Germany was to be treated as conclusive. That judgment did not decide that money was not owed by the Respondents to the Appellants but that it was not recoverable owing to the German period of limitation. Nevertheless, in Lord Denning's view, section 8(1) operated to prevent the Appellants from suing in this country on the same cause of action even though the period of limitation under English law had not expired.

Megaw L.J. and Scarman L.J. held that section 8(1) displaced the common law as to the enforcement and recognition of foreign judgments, and agreed that the judgment of the German court prevented proceedings being instituted in this country.

The contrary view advanced by the Appellants was that the judgment of the foreign court was only by section 8(1) made conclusive as to the matters decided therein and so was conclusive only on the question whether the limit imposed by German law on the time within which actions must be instituted applied and barred the action.

Although since 1964 the use of the expressions "*cause of action estoppel*" and "*issue estoppel*" has become common, I do not think that that division into two species of estoppel per rem judicatam was recognised in 1933 or that those expressions were then used. If that be right, it would indeed be singular if Parliament had then intended section 8(1) only to apply to "*cause of action estoppel*" and section 8(3) only to "*issue estoppel*".

In this connection I think the way in which section 8(3) is drafted is illuminating. If that section was intended to cover issue estoppel, I would not have expected it to commence with the words *"Nothing in this section shall be taken to prevent . . .".* That is a formula frequently used in statutes when a provision is inserted ex abundanti cautela. Its use in section 8(3)

leads me to the conclusion that section 8(3) was not intended to cover issue estoppel as a distinct species of res judicata but was inserted to ensure that the Act did not by section 8(1) reduce the recognition given by the courts of this country under the common law to foreign judgments. It follows that section 8(1) was not intended, if this be so, to cover only one species of estoppel per rem judicatam.

Our attention was drawn to the fact that the Foreign Judgments (Reciprocal Enforcement) Act 1933 was passed by Parliament on the 13th April, 1933 shortly after the Report of a Committee called the Foreign Judgments (Reciprocal Enforcement) Committee had been presented to Parliament. That was done in December 1932. The Committee had been appointed by the then Lord Chancellor and its chairman was Greer L.J. It had among its members many very eminent lawyers. To its Report were annexed a draft of Conventions to be entered into with foreign countries and a draft Bill, clause 8 of which was in precisely the same terms as section 8 of the Act.

The question was debated to what extent could recourse be had to the Committee's Report as an aid to the construction of section 8.

Ever since ***Heydon's Case*** (1584) 3 Co. Rep. 7a it has been recognised that there are, in connection with the interpretation of statutes, four questions to be considered: (1) what was the common law before the making of the Act; (2) what was the mischief or defect for which the law did not provide ; (3) what remedy Parliament had provided and (4) the reason for the remedy (see ***Eastman Photographic Materials Co. v. Comptroller of Patents*** [1898] A.C. 571).

In that case Lord Halsbury cited a passage from the report of commissioners appointed to inquire into the duties, organisation and arrangements of the Patent Office in relation to trade marks and designs. That passage not only referred to what the existing law was but also to what the commissioners thought it ought to be ; and after citing it. Lord Halsbury said: *"My Lords, I think no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission."*

Many instances were cited in the course of the argument where the Courts have had regard to the reports of such commissions or committees ; e.g. in ***Rookes v. Barnard*** [1964] A.C. 1129 and ***Heaton's Transport (St. Helens) Ltd. v. Transport and General Workers Union*** [1973] A.C. 15 to the Report of the Royal Commission on Trade Unions and Employees' Associations, in ***National Provincial Bank Ltd., v. Ainsworth*** [1965] A.C. 1175 to the Report of the Royal Commission on Marriage and Divorce and in ***Letang v. Cooper*** [1965] 1 Q.B. 232 to the Report of the Tucker Committee on the Limitation of Actions. Other instances could be cited and, despite the observations of Lord Wright with which Lord Thankerton agreed in ***Assam Railways v. Commission of Inland Revenue*** [1935] A.C. 445, it is now, I think, clearly established that regard can be had to such reports.

In that case counsel had sought to refer to recommendations of the Royal Commission on Income Tax of 1920 and to argue that the Finance Act 1920 followed those recommendations. The House did not allow him to do so, Lord Wright saying at p. 458:

". . . on principle no such evidence for the purpose of showing the intention, that is the purpose or object, of an Act is admissible ; the intention of the Legislature must be ascertained from the words of the statute with such extraneous assistance as is legitimate: as to this, I agree with Farwell L.J. in ***Rex v. West Riding of Yorkshire County Council*** [1906] 2 K.B. 676 where he says: - *'I think the true rule is expressed with accuracy by Lord Langdale in giving the judgment of the Privy Council in the Gorham case in Moore 1852 edition p. 462 we must endeavour to attain for ourselves the true meaning of the language employed - in the Articles and Liturgy - assisted only by the consideration of such external or historical facts as we may find necessary to enable us to understand the subject matter to which the instruments relate, and the meaning of the words employed .... It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the Report of Commissioners is even more removed from value as evidence of intention because it does not follow that their recommendations were accepted."*

Despite these observations, in ***Shenton v. Tyler*** [1939] 1 Ch. 620 (C.A.) Sir Wilfred Green M.R. cited a recommendation of the Common Law Commissioners of 1852 saying that it was accepted by the Legislature and embodied in the Evidence Amendment Act 1853.

The task confronting a Court when construing a statute is to determine what was Parliament's intention. In a perfect world the language employed in the Act would not be capable of more than one interpretation but due in part to the lack of precision of the English language, often more than one interpretation is possible. Then, to enable Parliament's intention to be determined, as I understand the position, one may have regard to what was the law at the time of the enactment and to what was the mischief at which it was directed.

That one can look at such reports to discern the mischief is now, I think, established but there is a difference of opinion as to what may be looked at in such reports. Can one have regard to the recommendations of the Committee or. Commission? Where a draft Bill is attached to the report, as is now frequently the case, and was the case in this instance, can one refer to the terms of the draft Bill when they have been enacted without material alteration by Parliament? Can one refer to the notes on the clauses of the draft Bill appended to it by the Committee, and in the present case to the terms of the draft Conventions prepared by the Committee and attached to their Report? Is it legitimate to make use of such parts of a report as an aid to the construction of the Act?

In my opinion it is. The reason why one is entitled to consider what was the mischief at which the Act was aimed is surely that that will throw a revealing light on the object and purpose of the Act, that is to say the intention of Parliament; and, applying Lord Halsbury's observations cited above, what more accurate source of information both as to the law at the

time and as to the evil or defect which the Act was intended to remedy can be imagined than the report of such a Committee matter, the reports of the Law Commission.

The contrary view seems to impose on judges the task of being selective in their reading of such reports. What part may they look at and what not? Have they to stop reading when they come to a recommendation? Have they to ignore the fact, if it be the fact, that the draft Bill was enacted without alteration? To ignore what the Committee intended the draft Bill to do and what the Committee thought it would do? I think not.

I think so to hold would be to draw a very artificial line which serves no useful purpose. What weight is to be given to a Committee's recommendations is another matter. That may depend on the particular circumstances. If the report of the Committee merely contains recommendations, while I think that regard can be had to them, little weight may be attached to them as it may not follow that Parliament has accepted them. Parliament may have decided to go further or not as far. But where, as here, a draft Bill is attached to the report, then one can compare its provisions with those of the Act and if there is no difference or no material difference in their language, then surely it is legitimate to conclude, as Greene M.R. did in Shenton v. Tyler (supra), that Parliament had accepted the recommendation of the Committee and had intended to implement it. In such a case that recommendation becomes as it did in Eastman Photographic Material Ltd. v Comptroller General of Patents (supra) the most accurate source of information as to the intention of Parliament.

Of course, it may be that the language used in the draft Bill and in the Act is defective and does not carry out the Committee's and Parliament's intention. Regard must be had to that possibility, however remote it may be.

In ***Letang v. Cooper*** [1965] 1 Q.B. 232 Lord Denning M.R. at p. 240 said: *" It is legitimate to look at the report of such a committee" (the Tucker Committee on the Limitation of Actions) "so as to see what was the mischief at which the Act was directed. You can get the facts and surrounding circumstances from the report so as to see the background against which the legislation was enacted. This is alwaysa great help in interpreting it. But you cannot look at what the committee recommended, or at least, if you do look at it, you should not be unduly influenced by it. It does not help you much, for the simple reason that Parliament may, and often does, decide to do something different to cure the mischief."*

While I respectfully agree that recommendations of a Committee may not help much when there is a possibility that Parliament may have decided to do something different, where there is no such possibility, as where the draft Bill has been enacted without alteration, in my opinion it can safely be assumed that it was Parliament's intention to do what the Committee recommended and to achieve the object the Committee had in mind. Then, in my view the recommendations of the Committee and their observations on their draft Bill may form a valuable aid to construction which the Courts should not be inhibited from taking into account.

It does not follow that if one can have regard to the whole of a Committee's report, one ought also to be able to refer to Hansard to see what the Minister in charge of a Bill has said it was intended to do. In the course of the passage of a Bill through both Houses there may be many statements by Ministers, and what is said by a Minister in introducing a Bill in one House is no sure guide as to the intention of the enactment, for changes of intention may occur during its passage. But when a Bill is drafted by such a Committee as that in this case and enacted without alteration, then. I repeat, in my opinion it is legitimate to have regard to the whole of the Committee's Report, including the terms of the draft Bill attached to it, to the Committee's notes on its clauses and to the draft Conventions annexed to the Report, for they constitute a most valuable guide to the intention of Parliament.

The Report of the Committee begins with a summary of the Committee's recommendations and the reason therefor. They were primarily concerned with securing that English judgments should be recognised and enforced in foreign countries without the case having to be fought again on the merits in a foreign court. To that end Conventions had to be entered into with foreign countries and the Committee had ascertained that some foreign countries would be willing to allow judgments to be enforced *" on similar conditions to those on which we enforce theirs, provided that those conditions are defined in a Convention "*. They pointed out that there were two difficulties in the way of concluding such Conventions: (1) that under the then existing procedure foreign judgments were not enforced as such, and (2) *" The principles on which English courts accept foreign judgments as conclusive depend on case law and are not to be found formulated in the Statute Book* ". Their aim was, they said, to remove these difficulties ; and, they said, so far as the position in England was concerned, the change they proposed involved " *no radical alterations of the present position* ".

