Volume 29 | Number 4 Article 7

6-1-1951

# Conflict of Laws -- Enforcement of Foreign Alimony Decrees

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Although there has been no square holding that these devices are adequate compliance with the driver's statutory duty, yet decisions have given cognizance to their ability to warn the driver following and put him on notice.[41] Hence even though no hand signal is given, it is clear that the flashing of a directional turn signal on the rear and front of the vehicle, or the flashing of a red light on the rear when the brakes are applied, are circumstances which will be considered. In a recent case[42] in which the operator of a stopping bus relied on the rear brake lights, the court held that a mere showing that the inspector for the Utilities Commission had approved the bus and that the bus had the lighting equipment prescribed by the Commission was not sufficient evidence of compliance with the above statute.

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**Conflict of Laws—Enforcement of Foreign Alimony Decrees**

A recent North Carolina case[1] is typical of the cases which pose the problems inherent in the methods of enforcing foreign alimony decrees. Plaintiff wife brought action to establish and enforce a Florida decree directing payment of $100 monthly alimony. The trial court entered judgment for plaintiff for past due and unpaid installments accrued, decreed the adoption of the Florida judgment, and thereupon entered an order directing payment of future installments as they become due. *Held:* plaintiff was not entitled to a judgment ordering payment of future installments, but only to a money judgment for past due and unpaid installments due her under the decree, "which judgment" the court added "is enforceable by execution and not by contempt proceedings."[2]

The courts are generally in agreement that a foreign alimony decree is not enforceable in so far as it relates to future installments.[3] And as

[41] Levy v. Carolina Aluminum Co., 232 N. C. 158, 59 S. E. 2d 632 (1950) (turning signal); Moore v. Boone, 231 N. C. 494, 57 S. E. 2d 783 (1950) (turning signal); Barlow v. City Bus Lines, 229 N. C. 382, 49 S. E. 2d 793 (1949) (brake lights); Warner v. Lazarus, 229 N. C. 27, 47 S. E. 496 (1948) (brake lights; court even raised question of how many feet brake lights were on before collision); Smith v. Carolina Coach Co., 214 N. C. 314, 199 S. E. 90 (1938) (brake lights; court let jury decide whether adequate compliance with statute; the then statute apparently did not contain a provision for electrical signal). But see Grimm v. Watson, 233 N. C. 65 (1950), where facts indicated electrical turn signal given, but no mention made of it in court's opinion.

[42] Banks v. Shepard, 230 N. C. 86, 52 S. E. 2d 215 (1949).

[1] Willard v. Rodman, 233 N. C. 198, 63 S. E. 2d 106 (1951).

[2] *Id.* at p. 202.

[3] The Full Faith and Credit Clause does not obligate the courts of one state to enforce an alimony decree rendered in another state with regard to future payments, particularly when such future installments are subject to modification by

a result of the mandate of the Full Faith and Credit Clause[4] of the Federal Constitution, the authorities are unanimous in enforcing foreign decrees for alimony to the extent of accrued installments not subject to modification.[5] However, since the full faith and credit mandate does not extend to remedies, unanimity is not compelled as to the method of enforcement.[6] The ordinary method of enforcing a foreign judgment is by an action at law and recovery of a money judgment followed by execution thereon.[7] Since a foreign alimony decree is one ordering the payment of money, all courts accord the ordinary method of enforcement to local money judgments based upon foreign decrees. The point of departure is on the question whether the local judgment is also enforceable by equitable processes such as sequestration, receivership, injunction, writ of *ne exeat,* and contempt proceedings.[8] Analysis of the case law on this point reveals a marked schism in the courts; one side totally denying equitable relief, the other granting the full scope of equitable enforcement.

