NOTES

Enforcement of Money Alimony Decree by Equity Process in a Foreign State

W, having obtained a money alimony decree in *F-1*,[1] seeks the enforcement of that decree in *F-2* by its court of equity, because *H* has fled into that jurisdiction. What should be the attitude of the *F-2* equity court? Does the full faith and credit clause [2] require the foreign court to accord the same means of execution as that obtaining in the state of rendition, when such foreign court recognizes the validity of the divorce [3] and the alimony claim? [4]

It is well settled that an action at law may be instituted upon a foreign money alimony decree if it possesses the elements of definiteness and finality which are prerequisites of any judgment.[5] It is also clear that full faith and credit must be extended such a decree in a suit at law for the accrued installments,[6] or for a lump sum award, provided the claim is not subject to modification.[7]

It was early said by the U. S. Supreme Court: "To give it (F-1 judgment) the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter state as its laws may permit." [8] This language, which was quoted in *Lynde v. Lynde*,[9] appears not to preclude a "judgment" from being an *F-2* equity decree. Further, the words "as its laws may permit"

---

1. For the sake of clarity and brevity, the symbols *F-1*, referring to the first forum, and *F-2*, denoting the second forum or state in which suit is brought on a decree obtained in another jurisdiction, will be used. Thus, if a judgment recovered in Ohio is sued on in New York, Ohio is *F-1* and New York is *F-2*.

2. U. S. CONST. Art. IV, § 1.

3. Full faith and credit must be extended divorce decrees rendered at the domicile of both parties. Cheely v. Clayton, 110 U. S. 701 (1884). See GOODRICH, CONFLICT OF LAWS (1927) § 125. Or at the domicile of one party, the other being personally served within the state, or appearing. Cheever v. Wilson, 9 Wall. 108 (U. S. 1869); see Haddock v. Haddock, 201 U. S. 562, 570 (1905); 3 FREEMAN, JUDGMENTS (5th ed. 1925) § 1430. Or at the last matrimonial domicile with proper notice to defendant,—the last matrimonial domicile being that last shared by both parties as man and wife. Haddock v. Haddock, 201 U. S. 562 (1905); Beischer v. Beischer, 226 App. Div. 454, 235 N. Y. Supp. 652 (4th Dep't, 1929); 3 FREEMAN, *op. cit. supra*, at § 1431. But if neither party is domiciled therein, the court is without jurisdiction, and the divorce is void and has no legal effect in any other state. Streitwolf v. Streitwolf, 181 U. S. 179 (1901); Keil v. Keil, 80 Neb. 496, 114 N. W. 570 (1908).

4. The court must have had personal jurisdiction over the defendant to make an alimony award binding on him. 2 BISHOP, MARRIAGE, DIVORCE & SEPARATION (1891) §§ 78, 79; GOODRICH, *op. cit. supra* note 3, § 133.

5. 2 FREEMAN, *op. cit. supra* note 3, § 1065.

6. Lynde v. Lynde, 181 U. S. 183 (1901); Lynde v. Lynde, 162 N. Y. 405, 56 N. E. 979 (1900); GOODRICH, *op. cit. supra* note 3, § 134.

7. Sistare v. Sistare, 218 U. S. 1 (1910); RESTATEMENT, CONFLICT OF LAWS (1934) § 464. In Holton v. Holton, 153 Minn. 346, 190 N. W. 542 (1922), full faith and credit was granted although the alimony was subject to modification. However, it is generally held that even though *F-1* might modify, installments that have accrued are vested debts. Lynde v. Lynde, 181 U. S. 183 (1901). But see Barclay v. Barclay, 184 Ill. 375, 377, 56 N. E. 636, 637 (1900).

