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ONE RULE FOR ALL:

AN END TO THE *ABOULOFF* DOUBLE STANDARD ON FRAUD AND FOREIGN JUDGMENTS

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Introduction

AS HE so often did, Lord Bingham put it best, I think, when—in addressing the gravity with which the English common law regards fraud—he observed that 'fraud is a thing apart. This is not a mere slogan. It reflects an old legal rule that fraud unravels all: *fraus omnia corrumpit*'.[1] Accordingly, any ruling of any court, if obtained by fraud, is vulnerable to challenge. It matters not, in this respect, whether it is delivered in Washington or Wandsworth.[2] This is as it should be, for there is nothing remotely less offensive about a fraudulently procured ruling from abroad than one acquired at home. In today's world, though, there is nothing inherently *more* offensive, either. And yet, at present, it is here that the similarity in the English common law's handling of judgments foreign and domestic, in the face of fraud, ends.

A *foreign* ruling may be impeached for fraud even where no new evidence has been unearthed; where the allegation has already been examined—and rejected—in the overseas proceedings; and even where the judgment debtor knew of the 'fraud', at the time of the foreign action, but opted not to raise it. By contrast, a party may seek to set aside an *English* judgment only if he can put forward fresh evidence of fraud, which could not previously have been produced with reasonable diligence. Understandably, this double standard has long attracted criticism, and has been abandoned in other common law jurisdictions. That the English courts harbour their own reservations is increasingly evident, also. For now, however, it survives; reform will have to come from Parliament. In this paper, I argue that the time for change—with 'Brexit' looming, and some recalibration of English private international law inevitable—has arrived.

The current law

GENERALLY, legal systems are territorially restricted, such that foreign judgments enjoy no legal significance in England. Plainly, though, a world in which one nation's courts ignored the rulings of another's would be intolerable. Consequently, overseas judgments may be recognised in this country.[3] Creditors of such judgments, however, cannot enforce them, at common law, by direct execution; they

[1] *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6 [15]. Honourable mentions, however, must go to both Rix LJ and Lord Denning, from whom Lord Bingham took his lead.
[2] As will be shown, though, there is no such defence of fraud under the Brussels I Regulation, which currently applies to judgments from other Member States of the European Union.
[3] There is a distinction, obviously, between recognition and enforcement. However, the defence of fraud, with which this essay is concerned, may be raised against an attempt to recognise or enforce alike.

must bring a fresh action.[4] Once based on comity, such recognition is now founded upon the doctrine of 'obligation'.[5] This holds that a foreign judgment will be enforced in England provided that it is the final and conclusive decision,[6] on the merits, of a court that—as a matter of English private international law—had international jurisdiction: that is, the judgment debtor *submitted* to the jurisdiction, or was *present* within it when process was served.[7] The principle behind this doctrine is *res judicata*, which dictates that, if an overseas ruling is entitled to recognition, the enforcing court will not reopen it.[8]

Res judicata recognises the need for finality of litigation, but there are exceptions. If the foreign tribunal failed to honour a choice-of-court agreement, for instance, its ruling must be denied recognition.[9] In addition, the English common law provides a number of defences.[10] Overseas judgments may be resisted on the grounds, *inter alia*, that the foreign court acted in breach of natural justice,[11] that the ruling was contrary to public policy, or that it was attained by *fraud*. A distinction is drawn between 'extrinsic' or 'jurisdictional' fraud—where the overseas tribunal was misled into assuming jurisdiction —and 'intrinsic' or 'perjury' fraud—that is, fraud going to the merits,[12] whether on the part of the overseas court itself[13] or (more commonly) that of the successful party.[14]

In common law countries, extrinsic fraud is fairly uncontroversial. It can always be raised, domestically, to challenge a foreign judgment.[15] The same cannot be said of intrinsic fraud. If a *prima facie* case is made out, an English court will investigate and rule upon it in a distinct trial. The leading authority is *Abouloff v Oppenheimer*, in which the Court of Appeal found that a foreign judgment