Paragraph 4 of their Report appears under the heading *"The Present Position, (i) Recognition and enforcement of foreign judgments in England "*, and reads as follows: *" Under English common law a foreign judgment (other than a judgment given in a criminal or fiscal matter), though it does not operate in England to merge the original cause of action, is, provided that certain reasonably well-defined conditions are satisfied, recognised as conclusive between the persons who were parties to the proceedings in the foreign court as regards the question therein adjudicated* upon, and can be relied upon by any of the said parties or their privies, if further proceedings are brought in England by any other such partyor his privy in respect of the same cause of action."*

To this paragraph there was the following footnote: *" * The words ' question adjudicated upon' refer to the actual decision (the operative parts of the judgment) as opposed to the grounds or reasoning upon which it may be based, in the course of which other points of law or fact may have been incidentally decided as preliminaries (necessary or otherwise) to the final conclusion. The authoritise on the effect of foreign judgments in English law are not very numerous. They appear, however, clearly to justify the statement of the position given above though it may be that this statement is slightly too narrow. This statement is in any case only intended to apply to judgments in ordinary proceedings in personam."*

The wording of this paragraph closely resembles that of section 8(1) of the Act and the passages in the Report to which I have referred establish, in my opinion, that by Part I of the Bill the Committee sought to secure that certain foreign

judgments were capable of being enforced as such in English courts and by section 8 to state in a statute the principles on which English courts recognise foreign judgments as conclusive. There is nothing to be found in these passages or elsewhere in the Report to support the contention that it was the Committee's intention to alter or depart in any way from the principles on which English courts had under the common law regarded foreign judgments as conclusive.

Paragraph 10 of the Report states the reasons in the Committee's view for *"the present failure"* of foreign courts to recognise and enforce British judgments and the steps necessary to remedy that position. In paragraph 10(b) they say: *"The whole of the English procedure, including the conditions required for the recognition of a foreign judgment as conclusive, depends upon rules of Common Law only. There is always a natural tendency for the foreign court to suppose that such Common Law rules are too indefinite to be applied as rigidly as the provisions of a statute or a code, and that they are largely discretionary. . . .".*

The Report continues: *" Therefore, in the case of these countries, in practice ... the conclusion of an international convention — containing reciprocal obligations for the recognition and enforcement of judgments which will be made binding as part of the municipal law of the foreign country, together with the statement of our own rules in statutory form —appears to be the only manner by which everything like reciprocal treatment can be secured in the mutter of recognition and enforcement of British judgments."* and in paragraph 16 the Report states: *" It was, however, desirable that such legislation, in laying down the conditions under which, in return for reciprocal treatment, the judgments of foreign countries should be enforced, should not depart from the substantive principles of the common law applicable to foreign judgments in general."*

In paragraph 23 the Committee emphasised the manner in which the draft Bill and rules on the one hand and the draft conventions on the other had been prepared *" concurrently with and in the light of each other, so as to render the arrangements proposed in connexion with foreign judgments in the United Kingdom consistent with the conventions, and vice versa."*

One Annex to the Report contains a draft Convention with Germany. Article 3 thereof deals with the recognition of judgments and Article 3(2) provides that a judgment which is recognised *" shall be treated as conclusive as to the matter thereby adjudicated upon in any further action between the parties . . . and as to such matter shall constitute a defence in a further action between them in respect of the same cause of action."* No such Convention was entered into with Germany until 1961 and Article lll(4) of that Convention corresponds with Article 3(2) of the draft.

In their notes on the clauses of the draft Bill, the Committee say: *" Clause 8 " (now section 8 of the Act) " contains the provisions of the Bill with regard to the recognition of foreign judgments as final and conclusive between the parties as regards the question therein adjudicated upon. It is entirely in accordance with the position at Common Law " (as explained in paragraph 4 of the Report) " and clause 8(3) "(section 8(3) of the Act) " saves the existing Common Law rules in any cases where the rule laid down by the Act may be narrower in operation than the Common Law."*

The Report thus shows, in my opinion beyond any question of doubt, that it was not the Committee's intention by clause 8 to make any change in the existing common law rules as to recognition of foreign judgments; that clause 8(3) was inserted ex abundanti cautela and that clause 8(1) was only intended to operate to make a judgment conclusive between the parties as to the matter thereby adjudicated upon.

Unfortunately the Report was not brought to the attention of the Court of Appeal.

Parliament by enacting clause 8 without alteration must, in my opinion, have intended to implement the intentions of the Committee and I can see no ground for holding that they did not effectively do so.

What then was the question adjudicated upon by the District Court of Munich on the 30th November, 1972? It was not that no money was owed by the Respondents to the Appellants. The expert evidence in this case made it clear that the Appellants' right to payment was not extinguished by that decision. It was not a judgment " on the merits ", an expression used not infrequently by lawyers, and used by the Committee in paragraph 1 of their Report and one to which I must confess I have no difficulty in attaching a meaning. It was a decision that the German period of limitation applied and that the Appellants' claim was consequently time barred.

In these circumstances what was the position at common law. That was in my opinion clearly settled by the decision in ***Harris v. Quine*** (1869) L.R.4 Q.B.653.

There it was held that a Manx statute which provided a three year period of limitation barred the remedy but did not extinguish the debt and that proceedings to recover the debt, though time barred in the Isle of Man, could be brought in this country. In the course of his judgment Blackburn J. said: *"... it was said that the plea . . . would shew that the Manx court had determined the matter and that the matter ought not to be litigated again in the courts of this country ; and, no doubt, wherever it can be shewn that a court of competent jurisdiction has decided the matter, the plaintiff is estopped from disputing the decision, or litigating the matter in another court, while the decision of the first court remains unreversed. But, in the present case, all that the Manx court decided was, that in the courts of the Isle of Man the plaintiffs could not recover."*

So here all that the German court decided was that in the German courts the Appellants could not recover.

It was contended that this case was wrongly decided. I found that argument entirely unconvincing. It is a decision which has stood unchallenged since 1869. It was submitted that the Committee must when preparing their Report have overlooked it. I cannot accept that. It is a decision cited in Dicey's Conflict of Laws without any adverse comment and in the 1st Edition of that work as authority for the proposition that *"... it is not an answer to an action in England if it be ... a judgment which, though it decides the cause finally in the country where it is brought, does not purport to decide it on the merits, e.g., if it is given in favour of the defendant on the ground that the action is barred by a statute of limitations."*

If the Act of 1933 had not been passed, then under the common law, in the light of this decision, proceedings by the Appellants in England would not have been barred by the decision of the Munich court. As in my opinion section 8 of the Act was intended to and does preserve the common law position without alteration, the Respondents' claim that that decision prevents proceedings in England must be rejected.

In the Court of Appeal some importance was attached to the concluding words of section 8(1), that the judgment is to be recognised as conclusive between the parties in all proceedings founded on the same cause of action and *" may be relied on by way of defence or counterclaim in any such proceedings "*. Res judicata may be relied on by way of defence but the need to provide that it may be relied on by way of counterclaim founded on the same cause of action is somewhat obscure. Whatever its content be, the inclusion of the reference to a counterclaim does not, in my view, answer the question or throw a light on the answer to the question of what is a judgment to be recognised as conclusive? In my opinion, though the words *"of the matter adjudicated upon"* are not in section 8(1), though they were in the draft Convention and in paragraph 4 of the Report, nevertheless the language of that subsection provides that a judgment to which the sub-section applies is to be conclusive of what it decides and not of what it does not decide. And the judgment of the Munich court did not decide that money was not owing by the Respondents to the Appellants. It was not a decision on the merits of the Appellants' claim.

I would therefore allow the appeal. But the position has changed since the Court of Appeal's decision. The judgment of the Munich Court has been reversed and that judgment reversing it is now under appeal.

In these circumstances while leave should be given to issue the writ and to serve notice thereof on the Respondents, thereafter there should be a stay pending the decision of the Federal Supreme Court and with liberty to apply after the decision of the Court has been given. I can see that formidable arguments may be advanced, if the Federal Supreme Court upholds the reversal of the decision of the Munich court, for saying that the Appellants, having chosen the German courts as the forum and as the case can then be heard on its merits, should not in the exercise of discretion be allowed at the same time to proceed in the courts of this country. But it is not necessary or desirable to express any opinion on that now.

For the reasons I have stated, in my opinion this appeal should be allowed.

Lord Wilberforce MY LORDS,

This appeal is essentially concerned with the interpretation of section 8(1) of the Foreign Judgments (Reciprocal Enforcement) Act, 1933. From the facts which have been fully stated I select those necessary for our decision.

1. The present action is brought upon two Bills of Exchange drawn by the Appellants and accepted by a predecessor in business of the Respondents- it is not disputed that the Respondents have succeeded to any liability on these Bills. The proper law of these Bills is English law. The German proceedings were brought by the Appellants against the Respondents on these same Bills after dishonour.
2. Action on the Bills in England is not, we must assume, barred by the English Limitation Act, 1939.
3. In Germany, a three year period of limitation applies to Bills of Exchange. If the German period is applied to the Bills, action upon them is barred by German law. The question litigated in Germany, upon which the German Courts have differed, is whether in proceedings before a German court the German period does apply. The basis of the affirmative decision of the District Court of Munchen is (briefly) that limitation is, under German law, classified as a matter of substance, not of procedure; that as the proper law of the Bills is English law, this involves the application by a German Court of English law ; that under English law limitation is regarded as a matter of procedure; that, applying the doctrine of renvoi (accepted by the German Court), reference back has to be made to the lex fori, i.e., German law, so that the proceedings were barred.
4. According to expert evidence, German law, though classifying limitation as a matter of substance, did not, in relation to the subject matter of dispute, extinguish the right, but did affect the remedy.

   As this point is crucial, I quote certain passages from the evidence filed on behalf of the Respondents:

   "In German law what is described in England as the limitation of actions does not extinguish the right. Nonetheless such limitation is a matter of substance, not of procedure." Dr. F. A. Mann.

   "The completion of the limitation affects the substantive quality of the right. Notwithstanding the limitation it is true the right remains in existence. Its effect, however, is weakened by the fact that the obligor is entitled permanently to refuse performance."

   Professor Feimehl, commenting on the German Civil Code, section 222, cited by Dr. F. A. Mann: *"... the position is that, while the debts under the bills are not extinguished, the defendants are under no duty to pay them because they have a permanent answer to them."* Dr. F. A. Mann.
5. The judgment of the District Court of Munchen, dated 30th November, 1972, is in evidence. U consists of a single document containing (i) a dispositive part, (ii) a statement of facts, (iii) grounds for the decision. The dispositive part states "*The suit is dismissed*". The grounds for decision set out fully the grounds in law for holding that the claim is barred by the German law as to limitation. I mention this point because the Respondents contend that the "*judgment*" to be recognised under the Act of 1933 is the dispositive provision dismissing the suit and nothing more.

