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The Enforcement of Foreign Alimony Decrees

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THE ENFORCEMENT OF FOREIGN ALIMONY DECREES

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I—INTRODUCTION

The term "alimony" is derived from the Latin word *alere* meaning to nourish or sustain, and thus the literal meaning is nourishment, sustenance and support.[1] In it origin, alimony was the method by which the spiritual courts of England enforced the duty of support owed by a husband to his wife during such time as they were legally separated.[2] In modern jurisprudence, the term has taken on an enlarged meaning and has come generally to include not only its former meaning, but also the provision or allowance, whether periodical or in gross, judically made to the wife upon an absolute divorce.[3]

Alimony is not a "debt" and is not based on a contract either expressed or implied.[4] But rather it is a social obligation to support which a court decrees in favor of a wife as a substitute for her common-law right of marital support founded on public policy, and is measured by the needs of the wife and the ability of the husband to pay.[5] Support due a wife and furnished by a husband while they are living together in a natural marriage relation is not alimony, since alimony is support due a wife when she is separated from her husband.[6]

Alimony may generally be divided into two classes: temporary alimony, which is synonymous with the terms "alimony *pendente lite*" and alimony *"ad interim,"* and permanent alimony. Temporary alimony is an allowance made to the wife for her maintenance during the pendency of a divorce action and also for the payment of the wife's counsel fees

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1. Speer v. Speer, 49 Ohio 65, 74 N. E. 2d 97 (1947).
2. Frank v. Juvenile and Domestic Relations Court of Essex County et. al., 137 N. J. L. 364, 58 Atl. 2d 601, 602 (1948).
3. See note, 18 A. L. R. 1040 (1922).
4. Smith v. Smith, D. C. N. Y. 7 F. Supp. 490 (1934).
5. Cole v. Cole, 142 Ill. 19, 31 N. E. 109 (1892); Robertson v. Brewer, 88 N. H. 455, 190 Atl. 709 (1937).
6. Murphy v. Murphy, 56 S. D. 355, 228 N. W. 464 (1929).

and other expenses of the litigation.[7] Permanent alimony is not permanent in an absolute sense, but merely as distiguished from *ad interim* or temporary alimony. It continues in operation until it is terminated or modified by the court or by death or remarriage of the parties.[8]

While courts have applied the term alimony to cover an award for support of minor children and, in some instances to designate amounts allowed a wife in settlement of property rights,[9] when used in this paper, the term refers to its more specific definition—the obligation to provide for the support of a former wife only.

Among laymen and lawyers alike, there has been a great deal of criticism of the laws granting alimony to wives in divorce cases and the application thereof by the courts. It is contended by those more sympathetic with the position of a divorced woman that the courts, in many cases, do not give her the proper economic protection. This school of thought may paint a truly pathetic picture of the divorcee who, having become accustomed to depending on the "stronger of the sexes" for her support, suddenly finds herself alone in the world faced with the grim reality of providing for herself, and perhaps for her children.

On the other hand, it is believed by many that the law has not kept pace with the progressively increasing independence of the female of the species and her ability to provide herself with sufficient income for her support without the aid of the male. Thus, it has been contended, there has been a great deal of abuse in the awarding of alimony by the court's taking a somewhat unrealistic view of women in our present day society.

Even those who most ardently adhere to the view that there have been too many abuses of the husband's rights by the courts in awarding alimony will probably concede that there are some cases in which alimony should be granted to a divorced woman. Whatever a person's attitude toward alimony may be, there is not likely to be any disagreement with the view that once alimony has been properly awarded by a competent court, it should be enforced against the husband.

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7. 17 AM. JUR. 407 § 497.
8. Wilson v. Hinman, 182 N. Y. 408, 75 N. E. 236 (1905).
9. Nelson v. Nelson, 180 Ore. 275, 182 P. 2d 416 (1947).

It is not the purpose of this work to enter into a discussion of the social and legal aspects of awarding alimony. The scope of this paper is limited to the more practical consideration of the enforcement of the alimony decree after it has been awarded, and more specifically, the enforcement of the decree where the husband has left the jurisdiction of the issuing state.

With the assumption that the alimony decree has been awarded and therefore should be enforced as a legal obligation in mind, we look now at the crux of the problem of enforcement with which this paper deals. A hypothetical case will readily reveal the difficulties to be encountered in enforcing an alimony decree rendered in a state other than the one in which enforcement is sought. A wife successfully sues her husband for a divorce or separation and alimony in State A. The decree awarding the alimony may or may not be subject to modification, it may order the husband to convey land lying either within or without the jurisdiction of the issuing state and the decree may provide that the payments be either in the form of a lump sum or installments. The husband then moves to State B and the wife goes there and sues him for enforcement of the alimony decree issued by State A. The suit in State B by the wife may be to recover an amount which has accrued under the foreign[10] decree at the time of the action, it may be for the enforcement of future installments, or for both. From this factual situation, several possible barriers are encountered in an attempt to grant relief to the wife. The general question of how and under what conditions can the payment of alimony be enforced in another state, may be broken down into more specific ones. Must State B give "full faith and credit" to the State A decree? Will the result be any different if the decree is subject to modification in State A? Will any of the difficulties be solved by reducing the amount due to a judgment in State A? How can enforcement of future payments be facilitated in State B? What requirements must the decree meet in order to be enforceable in State B under any condition? Will State B enforce a foreign decree ordering a husband to convey land lying outside of State A?