8. McElmoyle v. Cohen, 13 Pet. 312, 325 (U. S. 1839).

9. 181 U. S. 183, 187 (1900).

seem to indicate that *F-2* may give equitable enforcement to the *F-1* decree if its legal machinery is so adapted.[10]

Since 1927 a series of decisions has indicated that *F-2* will allow the use of its equity process to enforce a foreign alimony decree. This recent trend was inaugurated by the case of *Fanchier v. Gammill,*[11] in which a divorced wife filed a bill for alimony under a Nevada decree. The Mississippi court felt that the full faith and credit clause required it to "establish" the foreign decree and enforce it by equitable process. The court then reasoned that an alimony decree ought to receive the advantage of extraordinary means of enforcement anyway "on account of the character of a judgment for alimony, which rests, to some extent, upon public policy, in requiring a husband to support his wife and children due to the sacred human relationships. . . ." [12] Later decisions attaining this result, although citing *Fanchier v. Gammill* as persuasive authority, did not base their opinions upon the requirement of full faith and credit.[13] "In fact, it is clearly settled that a state is not obligated to afford any different relief to a foreign money alimony decree than it accords to any money judgment rendered in a foreign court of law.[14]

While some cases have held that an action at law lies for accrued alimony installments, it does not necessarily follow that such a holding denies the use of equitable process,[15] although some courts have expressly denied the jurisdiction of equty to act on a foregn decree.[16] Those courts that have refused their equitable assistance in the enforcement of an *F-1* decree for either a lump sum or accrued installments have maintained that the foreign decree constitutes a "debt of record" which is enforceable only at law, since an "adequate remedy" is provided there. However, the phrase "debt of record" was originated early in our history to enable a person who was awarded a money equity decree

---

10. It cannot be argued that a foreign court should extend remedies which it is not empowered to exercise in the enforcement of its own decrees. GOODRICH, *op. cit. supra* note 3, § 207.

11. 148 Miss. 723, 114 So. 813 (1927), 41 HARV. L. REV. 798.

12. *Id.* at 737, 114 So. at 814.

13. Creager v. Superior Ct. of Santa Clara County, 126 Cal. App. 280, 14 Pac. (2d) 552 (1932), 81 U. OF PA. L. REV. 342 (1933); Ostrander v. Ostrander, 190 Minn. 547, 252 N. W. 449 (1934); Shibley v. Shibley, 181 Wash. 166, 42 Pac. (2d) 446 (1935); German v. German, 188 Atl. 429 (Conn. 1936). Whether Massachusetts is in accord with the foregoing states is a moot question as a result of the decision in Weidman v. Weidman, 274 Mass. 118, 174 N. E. 206 (1931), in which it was held that Massachusetts was not required by the full faith and credit clause to enforce in equity a judgment for alimony rendered by a court of a sister state in a suit wherein the marriage was not dissolved. It is to be noted, however, that obligations of a similar nature could not be enforced by a wife against her husband in equity in Massachusetts even though the obligation were created by its own court [2 MASS. GEN. LAWS (1932) c. 209, § 6]; and the decision was based specifically upon this ground rather than upon the fact that it was a foreign alimony decree. Thus it may be that the *Weidman v. Weidman* holding applies only where there has been no final divorce in the sister state.

14. Sistare v. Sistare, 218 U. S. 1 (1910); Bennett v. Bennett, 63 N. J. Eq. 306, 49 Atl. 501 (1903).

15. Wagner v. Wagner, 26 R. I. 27, 57 Atl. 1058 (1904). See (1932) 10 CHI-KENT REV. 266. And the fact that the law has taken over a remedy formerly given only in equity does not preclude equity jurisdiction. 1 POMEROY, EQUITY JURISPRUDENCE (3d ed. 1905) § 62.

16. Grant v. Grant, 75 F. (2d) 665 (App. D. C. 1935); Worsley v. Worsley, 76 F. (2d) 815 (App. D. C. 1935); Page v. Page, 189 Mass. 85, 75 N. E. 92 (1905); Bennett v. Bennett, 63 N. J. Eq. 306, 49 Atl. 501 (1901); Lynde v. Lynde, 41 App. Div. 280, 58 N. Y. Supp. 567 (2d Dep't, 1899), *aff'd,* 162 N. Y. 405, 56 N. E. 979 (1900).

to institute an action at law.[17] The primary purpose was to require foreign law courts to accord full faith and credit to an equity decree so long as it was not a decretal order.[18] Hence, it appears that the expression was adopted for its convenience in tersely signifying that a final decree was such a judgment as would be capable of supporting an action of debt.[19] But declaring an alimony decree to be a "debt" and therefore adequately remedial at law begs the question, because, although what is owing may be called a "debt" to enable the institution of a suit for its recovery at law, the adequacy of the remedy might be dependent upon the nature of the claim.[20]