After this preface I come to the Act of 1933. It is in two parts. Part I contains provisions for the enforcement of foreign judgments by registration. Part II contains miscellaneous and general provisions starting with section 8, which deals with recognition. The question for decision is whether, and if so to what extent, section 8(1) applies to the present situation.

There are two issues. The first is whether the subsection applies at all to foreign judgments dismissing a suit, i.e.. in favour of a defendant: the Appellants' contention is that it only applies to judgments which could, if certain other elements existed (e.g., an order to pay money), be enforceable under Part I. The second issue is for what purpose and to what extent a foreign judgment is "*conclusive*". The Appellants' contention is that it is to be conclusive as to any matter adjudicated upon, but no further. Since in this case all that was adjudicated upon was that the Plaintiffs have no remedy in Germany upon the Bills, by reason of the expiry of the German limitation period, recognition of this fact does not prevent the Appellants from suing in England. I shall deal first with the second point.

My Lords, we are entitled, in my opinion, to approach the interpretation of this subsection, and of the 1933 Act as a whole, from the background of the law as it stood, or was thought to stand, in 1933 and of the legislative intention. As to these matters the Report to which my noble and learned friend, Lord Reid, has referred is of assistance. He has set out in his opinion the basis upon which the Courts may consult such documents. I agree with his reasoning and I only desire to add an observation of my own on one point. In my opinion it is not proper or desirable to make use of such a document as a Committee or Commission report, or for that matter of anything reported as said in Parliament, or any official notes on clauses, for a direct statement of what a proposed enactment is to mean or of what the Committee or Commission thought it means - on this point I am in agreement with my noble and learned friend Lord Diplock. To be concrete, in a case where a Committee prepared a draft Bill and accompanies that by a clause by clause commentary, it ought not to be permissible, even if the proposed Bill is enacted without variation, to take the meaning of the Bill from the commentary. There are, to my mind, two kinds of reason for this. The first is the practical one, that if this process were allowed the Courts would merely have to interpret, as in argument we were invited to interpret, two documents instead of one - the Bill and the commentary on it, in particular Annex V para. 13. The second is one of constitutional principle. Legislation in England is passed by Parliament, and put in the form of written words. This legislation is given legal effect upon subjects by virtue of judicial decision, and it is the function of the Courts to say what the application of the words used to particular cases or individuals is to be. This power which has been devolved upon the judges from the earliest times is an essential part of the constitutional process by which subjects are brought under the rule of law - as distinct from the rule of the King or the rule of Parliament; and it would be a degradation of that process if the Courts were to be merely a reflecting mirror of what some other interpretation agency might say. The saying that it is the function of the Courts to ascertain the will or intention of Parliament is often enough repeated, so often indeed as to have become an incantation. If too often or unreflectingly stated, it leads to neglect of the important element of judicial construction ; an element not confined to a mechanical analysis of today's words, but, if this task is to be properly done, related to such matters as intelligibility to the citizen, constitutional property, considerations of history, comity of nations, reasonable and non-retroactive effect and, no doubt, in some contexts, to social needs.

It is sound enough to ascertain, if that can be done, the objectives of any particular measure, and the background of the enactment; but to take the opinion, whether of a Minister or an official or a Committee, as to the intended meaning in particular applications of a clause or a phrase, would be a stunting of the law and not a healthy development.

In this light I can state in summary form the considerations to which the Report brings me in interpreting the Act. First, the objective of the Act is clear: it was to secure the enforcement by other countries of English judgments, mainly money judgments, upon principles similar to those on which foreign judgments were recognised in England. Secondly, the Act was to be based upon and to follow with minimal departures the common law. Third, the Act was to state in statutory form the general principles upon which foreign judgments (to which the Act applied) would be recognised in English courts. Fourth, the Act, a draft of which was annexed to the Report, and which the eventual statute adopted with negligible variation, was prepared in the contemplation that bilateral Conventions would be entered into with foreign States, with a view to securing reciprocity of treatment. It is made clear that negotiations had taken place with the Belgian, French and German governments: draft Conventions had been prepared and are annexed to the Report: the Act was intended to operate upon and in aid of these Conventions. [The Convention with Germany was not, in fact, signed until 1960 and was given effect to by Statutory Instrument 1961, No. 1199; but it followed closely the draft scheduled to the Report.]

Fifth, it is relevant to notice that the Committee included a number of persons of acknowledged competence, and indeed distinction, in the field of Private International Law, who must be taken to be familiar with established rules and decided cases.

One of the rules, which they must be taken to be aware of, relates to the distinction made in English Private International Law between matters of substance and matters of procedure, and, within that, the classification of limitation as a matter of procedure. Classification of limitation as procedural means that in proceedings in an English Court, English law, as the lex fori, will apply its domestic law as to limitation and will not apply foreign limitation provisions even if the foreign law is the proper law, unless, at least, they extinguish the right. This principle has been part of English law since, at any rate, Huber v. Steiner. I quote the well-known statement of principle by Tindal CJ.: *"The distinction between that part of the law of the foreign country where a personal contract is made, which is adopted, and that which is not adopted by our English courts of law, is well known and established ; namely, that so much of the law as affects the rights and merit of the contract, all that relates ad litis decisionem, is adopted from the foreign country ; so much of the law as affects the remedy only, all that relates ad litis ordinationem, is taken from the lex fori of that country where the action is brought."* ((1835) 2 Bing N.C. 202).

Huber v. Steiner was not itself a case involving a foreign judgment, but the question arises immediately whether the same principle applies. The answer to this can only be affirmative. If English law applies its own limitation provisions to a foreign obligation, even where there is evidence that action on that obligation would (or would not) be barred by the limitation provisions of the proper law of that obligation, it would seem inevitably to follow that English law should not

recognise a foreign judgment to the same effect- more precisely should treat the foreign judgment as a decision as to the remedy procedurally available, or not available, in the foreign court and nothing more. Exactly that was in fact decided in 1869 by ***Harris v. Quine*** (L.R. 4 Q.B. 653). Cockburn C.J. treated the matter as concluded by ***Huber v. Steiner***: *"The law being as I have stated, there is no judgment of the Manx court barring the present action, as there was no plea going to the merits, according to the view which we are bound to take of the Manx statute of limitations, and the issue which the Manx court decided in favour of the defendant is not the same issue as is raised in the present action ".*

Blackburn J.: *"But it was said the plea, if amended according to the facts, would show that the Manx court had determined the matter. . . . But ... all that the Manx court decided was that, in the courts of the Isle of Man the plaintiffs could not recover."*

We see here, in the judgment of Cockburn C.J., a reference to a plea going *"to the merits"*. This expression, whether related to pleas or to judgments, is a familiar one in English law: any practitioner would use it even if it is not always understood. It is used in many well known authorities - see ***Ricardo v. Garcias*** (1845) 12 Cl. & F. 368, 377, 389, 390; ***Godard v. Gray*** (1870) L.R. 6 Q.B., 150 and in writers of authority - see Foote (5th Ed.) p. 553 ; Dicey (3rd Ed.) p. 455 ; Story Commentaries, section 576. See also American Law Institute (Restatement- Second) Conflict of Laws, section 110: *" A judgment that is not on the merits will be recognised in other states only as to issues actually decided."*

All of what was said in ***Harris v. Quine*** applies directly to the present case, and unless the Respondents can escape from the force of this authority, must conclude the appeal against them. They had, basically, two arguments. First they contended that ***Harris v. Quine*** was wrongly decided, or at least that it stood alone and ought not to be followed. I regard this as a hopeless contention. It may be true that, as regards this subject matter, ***Harris v. Quine*** is the only English reported case where a foreign judgment and its recognition was involved. But as I have shown it represents a logical and inevitable consequence of ***Huber v. Steiner*** and other cases and is merely an application of a principle too firmly established to be now put in question. ***Harris v. Quine*** has been cited often enough in English and Commonwealth cases. See ***Casanova v. Meier*** (1885) 1 T.L.R. 213 ; ***Carvell v. Wallace*** (1873) 9 Nova Scotia Reports 165 ; ***Bondholders Securities Corporation v. Manville*** [1933] 4 D.L.R. 699 ; ***Pedersen v. Young*** (1964) 110 C.L.R. 162, sometimes, I must say, irrelevantly, but it has never been doubted. The principle is well recognised by Courts of authority in the U.S.A. ***Warner et al v. Buffalo Drydock Co.*** (1933) 67 Fed.R. (2d.) 540; Cert. den. 291 U.S. 678 ; ***Western Coal and Mining Coy. v. Jones*** (1946) 164 A.L.R. 685 (S.C. Cal.) and see the Restatement quoted above. As at the year 1933, then, ***Harris v. Quine*** was undoubtedly good law.

Secondly, and more substantially, the Appellants say that ***Harris v. Quine*** is superseded by section 8(1) of the Act of 1933: this was in effect the view of the Court of Appeal.

Before looking at the language of the subsection, it may be useful to consider what this contention involves. It involves the proposition that a well established principle of English law, namely, that to obtain recognition, a foreign judgment must be on the merits and not be based merely on a "*procedural*" provision of the lex fori, is swept away in favour of a new principle that a foreign judgment, on whatever grounds it proceeds, is conclusive for all purposes, so long at least as the same "*cause of action*" is involved, or the same facts. If one accepts that the presumption is against changes in the common law, and that this presumption is fortified in the present case by the Report of 1932, if one accepts moreover that the principle under consideration was perfectly well known and understood in 1932, it was to be expected that on this point the common law would only be changed by a clear and express provision. Yet what is relied upon is the word *"conclusive"* coupled with a reference to *"cause of action"*. I return to these words later: What, one could ask, could be the purpose of the change? Why should this Act make a judgment conclusive as to something it never decided? Why, to take the present case, should a foreign judgment be conclusive on a matter whose proper law is English, and accepted as English by the foreign Court, when that foreign law itself does not destroy the right, but only limits the remedy it will grant? For English law to abolish the distinction between substance and procedure, or to classify limitation as substance, might be an intelligible objective, but short of this, and leaving the distinction and classification intact, to change the effect of a judgment is something that, at the least, requires explanation.