[4] Alternatively, rulings from certain nations are enforceable under statute; see the Civil Jurisdiction and Judgments Act 1982 (which deals with recognition and enforcement within the United Kingdom and under the Brussels I Regulation); the Administration of Justice Act 1920 (making provision for judgments from the Commonwealth); and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (for judgments from foreign countries with which the United Kingdom has reciprocal arrangements).
[5] *Russell v Smyth* (1842) 9 M & W 810 [819] (Parke B); *Schibsby v Westenholz* (1870–71) LR 6 QB 155 [159] (Blackburn J).
[6] 'Final' in the sense that the decision cannot be reopened in the court that made the ruling; 'conclusive' in that it represents that court's settled answer on the substance.
[7] As opposed to when proceedings were issued; see *Adams v Cape Industries Plc* [1990] Ch 433 [518] (Scott J).
[8] *Henderson v Henderson* (1844) 6 QBR 288 [298] (Lord Denman CJ).
[9] Civil Jurisdiction and Judgments Act, s 32.
[10] Similar provisions are found, also, under two of the aforementioned enforcement statutes (n 4). See Administration of Justice Act 1920, s 9(2); Foreign Judgments (Reciprocal Enforcement) Act 1933, s 4(1)(a)(iv).
[11] Although Article 6 of the European Convention on Human Rights may now have overtaken this defence; see Adrian Briggs, *Private International Law in English Courts* (OUP 2014) 6.188.
[12] Richard Garnett, 'Fraud and Foreign Judgments: The Defence that Refuses to Die' (2001) 1(2) *Journal of International Commercial Law* 161, 164–165.
[13] See, for example, *Price v Dewhurst* (1837) 8 Sim 279.
[14] See, for example, *Ochsenbein v Papelier* (1872–73) LR 8 Ch App 695.
[15] See, for example, *Middleton v Middleton* [1967] P 62; *Powell v Cockburn* [1977] 2 SCR 218.

could be set aside for fraud even where no fresh evidence has been discovered, and even though that 'fraud' might have been considered by the overseas tribunal.[16] Brett LJ was particularly forthright:

> I will assume that…in the Russian courts the…fraud was alleged by the defendants and that they gave evidence in support…I will assume even that the defendants gave the very same evidence which they propose to adduce in this action; nevertheless the defendants will not be debarred at the trial of this action from making the same charge of fraud and from adducing the same evidence in support of it.[17]

The rule in *Abouloff* was endorsed in *Vadala v Lawes*, in which Lindley LJ observed that, when faced with such an allegation of fraud, an English court 'can reopen the whole case even although you will have in this Court to go into the very facts which were investigated, and which were issue in the foreign Court'.[18] It has since even been held, in *Syal v Heyward*, to be immaterial that the evidence of fraud relied upon was known at all material times, and could, therefore, have been raised in the overseas proceedings.[19] Judgment debtors have a choice, then: plead fraud in the foreign action, in the knowledge that they will be afforded a second bite of the cherry; or keep their powder dry, and allege fraud only if enforcement is sought in England.

These cases illustrate that the scope of the fraud defence is incredibly wide. Nonetheless, they have recently been reaffirmed by the Court of Appeal[20] and the House of Lords.[21] The only exception is where a second set of proceedings has been commenced in the foreign jurisdiction, to set aside the original judgment, and failed, as was the case in *House of Spring Gardens Ltd v Waite*.[22] The Court of Appeal found that, as the judgment debtor had *elected* to seise the overseas court, he was estopped, by the *second ruling*, from relying upon fraud in England.[23]

The breadth of the rule in *Abouloff* is all the more striking, though, when measured against that adopted for *English* judgments. It is trite law that a domestic ruling, also, may be impeached for

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[16] (1882) 10 QBD 295 (CA).
[17] *ibid* [306].
[18] (1890) 25 QBD 310 [316]–[317].
[19] [1948] 2 KB 433 (CA) [449] (Cohen LJ). As the Foreign Judgments (Reciprocal Enforcement) Act 1933 was, by that time, in force and the judgment in question was from India, it was set aside under s 4(1)(a)(iv). Cohen LJ stated than an application under the 1933 Act should be dealt with in precisely the same way as an action at common law to set aside a judgment would have been treated previously.
[20] *Jet Holdings Inc v Patel* [1990] 1 QB 335 (CA).
[21] *Owens Bank Ltd v Bracco* [1992] AC 443.
[22] [1991] 1 QB 241 (CA).
[23] *ibid* [250]–[252] (Stuart-Smith LJ).

fraud.[24] This, however, is not a practice that is encouraged,[25] for it is subject to strict safeguards.[26] Thus, any attempt to impeach an English ruling for fraud will be dismissed unless the judgment debtor can present *newly-discovered* evidence, of a decisive nature,[27] which could not previously have been produced with reasonable diligence.[28]

The case for reform

IT IS clear that, when it comes to fraud, the English common law puts foreign and domestic judgments on an unequal footing. For decades, this double standard has prompted potent criticisms.[29] G.C. Cheshire described it as 'inconvenient', 'often unjust', 'inconsistent', and unsound.[30] Horace E. Read concluded that 'there can be little doubt that the English courts are wrong'.[31] And it has been said that the impact of *Abouloff* is that the conclusiveness of overseas judgments is 'materially and most illogically prejudiced'.[32] Such objections are compelling. The case for reform, as I see it, is eight-fold.