Among those jurisdictions in which equitable relief is denied, three views are taken. (1) Alimony due under a foreign decree is merely a debt, collectible by execution upon a judgment recovered locally upon the foreign decree. From this premise it is concluded that, the remedy at law being complete and adequate, equity has no jurisdiction to exercise its extraordinary powers of enforcement.[9] (2) The equitable remedies

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the court rendering the decree. Sistare v. Sistare, 218 U. S. 1 (1909); Lynde v. Lynde, 181 U. S. 183 (1901); Barber v. Barber, 21 How. 582 (U. S. 1859); Cummings v. Cummings, 97 Cal. App. 144, 275 Pac. 245 (1929); German v. German, 122 Conn. 155, 188 Atl. 429 (1936); Kossower v. Kossower, 142 Atl. 30 (N. J. 1928). However, on the basis of comity some courts allow establishment of the foreign decree and give enforcement thereto the same as to a local decree. See *e.g.,* Biewend v. Biewend, 17 Cal. 2d 117, 109 P. 2d 701 (1941); Fanchier v. Gammill, 148 Miss. 723, 114 So. 813 (1927); Cousineau v. Cousineau, 155 Ore. 184, 63 P. 2d 897 (1936); Shibley v. Shibley, 181 Wash. 166, 42 P. 2d 446 (1935).

[4] U. S. CONST. Art. IV, §1.

[5] Barber v. Barber, 323 U. S. 77 (1944); Sistare v. Sistare, 218 U. S. 1 (1909); Lynde v. Lynde, 181 U. S. 183 (1901); Webb v. Webb, 222 N. C. 551, 23 S. E. 2d 897 (1943); Lockman v. Lockman, 220 N. C. 95, 16 S. E. 2d 670 (1941) (J. Devin stated, "Whatever uncertainty may have existed as to the law on this subject seems to have been settled by the decision of the Supreme Court of the United States in *Sistare v. Sistare.*").

[6] In German v. German, 122 Conn. 155, 188 Atl. 429 (1936), the court stated, "The constitutional provisional, however, only requires that the courts of a state other than that in which the decree is rendered shall give effect to it by the ordinary remedies appropriate to an action upon a judgment." 2 BEALE, CONFLICT OF LAWS 1377: "The method of enforcement of a foreign judgment is governed by the law of the forum."

[7] It may be pointed out in this connection that judgments and decrees of one state have, under the Full Faith and Credit provision, no operative force of their own in another state. To have the force of a judgment in another state, it must be made a judgment there. See 2 BEALE CONFLICT OF LAWS 1378.

[8] See Notes, 97 A.L.R. 1197 (1935), 109 A.L.R. 652 (1937).

[9] Lynde v. Lynde, 181 U. S. 183 (1901); Worsley v. Worsley, 76 F. 2d 815 (D. C. Cir. 1935) *cert. denied,* 294 U. S. 725 (1935); Ives v. Ives, 247 Ala. 690,

prescribed by local statutes for the enforcement of decrees of alimony have reference only to decrees of local courts and do not apply to decrees of courts of sister states.[10] (3) Equitable enforcement is not required by the Full Faith and Credit Clause of the Federal Constitution, because that provision does not extend to the method of or remedy for enforcement of foreign judgments.[11]

Those courts which grant equitable enforcement, deny the validity of the premise that a judgment for alimony due under a foreign decree is merely a debt. Such a judgment is said to represent more than an ordinary debt,[12] in that its origin lies in the marital duty of the husband to support his wife and is a continuation of that duty; this duty rests upon public policy, and is thus a matter of public concern, regardless of where the obligation arises or where its enforcement is sought. One well reasoned decision expresses the view in this manner:

"Migration of the parties across a state line has wrought no change in the nature and basis of the obligation. Its purpose remains the payment of alimony needed for the support of a former wife and the child of herself and the debtor. To the ordinary mind, untroubled by legal nuances, the money due from defendant remains alimony, wherever they or either may be. We prefer that nontechnical view which regards the substance of the matter as unchanged by the mere removal of the debtor across a state line."[13]

The assumption that the remedy at law is complete and adequate has also been assailed. It is said that the lapse of time that occurs between filing of suit, entry of judgment, and execution sale, works an increasing hardship upon dependents entitled to the necessaries of life; that the difficulty of finding assets of a recalcitrant defendant upon which to levy execution often makes the legal remedy wholly ineffective.[14] Unlike the courts which restrict the operation of local statutes providing

26 So. 2d 93 (1946); Lawrence v. Lawrence, 196 Ga. 204, 26 S. E. 2d 283 (1943); Kossower v. Kossower, 142 Atl. 30 (N. J. 1928); Bennett v. Bennett, 63 N. J. Eq. 306, 49 Atl. 501 (Ct. of Err. and App. 1901).