Some suggestion was made that to extend the recognition of foreign judgments might be desired on grounds of reciprocity: but I cannot understand this. There was no evidence that foreign Courts grant or would grant the wider recognition argued for by the Respondents and in any case reciprocity was to be achieved by the proposed Conventions. There is nothing in this alleged principle - one of uncertain extent - which assists either way in the interpretation of the Act.

I find then, so far, no intelligible reason for supposing the common law to be changed. But the Respondents say the words of the section are clear - clear words must be given effect to - conclusive means conclusive and that is that. This, however, I cannot accept. In the first place one has to ask, "*What is conclusive?"*, the section says the *"judgment"* - so what is "*the judgment"*? The Respondents say that the judgment is the dispositive - *"the suit is dismissed"*. If this is contained in a self-contained document, as in the English practice, one may not look beyond it. If in a comprehensive document, as in the German practice, only that part of it which states the disposition is the judgment, not the whole of the judgment showing what was decided or adjudicated upon. But there is no warrant for this limitation.

The Courts in this country, when faced with a foreign judgment, whether in favour of the plaintiff or the defendant, in English proceedings, invariably look at the whole matter: the order made: the reasons: the nature of the rival claims, resorting if necessary to extrinsic evidence to explain them and to expose the reality. They do not confine themselves to the fact of the record, or to the formal order. It must be remembered that at common law foreign judgments do not give rise to an estoppel by record. If relied on by a plaintiff in an English court, they are so as obligations, which the

defendant ought to discharge: so the nature of the obligation must be made known and if necessary explained. If they are relied on by a defendant as a bar in English proceedings, the nature of the bar must be enquired into, from an inspection of the matter adjudicated upon. ***Harris v. Quine*** itself is an example of this. One can cite many passages of authority: *"In general, in pleading a foreign judgment you produce it with the proceedings to show it is a judgment between the same parties and on the same matters "*. (***Ricardo v. Garcias*** u.s. p. 387 per Lord Lyndhurst L.C.): *" Every plea of a foreign judgment in bar ought to set forth so much at least of the judgment as would show that it was final and conclusive on the merits "*. (ibid, per Bethell arg.) *" No one contends that the judgment and proceedings should be set out in full, but we should have such a description of them as would enable us to know what was decided"*. (ibid p. 394 per Lord Brougham).

So, in my opinion, to say that in a case such as the present the English Court must stop at the first line of the German judgment and ignore the rest is irrational and out of line with what the Courts do. And then *"conclusive"*: conclusive of or as to what? The Respondents say *"conclusive that the cause of action on which the foreign proceedings were brought no longer exists "*. But the subsection does not say this: the words "*in all proceedings founded on the same cause of action"* merely describes the occasion on which the conclusiveness arises. There is nothing here - and, I add in passing, nothing in Part I of the Act - to indicate that the conclusiveness is to extend, irrespective of what the judgment decided, to the whole of the cause of action. Why should we give to the judgment a greater force than it receives by the law of the country where it is given? Certainly the law of Germany does not say that the cause of action does not exist.

In my opinion, therefore, an interpretation of both "*judgment"* and "*conclusive"* which would require Courts in this country to examine the judgment, see what it decided, and hold it conclusive as a judgment and for what it adjudicates, is both open on the language and is entirely consistent with the common law. To quote another leading authority : - *"As to whatever it meant to decide, we must take it as conclusive "****Bernardi v. Motteux*** 1781 2 Doug. 575, 581 per Lord Mansfield.

The Appellant finally relied strongly on the wording of section 8(3) of the 1933 Act. I agree with my noble and learned friend Lord Simon of Glaisdale in the reasons he has given why this subsection is of no assistance and shall not repeat them in words of my own.

In my opinion, if this case had arisen at any time between 1869 and 1933 there could be no doubt how it would have been decided. I see no reason why the Act of 1933 should be understood as intending to bring about a different result. The language of section 8(1) does not so compel. The German judgment would be conclusive for what it decided and for nothing more. The Plaintiffs' claim has not been decided on the merits, and they should be allowed to pursue it. This being my conclusion on the second point, it is not necessary to decide the first. I prefer to reserve my opinion upon whether subsection (1) of section 8 applies to defendants' judgments.

There remains finally the question of residual discretion, and I must say that the situation now existing is unfortunate. This House is called upon to decide this matter before it knows how the German proceedings will finally terminate. It is not in a position effectively or with knowledge to exercise such discretion as the Courts ought to exercise. In my opinion, if a majority of your Lordships disagree with the legal position taken by the Court of Appeal, the appeal should be allowed. But I suggest that the present proceedings should be stayed, with liberty to apply after determination of the final appeal in Germany and that the matter then be brought afresh, if the Plaintiffs so desire, before the Master to decide whether they should be allowed to continue their action here. Obviously this House cannot now foresee all the contingencies. If the Respondents' appeal in Germany is allowed by the Federal Supreme Court and the matter is restored to where it was when this case was before the Court of Appeal, then, if your Lordships take a different view of the law from the Court of Appeal, there would appear to be - ceteris paribus - a strong case for allowing the Plaintiffs to continue with their action here. If, on the other hand, the Respondents' appeal in Germany is dismissed - so that the Plaintiffs in one way or another can proceed in Germany - then the conditions on which the Plaintiffs should (if at all) be allowed to sue the Defendants also in this country would require examination. I do not think that this House can at the present stage offer any useful guidance as to the manner in which that could be decided.

Lord Diplock MY LORDS,
If the effect of the interpretation given by the majority of this House to section 8(1) of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, were confined to the United Kingdom, I should content myself with recording my respectful dissent and my agreement with the interpretation unanimously placed upon it by the Court of Appeal. But the Act is designed to facilitate the reciprocal enforcement of the judgments of foreign courts in the United Kingdom and of the judgments of United Kingdom Courts in foreign states. It makes provision enabling and requiring English, Scots and Northern Irish courts to comply with obligations which the United Kingdom Government has assumed in international law towards the governments of those foreign states with which it has entered into conventions *"for the recognition and enforcement of judgments in civil and commercial matters "*. So the consequences of your Lordships' decision on this matter will not be confined to the municipal law of the United Kingdom. It may have repercussions in international law and in the municipal law of those foreign states with which conventions have been made. This emboldens me to state briefly why I am unable to accept either of the constructions of section 8(1) which commend themselves to those of your Lordships who consider that the interpretation placed on it by the Court of Appeal was wrong.

In a sentence the question that divides us is: *"Did section 8 of the Act of 1933 alter the common law as it had been stated by the Court of Queen's Bench in 1869 in* ***Harris v. Quine*** *(L.R. 4 Q.B. 653)"?*

All three members of the Court of Appeal thought that it did. They reached this conclusion by looking at the actual words of the section. They considered that the meaning of those words was plain and unambiguous. For my part I find their

reasoning convincing. I would not seek to improve upon the way in which it is put in the judgment of Scarman L.J. I am content to adopt it as my own.

I would, however, supplement it with three brief comments.

First, I can see no warrant for confining the application of the section to judgments in favour of a plaintiff or counterclaimant. Since it applies only to *"proceedings founded on the same cause of action"* as that disposed of by the foreign judgment, such proceedings ex hypothesi must be brought by a party who was the plaintiff in the foreign action against a party who was the defendant in that action. The reference to reliance on the foreign judgment *"by way of defence"* in my view clearly indicates that the section does apply to foreign judgment in favour of defendants.

Secondly, if there had not been the reported, albeit isolated, case of ***Harris v. Quine*** which had been mentioned without adverse comment in the standard text books on English private international law, I venture to think that it never would have occured to any English lawyer that the actual words of section 8(1) were to be understood as drawing any distinction between, on the one hand, foreign judgments given in favour of a defendant on the ground that the plaintiff's cause of action was time- barred under the domestic law of the foreign court, and, on the other hand, all other foreign judgments given in favour of plaintiffs or defendants on any other ground. If it were possible to discern from its provisions taken as a whole that the Act was intended to apply only to foreign judgments given "*on the merits*" - a phrase which I find elusive as a term of art, but which I take it would exclude judgments given upon the ground of non-compliance with a procedural rule of the foreign court or upon some other ground which would be classified in English private international law as governed by the lex fori - this might justify construing the word "*judgment*" in the same restricted sense in section 8(1). But it is clear from section 4(I)(a)(iii) that, provided the defendant has had due notice of the proceedings, a foreign judgment by default obtained against him by the plaintiff is enforceable under Part I of the Act, notwithstanding that it has been given upon what is solely a procedural ground governed by the lex jori and is not a judgment which can be described as being "*on the merits*". So the distinction sought to be drawn is peculiar to judgments in favour of a defendant on the ground that the plaintiff's cause of action was time-barred under the domestic law of the foreign state, and must be derived as a matter of construction from the words of section 8 itself. For my part, I am unable to discern any suggestion of that distinction in those words.

Thirdly, the word "*conclusive*" is, in my view, used in the section in the same meaning as in the phrase *"final and conclusive as between the parties thereto"* which is used in section 1(2)(a) as descriptive of foreign judgments to which Part I of the Act applies. This is incorporated by reference into section 8(1) itself. So I would answer the question "*Conclusive of what?"* by saying that it is conclusive of that of which the foreign judgment is conclusive in the country of the foreign court. Whatever else the foreign judgment does, its dispositive or operative part must embody a decision of the foreign court upon the ultimate question whether the plaintiff is entitled to the remedy he claimed that the court ought to grant him against the defendant as redress for the facts that he relied upon as constituting his cause of action. So, in a subsequent action brought in an English court by the same plaintiff against the same defendant founded upon the same facts and claiming the same remedy the foreign judgment is at very least conclusive of the question whether or not the plaintiff is entitled to that remedy.

In the course of reaching its ultimate decision disposing of the plaintiff's claim to the remedy he seeks, the foreign court may have incidentally decided other matters of fact or law essential to the plaintiffs claim to be entitled to the remedy or to the defendant's answer to that claim. Whether decisions of this kind will be embodied in the same document which contains the dispositive or operative part of the foreign judgment will depend upon the practice followed by the foreign court ; and the collusiveness attaching to such incidental decisions in subsequent litigation in the country of the foreign court between the same parties but not founded on the same cause of action, will depend upon the extent to which the foreign system of law incorporates a principle similar to the English doctrine of issue estoppel. The English doctrine of issue estoppel, though it did not acquire that name until later, was well known in 1933. It had been brought into prominence in the recent case of ***Hoystead v. Commissioner of Taxation*** ([1926] A. C. 155). It is based on public policy and section 8(3) of the Act preserves it as respects foreign judgments, whether or not the system of law of the foreign country incorporates a similar principle.