First, the rule in *Abouloff* ignores the doctrines of obligation and *res judicata*, by sanctioning a review of the *merits* of a competent foreign court's decision. Effectively, the overseas tribunal is told: 'In this particular case we must excuse the defendant, because we think that, though you considered the plaintiff's fraudulent conduct, you did not take the right view'.[33] It has been argued that the issue in England is whether the foreign court was deceived, and that this is *not* the same as that which arose before that tribunal.[34] As was acknowledged in *Vadala*, this is a technical reply to a technical point.[35] Or—less politely—a 'narrowly technical "hocus-pocus"'.[36] *The issue* before the overseas court is the credibility of the witnesses. In England, any re-examination of fraud hinges upon the same credibility

[24] *DPP v Humphrys* [1977] AC 1 [21], [30].
[25] *Flower v Lloyd (No 2)* (1879) 10 Ch D 327 [333]–[334] (James LJ).
[26] See, for example, *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529.
[27] *Birch v Birch* [1902] P 130.
[28] See, for example, *Kuwait Airways Corp v Iraq Airways Corp* [2005] EWHC 2524 (Comm).
[29] See, for example, Horace E Read (1930) 8 *Canadian Bar Review* 231–237 (note); Zelman Cowen, 'Foreign Judgments and the Defence of Fraud' (1949) 65 *Law Quarterly Review* 82; JG Collier (1992) 51(3) *Cambridge Law Journal* 441 (note); Celia Wasserstein Fassberg, 'Rule and Reason in the Common Law of Foreign Judgments' (1999) 12 *The Canadian Journal of Law and Jurisprudence* 193.
[30] G.C. Cheshire, *Private International Law* (3rd edn, OUP 1947) 816.
[31] Horace E Read, *Harvard Studies in the Conflict of Laws, Vol II: Recognition and Enforcement of Foreign Judgments in the Common Law Units of the British Commonwealth* (Harvard University Press 1938) 275, 280.
[32] JW Fawcett, JM Carruthers and Sir Peter North (eds), *Cheshire, North & Fawcett: Private International Law* (14th edn, OUP 2008) 554.
[33] G.C. Cheshire, *Private International Law* (1st edn, OUP 1935) 523.
[34] See, for example, Adrian Briggs, *Civil Jurisdiction and Judgments* (6th edn, Routledge 2015) 7.69.
[35] *Vadala* (n 18) [317], [318].
[36] Read (n 31) 276.

of those same witnesses. If the only evidence is that which was used overseas, the result will inescapably be a retrial of the merits.

Second, the English common law is open to abuse. The scale of its fraud defence ensures that it can be tactically deployed to make it impossible for a judgment creditor to enforce without re-litigation.[37] At best, this means an increased workload for the English courts. At worst, that creditor may be forced to discontinue his claim, irrespective of its worth. Furthermore, the decision in *Syal* allows for a retrial in England notwithstanding that the judgment debtor deliberately neglected to raise in the foreign proceedings the facts upon which his contention of fraud is based. This conflicts with the proposition that a party should pursue all available challenges in the country giving judgment. Such a state of affairs is difficult to defend. Tellingly, even Martin Wolff and Richard Garnett—writers who otherwise seek to support *Abouloff*—do not advocate an outcome such as that in *Syal*.[38]

Third, time has not been kind to the fraud rule, which looks every one of its 135 years. In *Wentworth v Rogers (No 5*), Kirby P likened it to 'no more than a reflection of the attitudes of the English judiciary at the apogee of the English empire'.[39] In *Keele v Findley*, more charitably, it was found that *Abouloff* was decided *before* the adoption of the newly-discovered evidence rule for domestic judgments, and that the English courts had simply failed to keep up.[40] Both charges carry weight. In *House of Spring Gardens Ltd*, the Court of Appeal came close to admitting the latter, observing that *Abouloff* et al were determined 'at a time when our courts paid scant regard to the jurisprudence of other countries'.[41] Such a stance *may* have had some value, in the 19th century, but in the 21st it reeks of an outmoded English superiority, according to which the intelligence and impartiality of foreign tribunals is called into question.