[10] This view stems from the premise that a judgment on a foreign decree is not one for alimony, but a judgment to authorize enforcement of the foreign decree in the forum, that therefore, the local statutory remedies for the enforcement of a local decree for alimony are not applicable thereto. See Page v. Page, 189 Mass. 85, 75 N. E. 92 (1905); Mayer v. Mayer, 154 Mich. 386, 117 N. W. 890 (1908); see also, Kelley v. Kelley, 275 App. Div. 887, 90 N. Y. S. 2d 178 (4th Dep't 1949) (New York statute provides for application of statutory equitable remedies if foreign divorce granted on grounds of adultery, N. Y. Civ. Prac. Act, §§1171, 1172).

[11] Sistare v. Sistare, 218 U. S. 1 (1909); Lynde v. Lynde, 181 U. S. 183 (1901).

[12] For a discussion of some of the peculiar attributes of alimony see Munson, *Some Aspects of the Nature of Permanent Alimony*, 16 Col. L. R. 217 (1916).

[13] Ostrander v. Ostrander, 190 Minn. 547, 252 N. W. 449, 450 (1934).

[14] See Brief, prepared by Nat'l Ass'n of Legal Aid Organizations, 34 Mass. L. Q. 9 (Oct. 1949).

for equitable enforcement of local decrees of divorce and alimony, the courts granting equitable relief assert, more realistically, that the character of the obligation imposed by the foreign decree is not changed by mere crossing of state lines, and unhesitatingly apply the local statute on the ground of public policy.[15] The main basis mentioned for affording equitable remedies is the principle of comity. The courts adopting this view justify their decisions by stating,

". . . we decline debate as to how little we can do for plaintiff and yet comply with the full faith and credit mandate. In view of her plain right, and the need for its enforcement, not only in justice to her and her child, but also to vindicate our system of interstate comity, we prefer only to inquire whether our district court has adequate power to give plaintiff the remedy which the nature of her claim commends as just."[16]

It is apparent from the nature of the problem and the purpose of alimony decrees that the question is not whether, by reason of the Full Faith and Credit Clause, it is obligatory upon the state courts to accord equitable enforcement to the alimony decrees of sister states, but whether, by reason of comity, public policy, or need for enforcement, the state courts *ought* to accord equitable enforcement to such decrees. That this question is to be answered affirmatively is indicated by the trend of recent cases.[17]

The increased mobility of people in this country (the national population) accentuates the need for effective enforcement to deter a delinquent defendant from resorting to flight across state lines to escape his legally imposed duty. This need is reflected in a new approach to the national problem, *i.e.,* specific legislation designed to obviate the obstacles heretofore in the path of effective enforcement. The Uniform Reciprocal Enforcement of Support Act,[18] promulgated by the National Confer-

[15] Creager v. Superior Ct., 126 Cal. App. 280, 14 P. 2d 552 (1932); Ostrander v. Ostrander, 190 Minn. 547, 252 N. W. 449 (1934); Shibley v. Shibley, 181 Wash. 166, 42 P. 2d 446 (1935).

[16] Ostrander v. Ostrander, 190 Minn. 547, 252 N. W. 449, 450 (1934); see also, Cousineau v. Cousineau, 155 Ore. 287, 63 P. 2d 897 (1936); McKeel v. McKeel, 185 Va. 108, 37 S. E. 2d 746 (1946).