Section 8(1), however, in contrast to section 8(3), applies only to proceedings founded on the same cause of action as that for which the plaintiff claimed a remedy in the foreign action. If the judgment in the foreign court contains, as it must, the ultimate decision of the foreign court disposing of the plaintiff's claim to the remedy he seeks, the conclusiveness of this decision cannot, in my view, be rendered inconclusive by any failure of the foreign court to reach decisions on incidental matters of fact or law which it considers unnecessary for the purpose of disposing of the plaintiff's claim to the remedy he sought - even though, if the same remedy had been sought in an action brought in England, the English court would have considered it necessary to decide those incidental matters.

The attention of the Court of Appeal had not been drawn to the Report of the Foreign Judgments (Reciprocal Enforcement) Committee which had been presented to Parliament in December, 1932. To that Report there was annexed a draft Bill of which the wording was almost identical with that of the Act which received the Royal Assent in April, 1933. Also annexed was a commentary and explanation of the draft Bill. It is apparent from the Committee's comments on Clause 8, which is reproduced verbatim by section 8 of the Act, that they did not consider that it made any alteration to the common law. The membership of the Committee included experts in private international law who must have been aware of the decision in ***Harris v. Quine***; I would therefore accept the inference that the Committee did not realise that the language that they had recommended for Clause 8 would have the result of altering the common law as to the effect given by English courts to judgments of foreign courts in favour of defendants which were based solely on the ground that the plaintiff's remedy was time-barred under the domestic law of the foreign state. On the other hand it would, in

my view, be quite unrealistic to suppose that the members of either House of Parliament who voted on the Bill gave any thought, either individually or collectively, to the decision in ***Harris v. Quine*** or to the effect of Clause 8 upon it. The most that can be inferred is that those who took the trouble to read the small print on page 64 of the fifth Annex to the Report were not aware that it would alter the existing common law in any way.

I do not, however, understand that any of your Lordships go so far as to suggest that a court is entitled to put a strained construction on the words of section 8 in order to give them the effect the Committee thought that they had, if this would involve departing from their plain and natural meaning. It is for the court and no-one else to decide what words in a statute mean. What the Committee thought they meant is, in itself, irrelevant. Oral evidence by members of the Committee as to their opinion of what the section meant would plainly be inadmissible. It does not become admissible by being reduced to writing.

What is suggested is that recourse may be had to the Report as an aid to construction in order to ascertain, first, what the existing law was understood to be upon the subject-matter of the Act; and, secondly, what was the mischief for which Parliament intended to provide a remedy by the Act.

As regards the first of these purposes for which recourse may be had to the Report, the Act deals with a technical subject-matter—the treatment to be accorded by courts in the United Kingdom to judgments of foreign courts. The expressions used in it are terms of legal art which were in current use in English and Scots law at the time the Act was passed. In order to understand their meaning the Court must inform itself as to what the existing law was upon this technical subject-matter. In order to do this it may have recourse to decide cases, to legal text-books or other writings of recognised authorities, among whom would rank the members of the Committee. Their Report contains a summary of the existing law, as they understood it. As such it is part of the material to which the court may have recourse for the purpose of ascertaining what was the existing law upon the subject-matter of the Act. There is, however, no real doubt as to what it was.

As regards recourse to the Report for the purpose of ascertaining the mischief for which Parliament intended to provide a remedy by the Act, this is based upon the so-called "*mischief*" rule which finds its origin in ***Heydon's Case*** (3 Co. Rep. 7a) decided under the Tudor Monarchy in 1584. The rule was propounded by the judges in an age when statutes were drafted in a form very different from that which they assume today. Those who composed the Parliaments of those days were chary of creating exceptions to the common law ; and, when they did so, thought it necessary to incorporate in the statute the reasons which justified the changes in the common law that the statute made. Statutes in the sixteenth century and for long hereafter in addition to the enacting words contained lengthy preambles reciting the particular mischief or defect in the common law that the enacting words were designed to remedy. So, when it was laid down, the *"mischief"* rule did not require the court to travel beyond the actual words of the statute itself to identify *"the mischief and defect for which the common law did not provide",* for this would have been stated in the preamble. It was a rule of construction of the actual words appearing in the statute and nothing else. In construing modern statutes which contain no preambles to serve as aids to the construction of enacting words the "*mischief*" rule must be used with caution to justify any reference to extraneous documents for this purpose. If the enacting words are plain and unambiguous in themselves there is no need to have recourse to any *"mischief*" rule. To speak of mischief and of remedy is to describe the obverse and the reverse of a single coin. The former is that part of the existing law that is changed by the plain words of the Act; the latter is the change that these words made in it.

The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should he able to know in advance what are the legal consequences that will flow from it. Where those consequences are regulated by a statute the source of that knowledge is what the statute says. In construing it the court must give effect to what the words of the statute would be reasonably understood to mean by those who conduct it regulates. That any or all of the individual members of the two Houses of the Parliament that passed it may have thought the words bore a different meaning cannot affect the matter. Parliament, under our constitution, is sovereign only in respect of what it expresses by the words used in the legislation it has passed.

This is not to say that where those words are not clear and unambiguous in themselves but are fairly susceptible of more than one meaning, the court, for the purpose of resolving - though not of inventing - an ambiguity, may not pay regard to authoritative statements that were matters of public knowledge at the time the Act was passed, as to what were regarded as deficiencies in that branch of the existing law with which the Act deals. Where such statements are made in official reports commissioned by government, laid before Parliament and published, they clearly fall within this category and may be used to resolve the ambiguity in favour of a meaning which will result in correcting those deficiencies in preference to some alternative meaning that will leave the deficiencies uncorrected. The justification of this use of such reports as an aid to the construction of the words used in the statute is that knowledge of their contents may be taken to be shared by those whose conduct the statute regulates and would influence their understanding of the meaning of ambiguous enacting words.

My Lords, I do not think that the actual words of section 8 of the Act of 1933 are fairly susceptible of any other meaning than that ascribed to them by the Court of Appeal. So I see no need to look at the Report of the Committee; but much of the argument in this House has been devoted to a meticulous verbal analysis of everything that the Committee said in it. For my part this recourse to the Report for the purpose of ascertaining what was the *"mischief"* for which Parliament intended to provide a remedy by the Act has only served to confirm me in the view that section 8 should be construed as the Court of Appeal construed it.

The mischief was said by the authors of the Report to be that foreign courts did not, in effect, recognise judgments of English courts as conclusive. The reason for this was the difficulty in convincing foreign courts that reciprocal treatment was accorded to their own judgments in the United Kingdom. The causes of the difficulty were said to be: (1) the lack of any provision in the English legal system for the direct enforcement of foreign judgments for sums of money by execution rather than by action ; and (2) the dependence of the English recognition of foreign judgments upon unwritten rules of common law which foreign courts suspected of being indefinite and discretionary as compared with written law embodied in a code or statute.

These were the reasons why, in the Committee's view, the only manner of securing reciprocal treatment by foreign countries in the matter of the recognition and enforcement of British judgments was by: *"the conclusion of an international convention containing reciprocal obligations for the recognition and enforcement of judgments which will be made binding as part of the municipal law of the foreign country together with the statement of our own rules in statutory form ".*

The conclusion that I would draw from this is that in the Committee's view the Act would fail in its purpose of inducing foreign states to enter into such conventions unless, as well as amending the existing law by providing a method of obtaining direct execution of foreign judgments for money sums, it also embodied a comprehensive written statement of at least the minimum effect which courts in the United Kingdom were required to give to judgments of courts of foreign states with which reciprocal conventions had been concluded - such written statement to be in substitution for the written rules of the common law and to obviate the necessity of resorting to an examination of previous judicial decisions on this topic. That, after all, is what the lawyers of the three countries with whom informal negotiations had already been conducted France, Germany and Belgium, understand as being the purpose of a code. Yet the construction which commends itself to the majority of your Lordships can only be arrived at by going beyond the actual wording of the Act and resorting to an examination of previous judicial decisions and specifically the decision in ***Harris v. Quine***. To do this is to perpetuate one of the very mischiefs which, according to the Committee, it was the purpose of the proposed Bill to remedy.

Annexed to the Report were draft Treaties with France, Germany and Belgium providing for the reciprocal enforcement and recognition of judgments of superior courts of the High Contracting Parties. Article 3 in each of these Treaties, like section 8 of the draft Bill, dealt with the recognition of judgments, as distinct from their direct enforcement by execution. The final paragraph of that Article stated what was meant by the "*recognition*" of a judgment which the High Contracting Parties mutually undertook to grant to judgments of one another's superior courts. It was to the obligation to be assumed by the United Kingdom Government under this Article that section 8(1) of the Act was intended to give statutory effect.

The paragraph was in the following terms: *"The recognition of a judgment under paragraph (1) of this article means that such judgment shall be treated as conclusive as to the matter thereby adjudicated upon in any further action between the parties (judgment creditor and judgment debtor) and as to such matter shall constitute a defence in a further action between them in respect of the same cause of action."*

There are differences of phraseology between this provision of the Treaties and section 8(1) of the Act. What is significant for my present purpose is that the Treaty says that the judgment shall be treated as conclusive *"as to the matter thereby adjudicated upon"* whereas the words I have italicised are omitted from section 8(1). These additional words may be ambiguous in themselves, but the Committee (some of whose members are said to have negotiated the draft Treaties with representatives of the foreign governments concerned) explained in a footnote to paragraph 4 in the body of the Report what they meant by this phrase: *"The words ' **question adjudicated upon** ' refer to the actual decision (the operative parts of the judgment) as opposed to the grounds or reasoning upon which it may be based, in the course of which other points of law or fact may have been incidentally decided as preliminaries (necessary or otherwise) to the final conclusion."*

While this on the one hand would appear to limit the "*matter adjudicated upon*" to the decision of the ultimate question dealt with by the dispositive or operative part of the judgment, viz. whether or not the plaintiff was entitled (o the remedy that he claimed that the court ought to grant him against the defendant as redress for the facts that he relied upon as constituting his cause of action ; it would, on the other hand, bind the United Kingdom government to treat the decision of that ultimate question as conclusive whatever might be the grounds or reasoning on which it was based.