Fourth, fellow common law jurisdictions have already shown the way, and discarded the rule in *Abouloff*. In Canada, in *Beals v Saldanha*, the Supreme Court held that the courts would intervene only where *fresh evidence* has emerged, which could not with *due diligence* have been discovered—thereby aligning Canadian law with the common law approach to domestic judgments.[42] The Singaporean courts, too, have followed suit.[43] In Australia, in *Keele*, a similar conclusion was reached. Regrettably, in *Ki Won Yoon v Young Dung Song*, the Federal Court of Australia found that

[37] Clive Freedman QC, 'Fraud and related bars to enforcement of foreign judgments' (European Circuit of the Bar conference, Berlin, 21 September 2015) <http://www.cfla.org.uk/wp-content/uploads/2011/03/Fraud-and-related-bars-to-enforcement-of-foreign-judgments.pdf> accessed 20 September 2017.
[38] Martin Wolff, *Private International Law* (2nd edn, OUP 1950) 269; Garnett (n 12) 169.
[39] (1986) 6 NSWLR 534 [541].
[40] (1991) 21 NSWLR 444 [451], [453], [457], [458] (Rogers CJ).
[41] *House of Spring Gardens Ltd* (n 22) [251] (Stuart-Smith LJ).
[42] [2003] 3 SCR 416 [50]–[52] (Major J). See also *Lang v Lapp* [2010] BCCA 517.
[43] *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 2 Sing R 81 (Sing CA).

Keele was wrongly decided.[44] That decision, however, does little to weaken the case for reform, given that the Court appeared primarily preoccupied that, if the law was to be changed, 'it should be by Parliament and not by the Courts'.[45]

Fifth, there is a sense, in England, of 'judicial coolness' towards the status quo.[46] In *Owens Bank*, Lord Bridge declared that, 'as a matter of policy, there may be a very strong case…in favour of according to overseas judgments the same finality as the courts accord to English judgments'.[47] The House of Lords, though, maintained the rule, reasoning that the 'whole field' was effectively governed by statute and that reform was for the legislature.[48] In *Owens Bank Ltd v Etoile Commercial SA*, the Privy Council stated that it did not regard *Abouloff* 'with enthusiasm', and that, 'the salutary rule which favours finality in litigation' might be more appropriate'.[49] Arguments that *Abouloff* should be reconsidered, however, went unheeded, because the fraud defence was an abuse of process.[50] Misgivings surfaced once more in *AK Investment CJSC v Kyrgyz Mobil Tel Ltd*, but the Privy Council again stopped short of instigating any change in the law.[51] This disquiet[52] undermines Garnett's assertion that the English courts have applied *Abouloff* not out of deference to precedent but for sound policy reasons.[53]

Sixth, fraud is not a discrete ground for refusal to recognise a judgment under the Civil Jurisdiction Act 1982, because neither the Brussels I Regulation[54] nor the Lugano Convention[55] boasts such a defence. They do contain a defence of *public policy*, under which the matter of fraud falls in continental European law.[56] In *Interdesco SA v Nullfire Ltd*, however, it was held that the defence is of limited scope, and that, if a remedy exists in the relevant Member State, that is where it should be

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[44] (2000) 158 FLR 29 [22] (Dunford J).
[45] *ibid.*
[46] Briggs (n 34) 7.70.
[47] *Owens Bank* (n 21) [489].
[48] *ibid*. This is decidedly unconvincing, however, given that the whole field is not, in fact, so governed—no statutory scheme covers, for instance, the US, Russia, or China.
[49] [1995] 1 WLR 44 [50] (Lord Templeman).
[50] *ibid* [51].
[51] [2011] UKPC 7 [116]–[119] (Lord Collins). The case was an appeal from the Isle of Man, but there is no reason to doubt the judgment as a statement of English law.
[52] For a very recent example, see *Mengiste v Endowment Fund for the Rehabilitation of Tigray* [2017] EWCA Civ 1326 [71] (Davis LJ).
[53] Garnett (n 12) 173. It must be said, though, that Garnett was writing *before* such expressions of disquiet in *Owens Bank Ltd*, *AK Investment CJSC*, and *Mengiste*.
[54] Regulation (EU) No 1215/2012 of the European Parliament and Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/1.
[55] Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention) [2007] OJ L339/3.
[56] Lord Collins and Others (eds), *Dicey, Morris & Collins on The Conflict of Laws* (15th edn, Sweet & Maxwell 2012) 14-146. It is for this reason, too, that the Geneva and New York Conventions on the recognition of arbitration awards omit the defence of fraud; in this regard, see also *Westacre v Jugoimport* [2000] 1 QB 288 [309]–[310], [316]–[317] (Waller LJ).