[17] Biewend v. Biewend, 17 Cal. 2d 117, 109 P. 2d 701 (1941); German v. German, 122 Conn. 155, 188 Atl. 429 (1936); McDuffie v. McDuffie, 155 Fla. 63, 19 So. 2d 511 (1944) (first impression); Rule v. Rule, 313 Ill. App. 108, 39 N. E. 2d 379 (1942) (first impression); Glanton v. Renner, 285 Ky. 808, 149 S. W. 2d 748 (1941) (first impression); Ostrander v. Ostrander, 190 Minn. 547, 252 N. W. 449 (1934); Fanchier v. Gammill, 148 Miss. 723, 114 So. 813 (1927) (first impression); Cousineau v. Cousineau, 155 Ore. 287, 63 P. 2d 897 (1936) (first impression); Johnson v. Johnson, 194 S. C. 115, 8 S. E. 2d 351 (1940) (first impression); Sorenson v. Spence, 65 S. D. 134, 272 N. W. 179 (1937) (first impression); Thones v. Thones, 185 Tenn. 124, 203 S. W. 2d 597 (1947) (first impression); McKeel v. McKeel, 185 Va. 108, 37 S. E. 2d 746 (1946) (first impression); Shibley v. Shibley, 181 Wash. 166, 42 P. 2d 446 (1935) (first impression).

[18] Handbook of National Conference of Commissioners on Uniform State Laws 175 (1950).

ence of Commissioners on Uniform State Laws in September, 1950, attempts to remedy the failure of existing legal techniques and the inadequacy of concepts of personal jurisdiction and full faith and credit to resolve the problem of deserted dependents in a federal system. A simple two-state procedure is devised whereby the courts of each state participate in enforcing, by appropriate civil and criminal remedies, the duty of support owed by a person who has fled from one state to the other, provided, of course, that both states have the same or substantially similar reciprocal law.[19]

Subsequent to the principal case, this Act, with modifications, was enacted into law by the North Carolina General Assembly.[20] The adoption of this Act is an unequivocal legislative expression of the public policy of this state to provide effective means of coping with the problems inherent in the interstate enforcement of support. Since reciprocity is the heart of the act, its efficacy may be gauged by the number of states that adopt it. Until its full potential is realized by widespread adoption, the court should feel bound to give effect to the legislative declaration of public policy by providing equitable, as well as legal, remedies for enforcing foreign alimony decrees and support orders, in those cases that come before it from states which have yet to adopt a reciprocal or similar law.

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**Constitutional Law—Privilege Against Self-Incrimination—Smith Act**

In the recent case of *Blau v. United States*,[1] petitioner, in response to a subpoena, appeared as a witness before the United States District Court Grand Jury at Denver, Colorado. There she was asked several questions[2] concerning the Communist Party of Colorado and her em-

[19] For a substantially similar act, progenitor of the principal act, see UNIFORM SUPPORT OF DEPENDENTS ACT, adopted by 10 jurisdictions in 1949. CONN. GEN. STAT. tit. 63, c. 415a (Supp. 1949); ILL. REV. STAT. c. 68, Sec. 50 (1949); IND. ANN. STAT. sec. 38-118a (Burns 1949); IOWA CODE c. 252A (1950); ME. LAWS c. 297 (1949); N. H. LAWS c. 153 (1949); N. J. STAT. ANN. tit. 9, c. 18, sec. 17.1 (Cum. Supp. 1950); McK. UNCONSOL. LAWS sec. 2111-2120 (1949); OKLA. STAT. tit. 12, sec. 1601-1610 (Supp. 1949); VIRGIN ISLANDS, Bill No. 3 (1949). Though bearing the title, "Uniform," this act was not promulgated by the National Commissioners on Uniform State Laws. For an interesting account of the genesis of this Act, see Griswold, "Fugitive Husbands," American Magazine, Jan. 1949, p. 24.

[20] See summary of new statute, *supra* p. 423.

[1] 71 Sup. Ct. 223 (1950).

[2] "Do you know the names of the State officers of the Communist Party of Colorado?" "Do you know what the organization of the Communist Party of Colorado is, the table of organization of the Communist Party of Colorado?" "Were you ever employed by the Communist Party of Colorado?" "Did you ever have in your possession or custody any of the books and records of the Communist