Generally alimony is held to be an obligation of the same nature as that of the marital duty to support.[21] It is not founded on a contract, express or implied, but arises out of the relationship of marriage.[22] Thus viewed, the decree does not create a debt in the ordinary sense, but rather defines the husband's original obligation.[23]

It has been said that the claim for alimony becomes merged in the decree, and this becomes then a suit on a debt of a different sort from the petition for alimony.[24] But surely the "debt" thus created is a peculiar specie.[25] It is not a property right which is assignable.[26] By the weight of authority, it is exempt from garnishment,[27] except if the debt had been contracted for necessaries, and made after the divorce.[28] Also, it is a "debt" which prevails over exemption laws [29] and survives bankruptcy.[30] Further, the obligation to pay the alimony

17. Post v. Neafie, 3 Caines 22 (N. Y. 1805). See Cook, *The Powers of Courts of Equity* (1915) 15 COL. L. REV. 106, 240. It was an answer to the divergent English views, which held that as a chancery court was not a court of record, no action at law could be maintained upon a decree. The development of a chancery court to a court of record is discussed in Barbour, *The Extra-Territorial Effect of the Equitable Decree* (1919) 17 MICH. L. REV. 527.

18. Pennington v. Gibson, 16 How. 65 (U. S. 1853). But an action for debt will not lie on a decretal order. Hugh v. Higgs, 8 Wheat. 697 (U. S. 1823).

19. "The liability for unpaid alimony may not, strictly speaking, be a debt within the legal meaning of the word. But it gives to the wife in proceedings like this the right as a creditor to enforce payment in the same manner and to as great an extent as if she were a creditor in the most exact sense of the word." McIlroy v. McIlroy, 208 Mass. 458, 464, 94 N. E. 696, 699 (1911).

20. "The law of merger as applied to judgments does not forbid all inquiry into the nature of the cause of action." 2 FREEMAN, *op. cit. supra* note 3, § 550.

21. 2 BISHOP, *op. cit. supra* note 4, § 829; 2 SCHOULER, MARRIAGE, DIVORCE, SEPARATION & DOMESTIC RELATIONS (6th ed. 1921) § 1754.

22. 2 NELSON, DIVORCE & SEPARATION (1895) § 900.

23. Faversham v. Faversham, 161 App. Div. 521, 146 N. Y. Supp. 569 (1st Dep't, 1914).

24. 2 SCHOULER, *op. cit. supra* note 21, § 1861; see (1934) 11 N. Y. U. L. Q. REV. 634.

25. For a discussion of some of the peculiar attributes of alimony, see Munson, *Some Aspects of the Nature of Permanent Alimony* (1916) 16 COL. L. REV. 217.

26. Jordan v. Westerman, 62 Mich. 170, 28 N. W. 826 (1886); see Faversham v. Faversham, 161 App. Div. 521, 523, 146 N. Y. Supp. 569, 571 (1st Dep't, 1914).

27. Wright v. Wright, 93 Conn. 296, 105 Atl. 684 (1919); Kingman v. Carter, 8 Kan. App. 46, 54 Pac. 13 (1898); Romaine v. Chauncey, 129 N. Y. 566, 29 N. E. 826 (1892). *Contra:* Kelso v. Lovejoy, 9 Ohio Cir. Ct. (N. S.) 539 (1905), *aff'd*, 76 Ohio St. 598, 81 N. E. 1189 (1907); Scheffer v. Boy, 5 Pa. Cty. Ct. 158 (1888).

28. West v. Washburn, 153 App. Div. 460, 462, 138 N. Y. Supp. 230, 231 (3d Dep't, 1912). See Harper, *Garnishment of Alimony* (1928) 13 IOWA L. REV. 164.

29. Szymanski v. Szymanski, 188 Iowa 931, 176 N. W. 806 (1920); Johnson v. Johnson, 66 Kan. 546, 72 Pac. 267 (1903); Pearson v. Pearson, 166 Ky. 91, 178 S. W. 1164 (1915). The weight of authority, however, is that execution will not reach a homestead if the decree is not made a lien on the property, but a money judgment is taken. Ford v. Ford, 201 Ala. 519, 78 So. 873 (1918); Jackson v. Coleman, 115 Miss. 535, 76 So. 545 (1917). *Contra:* Rogers v. Day, 115 Mich. 664, 74 N. W. 190 (1898); Kimmerly v. McMichael, 83 Neb. 789, 120 N. W. 487 (1909).