pursued.[57] The rationale for this is that it corresponds with the spirit of reciprocity at the heart of these instruments, and that the courts that had jurisdiction are better placed to assess whether the original ruling was fraudulently procured.[58] This is sensible and practical, and yet the English common law rejects a comparable approach in favour of the *Abouloff* double standard.

Seventh, this country's withdrawal from the European Union represents a golden opportunity for change. EU regulation has transformed English private international law, to the point that ours has been depicted as a 'European legal structure' with only 'a residuum of common law content'.[59] Brexit, if nothing else, provides a rare chance to compare the rules that we have with what we might have instead.[60] Certain facets may barely alter. It is the Government's intention, for example, to re-enact the text of the Rome I[61] and Rome II[62] Regulations, the operation of which does not require reciprocity.[63] Some adjustment, though, is unavoidable. This need not be confined to those points at which European and English law overlap; the 'residuum', too, should undergo renovation. On fraud and foreign judgments, the English courts are waiting for the legislature to 'take back control'. What better time than now?

Finally, reform may be especially beneficial in light of our EU departure. As Andrew Dickinson has reflected, trying to predict what shape English private international law will take, post-Brexit, has turned lawyers into 'end of the pier fortune tellers'.[64] What is certain, though, is that the above solution for the Rome I and Rome II Regulations will *not* work for the Brussels I Regulation, which *does* depend on reciprocity.[65] What, then, will the United Kingdom do? It could, and should, join the Hague Choice of Court Convention,[66] but the instrument's reach is limited.[67] Or it could enter into a new bilateral treaty with the Union, similar to the Brussels I Regulation. That, though, would

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[57] [1992] 1 Lloyd's Rep 180 [37] (Phillips J).
[58] *ibid.*
[59] Professor Adrian Briggs, *The Conflict of Laws* (3rd edn, OUP 2013) *Preface*.
[60] Professor Adrian Briggs, 'Secession from the European Union and Private International Law: the cloud with a silver lining' (Commercial Bar Association, Lincoln's Inn Fields, London, 24 January 2017) <https://www.blackstonechambers.com/news/secession-european-union-and-private-international-law-cloud-silver-lining/> accessed 20 September 2017.
[61] Regulation (EC) No 593/2008 of the European Parliament and Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6.
[62] Regulation (EC) No 864/2007 of the European Parliament and Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) [2007] OJ L199/40.
[63] Department for Exiting the European Union, 'Providing a cross-border civil judicial cooperation framework: A future partnership paper' (22 August 2017) <https://www.gov.uk/government/publications/providing-a-cross-border-civil-judicial-cooperation-framework-a-future-partnership-paper> accessed 20 September 2017.
[64] Andrew Dickinson, 'Reading the Tea Leaves? Private International Law in England after EU Exit' (*Oxford Business Law Blog*, 26 October 2016) <https://www.law.ox.ac.uk/business-law-blog/blog/2016/10/reading-tea-leaves-private-international-law-england-after-eu-exit> accessed 20 September 2017.
[65] *ibid*.
[66] Hague Convention of 30 June 2005 on Choice of Court Agreements.
[67] Covering, as it does, only cases involving an *exclusive* choice-of-court clause that confers jurisdiction on the courts of a contracting state.

take time. In the absence of such an agreement—and assuming that the Brussels Convention,[68] which some have suggested might yet rise from the ashes,[69] is a dead duck[70]—enforcement in England of judgments from Member States would again be subject to common law rules, including the fraud defence.[71] Are we really to swap a world of free movement of judgments and judicial mutuality for one where rulings from the courts of European partners such as Spain, Sweden, and Portugal are exposed to the sort of re-evaluation decreed by *Abouloff*, with the enlarged caseload and added cost and complexity that would bring?