In construing a Treaty recourse may be had, in public international law, to the travaux preparatoires for the purpose of resolving any ambiguity in the Treaty ; and it would appear from the history of the negotiations contained in the body of the Report that the Report itself might be regarded as forming part of the travaux preparatoires. If this were so, recourse to The Report would in my view clearly lead to the conclusion that the High Contracting Parties in using the phrase "*matter adjudicated upon*" had undertaken to treat as conclusive the dispositive or operative part of the judgment.

Where an Act of Parliament is passed to enable or to require United Kingdom courts to give effect to international obligations assumed by Her Majesty's Government under a Treaty, it is a well established rule of construction that any ambiguity in the words of the Act should be resolved in favour of ascribing to them a meaning which would result in the performance of those international obligations - not in their breach. For this additional reason recourse to the Report serves to confirm me in the view that section 8 should be construed as the Court of Appeal construed it.

Lord Simon of Glaisdale MY LORDS,

Black Clawson, an English company, became holders in due course of two bills of exchange accepted by the predecessor in title of Papierwerke but dishonoured by Papierwerke. The bills were drawn, negotiated and payable in England. Black Clawson became their holders only shortly before action on them in England would have become time-barred by effluxion of six years from their acceptance. Papierwerke is a German company without any assets in England, its

principal assets being in Germany ; and, by the German law of limitation of actions, the time for suing on a bill of exchange is three years. Although it is a slight over-simplifiaction, for the purpose of this appeal it can be stated that, according to the expert evidence, in German law effluxion of the period of limitation bars the remedy (as in England) without extinguishing the right (as it does in Scotland). Whether a German court should, in an action on the bills, apply the English limitation period of six years or the German limitation period of three years depends on the appropriate choice-of-law rule in German private international law: this is a question to which different answers have been returned at first instance by the District Court in Munich and on appeal by the Bavarian Court of Appeal, and which now awaits decision by the German Federal Supreme Court. In view of the doubt whether an action on the bills in Germany would be held to be time-barred, Black Clawson, though starting such an action, tried to preserve a fall-back position in England. Before the effluxion of six years from the date of acceptance they applied ex parte in England for, and obtained, leave to issue a writ against Papierwerke and to serve it on them in Germany. Since Black Clawson's German action was proceeding, they gave no notice to Papierwerke of the issue of the English writ. On the 30th November, 1972, the Munich District Court dismissed Black Clawson's claim on the bills. The Court held that, under German private international law, the relevant limitation period was the German one of three years, not the English of six years, with the result that Black Clawson's claim was time-barred. The judgment handed down was in three parts. The first (headed " Final Judgment") has in argument conveniently been called "*the dispositive part*". This stated in translation:

" I. The suit is dismissed.

" II. The Plaintiff shall bear the costs of the dispute.

" III. The judgment is provisionally enforceable."

' [Then followed provisions permitting the Plaintiff to avert compulsory execution by providing security]'.

The second part of the judgment handed down (headed "Facts") was a statement of the facts of the case and the issues. The third part of the judgment handed down (headed "*Grounds for the Decision*") made it clear that the action was dismissed-on the ground that it was time-barred under what was held to be the relevant German choice-of-law rule.

Though Black Clawson appealed against this judgment to the Bavarian Court of Appeal, they now gave notice to Papierwerke of the issue of the English writ. Papierwerke countered by a summons to set aside the English writ and all proceedings in pursuance thereof. The Master dismissed Papierwerke's summons to set the writ aside. Papierwerke appealed to Talbot J., who, on the authority of ***Harris v. Quine*** (1869) L.R. 4 Q.B.D. 653, in the knowledge of the pending appeal to the Bavarian Court of Appeal, and in the exercise of his discretion, dismissed Papierwerke's appeal.

In ***Harris v. Quine*** the plaintiffs were attorneys in the Isle of Man and were retained by the defendant to conduct a suit in the courts of the Isle of Man. The plaintiffs subsequently sued for their fees in the Isle of Man ; but the Manx court held that their claim was time-barred by the Manx statute of limitations, under which the relevant period was three years. The plaintiffs then used in England within the six-year English limitation period. It was held by a powerful court that, as the Manx statute barred the remedy only and did not extinguish the debt, the judgment of the Manx court was no bar to the English proceedings. Cockburn CJ. said (p. 657): *" . . . . there is no judgment of the Manx court barring the present action as there was no plea going to the merits . . . and the issue the Manx court decided in favour of the defendant is not the same issue as is raised in the present action ".*

Blackburn J. said (p. 658) : *"... all that the Manx court decided was, that in the courts of the Isle of Man the plaintiffs could not recover. If the plaintiffs could have shown, as was attempted in* ***Huber v. Steiner*** *[2]Bing. N.C. 202] that the law of the Isle of Man extinguished the right as well as the remedy, and this had been the issue determined by the Manx court, that would have been a different matter ".*

Lush J. (p. 658) said: *" Had the Manx statute of limitations . . . extinguished the right after the limited time and not merely barred the remedy, there would have been good ground for defence in this court. But the Manx law is like our statute of limitations, and bars the remedy only; and all that was decided in the Manx court was, that the action could not be maintained there ".*

Hayes J. concurred. The decision has been cited in successive editions of Dicey's The Conflict of Laws as authority for the words " ***on the merits*** " italicised by me in the proposition that:

" A foreign judgment in personam ... is a good defence to an action in England for the same matter when either—

" (1) the judgment was in favour of the defendant and was final and conclusive on the merits: or . . .".

(Dicey and Morris, The Conflict of Laws, 9th ed. 1973, Rule 194, p. 1058 ; cf. 1st ed. 1896, Rule 100, p. 422). Such was the decision which Talbot J. followed and the rule which he applied. He held that the decision of the Munich District Court was not final and conclusive "on the merits"; it merely decided, like the judgment of die Isle of Man Court in ***Harris v. Quine,*** that the plaintiff's remedy was time-barred in the foreign court.

Papierwerke appealed to the English Court of Appeal. In addition to argument on the proper exercise of the discretion to allow the English writ to stand, which they had urged before the Master and Talbot J., Papierwerke put forward a new point to the Court of Appeal. This was based on section 8(1) of the Foreign Judgments (Reciprocal Enforcement) Act 1933. It was argued on behalf of Papierwerke that this subsection had abrogated the decision in ***Harris v. Quine***. The Court of Appeal ([1974] 2 W.L.R. 789) allowed the appeal. So far as discretion was concerned Lord Denning M.R. (p. 796A-B) doubted whether it would be a case for leave to serve a writ out of the jurisdiction. Megaw L.J. said (p. 796C): *" On the arguments presented before Master Bickford-Smith and Talbot J., their decisions were in my opinion right, including their exercise of the discretion under R.S.C. Ord. 11, r. 1."*

Scarman L.J. said (p. 801 F): *" If the judge was correct in law in holding that the German judgment was not ' res judicata ', I do not think that his exercise of discretion can be successfully challenged in this court."*

But the Court of Appeal was unanimous in holding that section 8(1) of the Act of 1933 had modified the rule in Harris v. Quine, and had rendered the judgment of the Munich District Court conclusive against any cause of action on the bills by Black Clawson in this country.

Shortly after the English Court of Appeal had given judgment, the Bavarian Court of Appeal gave their judgment. They allowed Black Clawson's appeal, holding that the limitation period according to German private international law was the English period of six years not the German period of three years. The judgment of the Bavarian Court of Appeal is under appeal to the German Federal Supreme Court. Black Clawson have appealed to your Lordships against the judgment of the English Court of Appeal, in order to safeguard themselves in case the Federal Supreme Court reinstates the judgment of the Munich District Court.

The appeal to your Lordships raises two main issues: first, what is the proper interpretation to be given to section 8(1) of the 1933 Act, in particular in relation to ***Harris v. Quine*** ; and, secondly, how far the discretion exercised by Talbot J. can be reviewed in an appellate tribunal.

I confess, my Lords, that when I first read section 8 of the 1933 Act I was under an immediate and powerful impression that the Court of Appeal must be right. It seemed obvious that subsection (1) was dealing with cause-of-action estoppel and subsection (3) with issue estoppel. If so, the judgment of the Munich District Court did not merely determine an issue between the parties relating to the operation of the German law of limitation of action ; it dismissed Black Clawson's action founded on the bills ; and such judgment would have to be recognised in any court in the United Kingdom as conclusive in all proceedings founded on the same cause of action, i.e., liability arising from acceptance of the bills.

But though the foregoing was my first and strong impression, I soon realised that I was looking at section 8 with 1975 eyes and interpreting it in 1974 terms; and that in so doing I was falling into fundamental error. Contemporanea expositio est fortissimo in lege. The concepts of cause-of-action and issue estoppel were not developed by 1933 (there is, for example, no reflection of the distinction in the notes to ***The Duchess of Kingston's Case*** (1776) 20 Howell St. Tr. 537 in the authoritatively edited 1929 edition of Smith's Leading Cases), and could not possibly be what Parliament and the draftsman then had in mind. My initial response had been scarcely less anachronistic than if I had attempted to interpret Magna Carta by reference to ***Rookes v. Barnard*** [1964] A.C. 1129.

The matter was, in my judgment put beyond doubt when your Lordships looked, de bene esse, at the Report of the Greer Committee on Reciprocal Enforcement of Foreign Judgments (Cmnd. 4213 of 1932). This was the Report of a committee of lawyers (practising, official and academic) of high distinction and of great expertise in private international law. Its terms of reference were: *" To consider (1) what provisions should be included in conventions made with foreign countries for the mutual enforcement of judgments on a basis of reciprocity, and (2) what legislation is necessary or desirable for the purpose of enabling such conventions to be made and to become effective, or for the purpose of securing reciprocal treatment from foreign countries."*

The Report discussed the prevailing law and the various problems which stood in the way of reciprocal enforcement of judgments. It annexed Conventions which had been officially negotiated in draft with three foreign countries (Belgium, France and Germany), and which could be carried into effect if appropriate legislation was enacted in this country. It drafted and annexed (Annex 1) a suitable Draft Bill, clause 8 of which corresponds exactly with section 8 of the 1933 Act. Annex V contains a commentary on the Draft Bill. Paragraph 13 of Annex V (p. 64) reads : *" Clause 8 contains the provisions of the Bill with regard to the recognition of foreign judgments as final and conclusive between the parties as regards the question therein adjudicated upon. It is entirely in accordance with the position at Common Law (as explained in paragraph 4 of the Report), and Clause 8(3) saves the existing Common Law rules in any cases where the rule laid down by the Act may be narrower in operation than the Common Law."* (My italics.)