30. 42 STAT. 354, 11 U. S. C. A. § 35 (1927); Wetmore v. Markoe, 196 U. S. 68 (1904).

does not survive the death of either party,[31] and it has been held that the estate of the deceased wife cannot recover from the husband the installments which had accrued prior to her death.[32] In addition, the determination of the amount of the alimony is controlled by no fixed standards, but rests in the sound discretion of the court,[33] and the uniqueness of the "debt" becomes pronounced by the fact that the amount awarded the wife is subject to modification by the court granting it,[34] even as to accrued installments,[35] and may be stopped entirely upon the remarriage of the spouse to a person able to support her.[36] In addition, imprisonment for failure to pay does not violate constitutional provisions forbidding imprisonment for debt.[37] It is well-settled that alimony is treated differently from other debts in the domestic forum where it is accorded the full scope of equitable enforcement, including injunction,[38] sequestration,[39] receivership,[40] writ of *ne exeat*,[41] and contempt process.[42] Hence, it might be said that although the term "debt" was used to describe accrued sums of alimony to enable a law suit to be maintained on its account, yet, since its legal attributes vary greatly from that of an ordinary money claim, and since the means of enforcement accorded it locally, at least, are peculiar to it, the obligation should not be denied equitable relief merely because it is labeled a "debt".

Alimony is awarded, primarily, to enable the divorced wife to maintain herself and children, in order that they might not become public charges and derelicts.[43] The economic dependence of a wife upon a foreign state is just as burdensome to it as it would have been to the domestic state had the wife not left the latter. Therefore, the public interest of *F-2* is directly affected by the wife's ability to compel payment. In this connection, it must be considered that a judgment at law can be evaded very easily. In fact, just as the respondent had left the domestic state, perhaps to avoid payment, he as readily can leave the sister

---

31. Hazard v. Hazard, 197 Ill. App. 612 (1916); MADDEN, DOMESTIC RELATIONS (1931) § 98.

32. Clark v. Clark, 6 W. & S. 85 (Pa. 1844) (divorce *a mensa et thoro*). However, the executor of a deceased wife was permitted to recover accrued installments even against the deceased husband's estate. Van Ness v. Ransom, 215 N. Y. 557, 109 N. E. 593 (1915).

33. Dietrick v. Dietrick, 88 N. J. Eq. 560, 103 Atl. 242 (1918); Toncray v. Toncray, 123 Tenn. 476, 131 S. W. 977 (1910).

34. Cohen v. Cohen, 150 Cal. 99, 88 Pac. 267 (1906); Hughes v. Hughes, 68 Cal. App. 195, 228 Pac. 675 (1924); Dietrick v. Dietrick, 88 N. J. Eq. 560, 103 Atl. 242 (1918).

35. Emerson v. Emerson, 120 Md. 584, 87 Atl. 1033 (1913).

36. Cohen v. Cohen, 150 Cal. 99, 88 Pac. 267 (1906); Morgan v. Lowman, 80 Ill. App. 557 (1898). But if the second husband is unable to support the wife, and especially if there are minor children, reduced alimony may be retained. Southworth v. Southworth, 168 Mass. 511, 47 N. E. 93 (1897); Hartigan v. Hartigan, 142 Minn. 274, 171 N. W. 925 (1919).

37. *Ex parte* Spencer, 83 Cal. 460, 23 Pac. 395 (1890); Bushman v. Bushman, 157 Md. 166, 145 Atl. 488 (1929); Richards v. Richards, 71 Misc. 532, 130 N. Y. Supp. 799 (Sup. Ct. 1911).

38. *In re* White, 113 Cal. 282, 45 Pac. 323 (1896); Errissman v. Errissman, 25 Ill. 136 (1830).