Proposal for reform

REFORM of the law on fraud and foreign judgments can come only from Parliament. True, if a suitable case came along, the Supreme Court *could* overrule *Abouloff*. That, however, would result in the absurdity mentioned in *Owens Bank*, and a different kind of double standard.[72] It is Parliament who can revise both the rule in *Abouloff* and the relevant enforcement statutes, to ensure that any such absurdity is avoided. As to what form that revision should take, the choice is simple. Either the legislature finds a way to replace the rule, as Lord Collins proposed in *AK Investment CJSC*, with a more 'nuanced approach… depending on the reliability of the foreign legal system, the scope of challenge in the foreign court and the type of fraud alleged';[73] or it follows the lead of the Supreme Court of Canada, in *Beals*, and implements the same standard, for overseas judgments, as for domestic rulings.

My preference lies with the latter. It is difficult to see how Lord Collins' suggestion could be realised effectively via legislation. Moreover, it would, I fear, remain open to abuse; carry with it, again, an unwelcome sense of English superiority; and be disposed to the same charges of uncertainty

[68] Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters [1972] OJ L 299/32.
[69] See, for example, Andrew Dickinson, 'Back to the future: the UK's EU exit and the conflict of laws' (2016) 12(2) *Journal of Private International Law* 195.
[70] Briggs (n 60).
[71] That said, there are still bilateral treaties in place with some individual Member States—Austria, Belgium, France, Germany, Italy, and the Netherlands—which may, as Article 59 of the Vienna Convention on the Law of Treaties would seem to suggest, still be in force.
[72] That is, that a judgment creditor, denied statutory enforcement under the Administration of Justice Act 1920, s 9(2) or the Foreign Judgments (Reciprocal Enforcement) Act 1933, s 4(1)(a)(iv), on the ground that the ruling was attained by fraud, could succeed in a *common law* action to enforce his judgment, because the evidence on which the judgment debtor relied did not satisfy the English rule for domestic judgments; see *Owens Bank* (n 21) [489] (Lord Bridge).
[73] *AK Investment CJSC* (n 51) [116].

and illegitimate discretion that blight the doctrine of *forum non conveniens*.[74] The test adopted in *Beals*, by contrast, effectively balances the need to guard against fraudulently obtained judgments with the need to treat foreign rulings as final.[75] To recap, then, the reform I propose is this:

> A party seeking to impeach a foreign judgment on the basis that it was procured by fraud must provide *newly discovered evidence*, of a decisive character, that could not *with reasonable diligence* have been produced at the original trial.

It may be said that this somehow takes the side of the alleged fraudster over the negligent judgment debtor.[76] But is *that* what the English courts are currently doing, in demanding fresh evidence before considering setting aside a domestic judgment: favouring the fraudsters? Of course not. All that the recommended reform requires is that parties exercise reasonable diligence; as they should in all litigation, not least the contesting of a foreign action. The law should not legislate for incompetence, and the *Abouloff* double standard cannot be excused by concern for careless judgment debtors alone. Where there are genuine complaints about deficiencies in the foreign judicial process, meanwhile—as in *AK Investment CJSC*—these may be more wisely included under the defence that recognition would be contrary to public policy, or inconsistent with Article 6 of the European Convention on Human Rights.[77]

Concluding remarks

THE reform that I propose: one rule for all, and an end to the *Abouloff* double standard on fraud and foreign judgments, is *desirable*, in that it better honours established doctrines of obligation and *res judicata*, and brings up-to-date a law that is stuck in the 19th century; *practical*, in that it follows the lead of other common law jurisdictions, and simply affords the same finality to foreign judgments as is currently afforded to domestic rulings; and *useful*—particularly with regard to the possibility, post-Brexit, that judgments of the courts of European partners may soon be subject to common law rules—in that it provides increased protection against abuse and tactical re-litigation, thus limiting the

[74] See, for example, Peter J Carney, 'International *Forum Non Conveniens*: "Section 1404.5"—A Proposal in the Interest of Sovereignty, Comity, and Individual Justice' (1995–1996) 45 *American University Law Review* 415; Hu Zhenjie, 'Forum Non Conveniens: An Unjustified Doctrine' (2001) 48 *Netherlands International Law Review'* 143.
[75] *Beals* (n 42) [50] (Major J).
[76] See, for example, Briggs (n 11) 6.194; (n 35) 7.69.
[77] *Dicey, Morris & Collins* (n 56) 14-143. Unlike fraud, such defences do not involve one rule for domestic judgments and another for foreign rulings. In the overseas context, they should, of course, be exercised cautiously, out of similar concerns for the doctrines of obligation, *res judicata*, and finality; but if such defences, too, are in need of reform, that is another matter, for another day.

English courts' caseload and helping to foster cooperation with other countries, in Europe and beyond.