Annex IV(b) was a draft Convention with Germany. Article 3 dealt with reciprocal recognition of judgments. Paragraph 2 (p. 46) reads: *" The recognition of a judgment under paragraph (1) of this article means that such judgment shall be treated as conclusive as to the matter thereby adjudicated upon in any further action between the parties (judgment creditor and judgment debtor) and as to such matter shall constitute a defence in a further action between them in respect of the same cause of action."* (My italics.)

There was similar provision in the draft Conventions with France (p. 54) and Belgium (p. 38).

If this material and that cited by my noble and learned friends is available to a court of construction, it is plain beyond doubt (if there could have been any doubt) that Parliament (in so far as it legislated in the light of the Report) did not have in legislative contemplation the modern concepts of issue and cause-of-action estoppel; it also shows that Parliament did not mean to abrogate the rule in Harris v. Quine. The Court of Appeal apparently was not asked to look at the Report. The first questions which arise in this appeal are therefore whether your Lordships, as a court of statutory construction, are entitled to examine the Greer Report, and, if so, for what purpose or purposes: the answers to these questions should indicate how much of the material which has been cited from it by my noble and learned friends and myself is available as an aid to construction. This raises some fundamental issues relating to statutory construction.

Courts of construction interpret statutes with a view to ascertaining the intention of Parliament expressed therein. But, as in interpretation of all written material, what is to be ascertained is the meaning of what Parliament has said and not what Parliament meant to say. This is not a self-evident juristic truth. It could be urged that in a parliamentary democracy, where the purpose of the legislature is to permit its electorate to influence the decisions which affect

themselves, what should be given effect to is what Parliament meant to say; since it is to be presumed that it is this that truly reflects the desired influence of the citizens on the decision-making which affects them. To this, however, there are three answers. First, in interpretation of all written material, the law in this country has set great pragmatic store on limiting the material available for forensic scrutiny: society generally thereby enjoys the advantages of economy in forensic manpower and time. By concentrating on the meaning of what has been said, to the exclusion of what was meant to be said, the material for scrutiny is greatly reduced. Specifically, experience in the United States has tended to show that scrutiny of the legislative proceedings is apt to be a disappointingly misleading and wasteful guide to the legislative intention. Secondly, interpretation cannot be concerned wholly with what the promulgator of a written instrument meant by it: interpretation must also be frequently concerned with the reasonable expectation of those who may be affected thereby. This is most clearly to be seen in the interpretation of a contract: it has long been accepted that the concern of the court is, not so much with the subject-matter of consent between the parties (which may, indeed, exceptionally, be entirely absent), as with the reasonable expectation of the promisee. So, too, in statutory construction, the court is not solely concerned with what the citizens, through their parliamentary representatives, meant to say; it is also concerned with the reasonable expectation of those citizens who are affected by the statute, and whose understanding of the meaning of what was said is therefore relevant. The sovereignty of parliament runs in tandem with the rule of objective law. Thirdly, if the draftsman uses the tools of his trade correctly, the meaning of his words should actually represent what their promulgator meant to say. And the court of construction, retracing the same path in the opposite direction, should arrive, via the meaning of what was said, at what the promulgator meant to say.

There are, however, two riders to be noted in relation to this last consideration. First, draftsmen's offices, government departments, houses of parliament and courts of justice are all manned by fallible human beings ; with the result that the court's exposition of the meaning of what Parliament has said is inherently liable to differ from what Parliament meant to say. The object of the parliamentary and forensic techniques should be to minimise such liability to error; so that artificial rules which stand unnecessarily in the way (i.e., which cannot be used as a code of communication) should be eliminated. Secondly, most words in the English language have a number of shades of meaning. Even the bright isolating rays of the draftsman's technical skills—his juxtapositions and differentiations—are rarely sufficient in themselves to pick out without any possibility of mistake by a court of construction the exact shade of meaning intended, to the exclusion of a penumbra of other possible meanings. The draftsman therefore needs the full co-operation of the court of construction: it must be tuned in on the same wavelength. In order to understand the meaning of the words which (he draftsman has used to convey what Parliament meant to say, the court must so far retrace the path of the draftsman as actually to put itself in his position and that of Parliament. The expositio must be both contemporanea and eodem loco. All this is merely the counterpart of what my noble and learned friend, Lord Wilberforce, said in ***Prenn v. Simmonds*** [1971] 1 W.L.R. 1381 at pp. 1383H-1384A, in relation to the interpretation of another class of written material: *" The time has long passed when agreements, even those under seal, were isolated from the matrix of facts in which they were set, and interpreted purely on internal linguistic considerations ".*

I can see no reason why a court of construction of a statute should limit itself in ascertaining the matrix of facts more than a court of construction of any other written material. A public Report to Parliament is an important part of the matrix of a statute founded on it. Where Parliament is legislating in the light of a public Report I can see no reason why a court of construction should deny itself any part of that light and insist on groping for a meaning in darkness or half-light. I conclude therefore that such a Report should be available to the court of construction, so that the latter can put itself in the shoes of the draftsman and place itself on the parliamentary benches - in much the same way as a court of construction puts itself (as the saying goes) in the armchair of a testator. The object is the same in each case - namely, to ascertain the meaning of the words used, that meaning only being ascertainable if the court is in possession of the knowledge possessed by the promulgator of the instrument.

Halsbury's Laws of England, 3rd ed., vol. 36, p. 411, states: *" Reference may not be made for the purpose of ascertaining the meaning of a statute to the recommendations contained in the report of a Royal Commission or of a departmental committee or in a White Paper which shortly preceded the statute under consideration because it does not follow that such recommendations were accepted by the legislature. On the other hand, reports of commissions preceding the enactment of a statute may be considered as showing the facts which must be assumed to have been within the contemplation of the legislature when the statute was passed."*

As regards the first sentence of this passage, I find unconvincing the reason given for non-reference; I should have thought that, in general, recourse to the statute itself will make it immediately apparent whether or not the recommendation has been accepted by the legislature. I would wish to leave open for consideration in a later case where the point is crucial whether this statement is correct.

As regards the second sentence, the critical questions in the instant case are whether such a Report (here the Greer Report) may be looked at in order to ascertain, first, what was the " mischief " which the provision falling for construction was designed to remedy, secondly, what was believed by Parliament to be the pre-existing law, and, thirdly, where a draft Bill is annexed to the Report in the same terms as the statute falling for construction, the opinion expressed by the committee as to the effect of its provisions.

The first question is, then, whether the Greer Report can be looked at in order to ascertain what was the *"mischief"* which Parliament was seeking to remedy. "*Mischief"* is an old, technical expression; but it reflects a firmly established and salutory rule of statutory construction. It is rare indeed that a statute can be properly interpreted without knowing what was the legislative objective. It would be trespassing on your Lordships' patience were I to repeat what, in collaboration with my noble and learned friend, Lord Diplock, I said about this matter in ***Maunsell v. Olins*** [19741] 3 W.L.R. 835, 847-

849. At the very least, ascertainment of the statutory objective can immediately eliminate many of the possible meanings that the language of the Act might bear; and, if an ambiguity still remains, consideration of the statutory objective is one of the means of resolving it.

The statutory objective is primarily to be collected from the provisions of the statute itself. In these days, when the long title can be amended in both Houses, I can see no reason for having recourse to it only in case of an ambiguity—it is the plainest of all the guides to the general objectives of a statute. But it will not always help as to particular provisions. As to the statutory objective of these, a Report leading to the Act is likely to be the most potent aid; and, in my judgment, it would be mere obscurantism not to avail oneself of it. There is, indeed, clear and high authority that it is available for this purpose.

In ***River Wear Commissioners v. Adamson*** (1877) 2 App. Cas. 743, 763, Lord Blackburn said: *" In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring further, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view ".*

In ***Eastman Photographic Materials Company Ltd. v. Comptroller-General of Patents, Designs & Trade Marks*** [1898] A.C. 571 the Earl of Halsbury L.C. cited this passage from Lord Blackburn's speech specifically as authority for looking at the Report of a commission in the light of which Parliament had enacted the statute which fell for construction in the Eastman case. At p. 573 Lord Halsbury said: *"... I think it desirable ... to say something as to what sources of construction we are entitled to appeal to in order to construe a statute. Among the things which have passed into canons of construction recorded in* ***Heydon's Case*** *[(1584) 3 Rep. 7a], we are to see what was the law before the Act was passed, and what was the mischief or defect for which the law had not provided, what remedy Parliament appointed, and the reason of the remedy."*

Lord Halsbury then (p. 574) cited at length from the Report of the commission dealing with the law pre-existing the Act which fell for construction and with its defects ; and added (p. 575): *" I think no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission."*

Lord Halsbury also cited Turner L.J. in ***Hawkins v. Gathercole*** (1855) 6 De G. M. & G. 1, 21 as further authority. I am therefore of opinion that the Greer Report is available to your Lordships in construing the 1933 Act, by way of helping to show what facts were within the knowledge of Parliament and what was the defect in the pre-existing law which called for parliamentary remedy.

Ascertainment of a defect in the law presupposes ascertainment of the law which contains the defect. But, for purposes of statutory construction, is it the pre-existing Jaw, as correctly determined, which is relevant, or what that law was understood to be?

There may be a communis error as to the law. This is a source of law until it is corrected (see Broom's Legal Maxims, 10th ed. 1939, p. 86). Indeed, a legal error may well be held to be too inveterate for correction (see, e.g., ***Ross Smith v. Ross Smith*** [1963] A.C. 280). Once it is accepted that the purpose of ascertainment of the antecedent defect in the law is to interpret Parliament's intention, it must follow that it is Parliament's understanding of that law as evincing such a defect which is relevant, not what the law is subsequently declared to be. On reflection, I do not think that my hesitation on this point in ***Povey v. Povey*** [1972] Fam. 40, 52C was justified. See also ***Barras v. Aberdeen Steam Trawling & Fishing Co.*** [19331] A.C. 402.

There is another canon of construction, which I shall have to cite later in greater detail, to which, for the same foregoing reasons, it is Parliament's understanding of the law which is relevant, rather than the law in an abstract juridical correctitude. This is the canon whereby the courts will presume that Parliament would use clear words if the intention were to abrogate a long-standing rule of law: though, no doubt, courts of construction will be readier to apply this presumption if satisfied that the rule in question is juridically well founded and if its framers carry weight in the law; whereas, on the other hand, the presumption will be weaker if the rule has been authoritatively questioned.