39. Casteel v. Casteel, 38 Ark. 477 (1882).

40. Stallings v. Stallings, 127 Ga. 464, 56 S. E. 469 (1907); Barker v. Dayton, 28 Wis. 367 (1871).

41. McGee v. McGee, 8 Ga. 295 (1850); Boucicault v. Boucicault, 21 Hun. 431 (N. Y. 1880).

42. Wightman v. Wightman, 45 Ill. 167 (1867); Foster v. Foster, 130 Mass. 189 (1880).

43. Fanchier v. Gammill, 148 Miss. 723, 114 So. 813 (1927); MADDEN, *loc. cit. supra* note 31.

state, and should the contumacious husband send his property to a third state, the wife would be unable to receive satisfaction.[44]

The adequacy of the legal remedy from the wife's viewpoint is obviously defective, since recovery is seldom had until the lapse of a long period after the institution of suit. While an ordinary money judgment is awarded as reimbursement or compensation, alimony is decreed for use in a particular manner, namely, for the maintenance of the wife and children, and comparably to her pre-divorce days.[45] What is the wife to do until the law judgment is recovered and satisfied? People are loath to extend credit on faith in a future judgment, and the alimony probably would not have been granted if the wife had been able to maintain herself without the fund.[46] In the case of installment alimony, not only are the preceding reasons applicable for the extension of equitable relief, but in addition a new action at law would be necessary as each installment became due; and the avoidance of a multiplicity of suits is not an uncommon basis for equity jurisdiction.[47]

Some courts have denied equitable relief on the ground that the mode of execution provided by the laws of the state which had rendered the decree is not, by operation of the full faith and credit clause, obligatory upon the courts of another state wherein the judgment is sought to be enforced.[48] However, the problem is whether a state, by reason of comity or in order to fulfill the purposes of this peculiar type of money decree, *ought* to grant the use of equity process, and not whether it is compelled to do so.

It is sometimes said that a court of equity is without power to enforce any but its own decrees, nor can it adjudge the decree of any other court binding or punish the violation of any but its own decree.[49] However, the court is not asked to enforce a foreign decree; it is asked to "establish" the foreign decree as its own or "to recognize such decree as affording a binding equitable obligation upon which a new decree may be founded".[50]

The recognition of equitable rights established by a foreign court as the basis for a new decree has considerable support in the law.[51] The cases have arisen principally upon the attempt of one party who has been declared by *F-1* to have certain equitable relations to land in *F-2,* to exercise a right thus created or refuse a duty imposed. In *Burnley v. Stevenson,* it was said that as the performance of the duty to convey could have been enforced by contempt proceedings, ". . . the fact that the conveyance was not made in pursuance of the order, does not affect the validity of the decree in so far as it determined the equitable rights of the parties. . . ." [52] It would seem that jurisdictions in accord with

44. This was the factual situation in Cummings v. Cummings, 97 Cal. App. 144, 275 Pac. 245 (1929).

45. 2 BISHOP, *loc. cit. supra* note 4.

46. 2 BISHOP, *op. cit. supra* note 4, § 1012 *et seq.;* 2 SCHOULER, *op. cit. supra* note 21, § 1814 *et seq.*

47. Murphy v. Lincoln, 63 Vt. 278, 22 Atl. 418 (1891). Some courts have dismissed a bill seeking equitable relief without distinguishing between lump sum and installment alimony. Grant v. Grant, 75 F. (2d) 665 (App. D. C. 1935).

48. Bennett v. Bennett, 63 N. J. Eq. 306, 49 Atl. 501 (1903); Lynde v. Lynde, 162 N. Y. 405, 56 N. E. 979 (1900).

49. Adams v. Knapp, 213 Pa. 567, 63 Atl. 1112 (1906).

50. This view is affirmatively expressed by Prof. Barbour, *loc. cit. supra* note 17.

51. Redwood Investment Co. v. Exley, 64 Cal. App. 455, 221 Pac. 973 (1923); Spalding v. Spalding, 75 Cal. App. 569, 243 Pac. 445 (1925); Dunlap v. Byers, 110 Mich. 109, 67 N. W. 1067 (1896); Niles v. Lee, 169 Mich. 474, 135 N. W. 274 (1912).

52. 24 Ohio St. 474, 478 (1873).

Burnley v. Stevenson would readily extend the use of their equitable aid in the enforcement of a marital duty which could have been enforced "by contempt proceedings".[53] As their decisions have been based upon the equitable obligation imposed by the equity court of the sister state rather than the compulsion of full faith and credit, and since the sister state had no jurisdictional control over the *res,* while it had such control over the marriage status, a decree founded upon the marital duty established by a foreign court[54] would be in consonance with the postulate that "an equity decree may be pleaded as a cause of action in another state", and would not even offend the theory of state sovereignty which many courts have applied in refusing to found decrees on equitable obligations concerning conveyances of land.[55]

The argument that on the one hand the land is existent, while the marital status has been dissolved and that the alimony suit is but an ancillary proceeding, and, therefore, there is no *res* to which the latter can attach, is not formidable, because of the well-known doctrine that equity looks through form to substance.[56] Alimony issues out of the marriage status, the dissolution of which might have been dependent upon faith in continued support, since one would rather bear personal indignities, etc., in preference to being left destitute.

Some courts have declined to extend equitable remedies to the enforcement of a foreign money alimony decree on the ground that, by statute, those remedies are applicable only to decrees rendered in an "action for divorce", and that a suit for the recovery of alimony awarded by a sister state is not an "action for divorce" within the meaning of the statute.[57] The present New York act,[58] however, expressly authorizes the use of certain remedial measures, such as sequestration and receivership, provided the cause for the foreign divorce is a ground recognized in New York.[59] It has been held that under this enactment, a suit on the foreign decree is not an equitable action, but one for the recovery of a money judgment, to which the statutory remedy relates.[60] Whereas New York must be commended on its effort to provide greater security, still it seems that the cause for the divorce ought not to be the determinative factor for the issuance of relief. The pecuniary distress of the divorced spouse is not alleviated by a separation resulting from a ground other than adultery.

Inasmuch as, in the absence of statutory prohibition, there is no legal principle which forbids the extension by *F-2* of its equity process in the enforcement

53. Matson v. Matson, 186 Iowa 607, 173 N. W. 127 (1919); Mallette v. Scheerer, 164 Wis. 415, 160 N. W. 182 (1916).

54. See Pound, *The Progress of the Law-Equity* (1919) 33 HARV. L. REV. 420, wherein the author decries the theory of the cases which have founded decrees conveying land on the equitable rights established by a foreign court.

55. Bullock v. Bullock, 51 N. J. Eq. 444, 27 Atl. 435 (1893); Fall v. Fall, 75 Neb. 104, 106 N. W. 412 (1905). Prof. Barbour believes that *Bullock v. Bullock* and *Fall v. Fall* were wrongly decided, as full faith and credit ought to have been given since the equitable rights of the parties had been settled. Barbour, *loc. cit. supra* note 33. See 2 BLACK, JUDGMENTS (2d ed. 1902) § 872; Goodrich, *Enforcement of a Foreign Equitable Decree* (1915) 5 IOWA LAW BULL. 230 (the principle of *Matson v. Matson* upheld).

56. BILLSON, EQUITY IN ITS RELATION TO THE COMMON LAW (1917) 97; CLARK, EQUITY (1919) § 19.

57. Mayer v. Mayer, 154 Mich. 386, 117 N. W. 890 (1908); Wood v. Wood, 7 Misc. 579, 28 N. Y. Supp. 154 (C. P. 1894).

58. N. Y. CIV. PRAC. ACT (Cahill, 1931) § 1171.

59. *Id.* at § 1147. However, the act does not include decrees from foreign countries. Boissevain v. Boissevain, 252 N. Y. 178, 169 N. E. 130 (1929).

60. Beeck v. Beeck, 211 App. Div. 720, 208 N. Y. Supp. 98 (1st Dep't, 1925).

of an *F-1* money alimony decree, it is submitted that its widespread adoption would be highly desirable. It is an expression of a humane attitude which comprehends the need of financially securing to a wife and children the enjoyment of a comfortable life. It is a means which will tend to limit the number of public charges that have been compelled to seek succor from the state. It is a method whereby a recalcitrant husband will be rendered less able to avoid the obligations imposed upon him at the dissolution of the marital status. Furthermore, a state should accord to a similar decree rendered by a foreign court the same facilities for satisfaction made available by it for its own decree. Therefore, the "non-technical view" seems to be preferable, since ". . . to the ordinary mind, untroubled by legal nuances, the money due from the defendant remains alimony, wherever they or either may be." [61]

M. S. F.

61. Ostrander v. Ostrander, 190 Minn. 547, 549, 252 N. W. 449, 450 (1934).