My Lords, I have spoken of *"Parliament's"* understanding of the law. Of course, a settlor, a testator, the parties to a contract, or individual members of Parliament, may not know the relevant law. It is the draftsmen of the instrument in question who knows the law (or is presumed to do so); and his knowledge, so far as forensic interpretation is concerned, is irrebuttably imputed to the person for whom he is drafting. The draftsman knows the legal effect that the person for whom he is drafting wants to bring about; and he will draft accordingly, against his understanding of the prevailing law, and using as a code of communication to the courts of construction various canons of construction. Few testators will have heard of the rule in ***Gundry v. Pinniger*** (1851) 14 Beav. 94; (1852) 1 DeG.M. & G. 502. But few draftsmen of wills will be ignorant of the rule; so that when the words "*next of kin*" appear in a will there is a strong though rebuttable presumption that the draftsman used them to denote those who would be the testator's next of kin on his death, and an irrebuttable presumption that the draftsman so used them in order to produce the legal effect desired by the testator. Similarly, many M.P.s do not know the legal rule that when the word "*child*" is used in a legal instrument, it is presumptively taken to mean a legitimate child; but the draftsman of the statute does know this; and a court of construction will conclude that his usage was to carry into legal effect what Parliament desired. So again, few M.P.s in 1933 will have known of the rule in ***Harris v. Quine***; but few, if any, members of the Greer Committee, which drafted Clause 8 of the Draft Bill, will have been ignorant of it. I have pointed out that this rule had been cited in successive editions of Dicey without question. It had been followed in the Commonwealth and in the United States. No one had suggested that it was wrongly decided. It made good sense: any other rule would make the foreign judgment conclusive

as to more than it actually decided. The legal knowledge of the Greer Committee as draftsmen of the 1933 Act must be ascribed to Parliament in its enactment.

Quite apart from the irrebuttable ascription to Parliament of a draftsman's knowledge of the law in relation to which Parliament is legislating, in my view a Report like that of the Greer Committee can also be looked at independently like any other work of legal authority in order to ascertain what was conceived to be the prevailing state of the law.

The most difficult question in this appeal, to my mind, arises out of the modern practice of annexation to a Report to Parliament of a draft Bill with a commentary on it. Is such a commentary available to a court construing the ensuing statute?

My Lords, before turning to this question, may I venture to summarise what aids to construction your Lordships obtain from the Greer Report irrespective of its commentary on the draft Bill?: - (1) ***Harris v. Quine***, although not cited by name, was part of the antecedent common law; (2) negatively, the rule in ***Harris v. Quine*** was not regarded as a defect requiring remedy; (3) positively, the Conventions negotiated in draft, and for which the staute was required for legal implementation, reflected, and thereby endorsed, the rule in ***Harris v. Quine*** ; (4) a provision such as the subsequent section 8(1) of the 1933 Act might well be restrictive of the common law; if therefore such a provision were enacted as part of the codification of the common law it would require a saving clause (such as the subsequent section 8(3)): although this was specifically stated in the commentary, it sufficiently appears from the body of the Report.

The foregoing, however, although going far to showing that section 8(1) was not meant to abrogate the rule in ***Harris v. Quine,*** is not absolutely conclusive when it comes to interpretation. It unfortunately happens, occasionally, that a statutory provision has an unlooked-for effect. Such a situation is sometimes described in the phrase, *"Whatever Parliament was aiming at, it hit such-and-such a target fair and square"*. If the words of section 8 can only be read as abrogating the rule in ***Harris v. Quine***, why then, it must be so, however little that was the legislative objective. After all, the first and most elementary (and, I would add, salutory) rule of construction is that the words of a statute must be read in the most natural sense which they bear in their context. But I do not myself so read section 8. There is, in fact, ambiguity inherent in it; it lies in the word "*judgment*". This word in its context is capable of meaning either the "*dispositive*" part of the court's pronouncement only, or the whole of such pronouncement including the grounds of judgment. If "*judgment*" in section 8(1) refers only to the "*dispositive*" part of the pronouncement of the court, I think that it would inevitably follow that ***Harris v. Quine*** has been abrogated: an action on the bills has been dismissed, and that is an end of it. But if "judgment" embraces also the grounds of the decision, all that is "*conclusive between the parties*" is what the whole *"judgment"*, including its grounds, has decided. In the instant case that was that Black Clawson's claim was time-barred in Germany. If, as I think, "*judgment*" is so ambiguous, the ambiguity must be resolved. There are, in fact, three canons of construction available here for its resolution.

The first is that clear and unmistakeable words will be required for the abrogation of a long-standing rule of common law: see Maxwell on Interpretation of Statutes, 12th ed. 1969, p. 116: *"It is a well established principle of construction that a statute is not to be taken as affecting fundamental alteration in the general law unless it uses words that point unmistakeably to that conclusion."* (Devlin J. in ***National Assistance Board v. Wilkinson*** [1952] 2 Q.B. 648, 661.) The rule in ***Harris v. Quine*** was just such a long-standing rule of law as is appropriate for the application of this canon: and any ambiguity must be resolved in such a way that the rule in Harris v. Quine is not abrogated.

Secondly, consideration of the legislative objective is available and required, not only to place a court of construction in the shoes of the draftsman, but also to resolve any ambiguity: see ***Maunsell v. Olins*** at p. 849 E-G. It was no part of the legislative objective to abrogate the rule in ***Harris v. Quine***; so that the construction which does not have that effect should be preferred.

Thirdly, there is a presumption against a change of terminological usage: *"It is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament."* (Cleasby B. in ***Courtauld v. Legh*** (1869) L.R. 4 Ex. 126, 130). A fortiori when the words occur in the same section of an Act. "*Judgment*" in subsection (3) can only be read in its wider sense, as including the grounds of decision ; it cannot be limited to the *"dispositive"* part of the judgment ("*any matter of law or fact decided therein*"). There is therefore a presumption that "*judgment*" in subsection (1) is also not so limited.

For all these reasons this does not seem to me to be a case where it can be said that, whatever Parliament was trying to do, it succeeded, however inadvertently, in abrogating the rule in **Harris v. Quine**.

It remains to consider, in this context, section 8(3); i hope that I have sufficiently indicated that the Report in itself, without necessity of recourse to the commentary, indicates the objective of this subsection - namely, that it was inserted as a saving provision and by way of reassurance. I should, I think, in any event, have surmised from the use of the common drafting formula, *"Nothing in this section shall be taken to prevent . . ."*, that the subsection was inserted ex abundanti cautela, and was not intended as a substantive provision to deal with issue estoppel in contradistinction to cause- of-action estoppel dealt with in section 8(1).

My conclusion is therefore that, regardless of the draft Bill and the commentary thereon, the Greer Report is available as an aid to construction in such a way as to make it clear that it was not the intention of Parliament in section 8(1) to abrogate the rule in ***Harris v. Quine***. It is, thus, strictly, unnecessary to decide whether the commentary on the draft Bill is also available as an aid to construction. But the technique of a draft Bill with commentary is so common nowadays in Reports to Parliament as to excuse, I hope, some expatiation on the matter. The argument against recourse to such a commentary is that if what Parliament or parliamentarians (or, indeed, any promulgators of a written instrument) think is the meaning of what is said is irrelevant, so must be the opinion of any draftsman, including the draftsman of a Bill

annexed to a Report to Parliament. But I confess that I find this less than conclusive. In essence, drafting, enactment and interpretation are integral parts of the process of translating the volition of the electorate into rules which will bind themselves. If it comes about that the declared meaning of a statutory provision is not what Parliament meant, the system is at fault. Sometimes the fault is merely a reflection of human fallibility. But where the fault arises from a technical refusal to consider relevant material, such refusal requires justification. The commentary on a draft Bill in a report to Parliament is not merely an expression of opinion - even if it were only that, it would be an expression of expert opinion, and I can see no more reason for excluding it than any other relevant matter of expert opinion. But, actually it is more: that experts publicly expressed the view that a certain draft would have such-and-such an effect is one of the facts within the shared knowledge of Parliament and the citizenry. To refuse to consider such a commentary, when Parliament has legislated on the basis and faith of it, is for the interpreter to fail to put himself in the real position of the promulgator of the instrument before essaying its interpretation. It is refusing to follow what is perhaps the most important clue to meaning. It is perversely neglecting the reality, while chasing shadows. As Aneurin Bevan said: *"Why gaze in the crystal ball when you can read the book?"* Here the book is already open: it is merely a matter of reading on. Certainly, a court of construction cannot be precluded from saying that what the committee thought as to the meaning of its draft was incorrect. But that is one thing: to dismiss, out of hand and for all purposes, an authoritative opinion in the light of which Parliament has legislated is quite another.

So, as at present advised, I think that your Lordships would have been entitled, if necessary, to consider the commentary of the Greer Committee on the draft Bill.

The only other matter that I need add in this part of the case is that I agree with those of my noble and learned friends who hold that section 8 is not limited to plaintiffs' judgments.

In my view, therefore, Talbot J. was correct in following ***Harris v. Quine***, and in holding that he had a discretion whether to allow the writ to stand. After he had given judgment Black Clawson's appeal from the decision of the Munich District Court to the Bavarian Court of Appeal was heard and determined. It was argued that this was a new factor, showing a commitment to the proceedings in Germany which would make it inequitable to allow a fall-back position in England. But Talbot J. exercised his discretion in the knowledge that such an appeal was pending; so it is no new factor permitting an appellate tribunal to substitute its own exercise of discretion for that of the Judge in Chambers. Unless the discretion has been exercised in legal or factual error, an appellate court should not other than exceptionally interfere with the Judge's discretion unless it is seen on other grounds that his decision might well result in injustice being done: ***Evans v. Bartlam*** [1937] A.C. 473 ; ***Charles Osenton & Co. v. Johnston*** [1942] A.C. 130, 138 ; ***Blunt v. Blunt*** [1943] A.C. 517, 526-527; ***Shiloh Spinners Ltd. v. Harding*** [1973] A.C. 691, 728; I respectfully agree with Megaw and Scarman L.JJ. that there are no grounds in the instant case for interfering with the exercise of discretion by the Judge in Chambers. I would therefore allow the appeal.

On the other hand, I cannot accede to the contention on behalf of Black Clawson that they should be at liberty to pursue their remedy in England even if the Federal Supreme Court should decide in their favour. I therefore agree with the Order proposed by my noble and learned friends, Lord Wilberforce and Viscount Dilhorne.