10. By "foreign" is meant here, as elsewhere in this paper, the court of another state of the United States.

II—ENFORCEMENT UNDER FULL FAITH AND CREDIT CLAUSE OF FEDERAL CONSTITUTION

The Constitution of the United States provides that each state shall give full faith and credit to the judicial proceedings of every other state.[11] The fundamental principle behind this section of the Constitution was stated by the United States Supreme Court in *Williams v. State of North Carolina*[12] when the court said: "The purpose of the full faith and credit clause is to alter the status of the several states as independent foreign sovereigns, each free to ignore obligations created under the laws or by the judicial proceeding of the other, and to make them integral parts of a single nation." Thus, a judgment for a sum of money, being a debt of record, must be given full faith and credit so that an action brought on that judgment will be enforced in any state.[13] However, this rule is subject to a limitation important for the purposes of this discussion, to wit, that no action will lie in another state on a judgment which is not final and conclusive in the state where it is rendered.[14] This brings us to the question of when is an alimony decree final so that it must be enforced in a foreign jurisdiction under the full faith and credit clause of the Federal Constitution.

In a number of divorce suits, a court will order the husband to pay a lump sum to his wife as alimony, thus discharging him from any future liability for support. It has been held that a judgment for alimony in a lump sum becomes final after adjournment of the term of court at which it is rendered, and cannot thereafter be modified unless the court in its judgment retains the right to do so.[15] In such a case, the judgment being final, it will be enforced in an action brought on it in any sister state under the full faith and credit clause of the United States Constitution, as it is nothing more than an ordinary money judgment.[16]

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11. U. S. CONST. ART. IV § 1: "Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceeding of every other State."
12. 317 U. S. 287 (1943).
13. Dunn v. Hild, 125 Pa. Super. 380, 189 Atl. 746 (1937); Paul v. Miller, 61 Cal. App. 2d 73, 142 P. 2d 96 (1943).
14. 2 BEALE, CONFLICT OF LAWS § 535.1 (1935): Gladfelter v. Gladfelter, 205 Ark. 1019, 172 S. W. 2d 246 (1943); Kardoski v. Belanger, 52 R. L. 286, 160 Atl. 205 (1937).
15. Keach v. Keach, 217 Ky. 723, 290 S. W. 708 (1927).
16. 2 BEALE, CONFLICT OF LAWS § 1392 (1935).

The problem becomes more complex where the decree for alimony calls for installment payments. Where there is no power, statutory or otherwise to annul, vary, or modify the decree, the judgment has the finality of an ordinary money judgment and therefore it seems to be a settled rule that recovery could be had for the installments already due.[17] Thus, in an action in a federal court to recover installments of alimony accrued under a decree of divorce of a California court, the decree was held to be entitled to full faith and credit as a fixed judgment where, although under the California Code the court awarding alimony may from time to time modify its order, it did not appear that the California court could modify the decree as to alimony that had accrued.[18]

The following Oregon statute is an example of the situation in which the issuing court does not have the power to alter accrued alimony:

> At any time after a decree is given, the court or judge thereof, upon motion of either party shall have the power to set aside, alter or modify so much of the decree as may provide for the appointment of trustees for the care and custody of minor children, or the nurture and/or education thereof, or the maintenance of either party to the suit; provided, however, that such decree shall be a final judgment as to any installments or payments of money provided for therein which have accrued up to the time either party shall move the court to set aside, alter or modify the same; and provided further, that the court shall not have the power to set aside, alter or modify such decree or any portion thereof which may provide for the payments of money, either for the nurture or education of minor children or the maintenance

17. 2 FREEMAN, JUDGMENTS § 1067 (5th ed. 1925); 2 BEALE, CONFLICT OF LAWS § 1393 (1935); Tolley v. Tolley, 210 Ark. 144, 194 S. W. 2d 687 (1946); Appel v. Appel, 38 Ohio App. 53, 65 N. E. 2d 153 (1946).

18. Caples v. Caples, 47 F. 2d 225 (5th C. C. A. 1931); *accord,* Graham v. Graham, 135 Neb. 761, 284 N. W. 280 (1939); Gladfelter v. Gladfelter, *supra* note 14; See Ades v. Ades, 70 Ohio App. 487, 45 N. E. 2d 416 (1943), in which the New York Court had granted a decree of separation and had awarded alimony to the wife without any reservation of power to modify either as to prospective installments or those that had accrued. The fact that under New York law the parties could by agreement terminate the provision for separation and alimony and restore the marital relation did not prevent the decree from standing as a "final judgment" and entitled to full faith and credit in a sister state.

of either party to the suit, which have accrued prior to the filing of such motion.[19]

There is very little difficulty in enforcing a foreign alimony decree for the accrued installments where such installments are reduced to a judgment in the court rendering the original decree of alimony, even though the decree had been subject to modification.[20] In *Dadmun v. Dadmun*,[21] an action was brought on a judgment of a court of New York for arrears of unpaid alimony due under a previous New York decree of separation ordering payments of alimony at a fixed sum per week. In allowing recovery on the New York judgment the court said, "Final decrees for the payment of ascertained sums of money constituting a debt of record are entitled to full faith and credit in every state and may be enforced by suit in the same way as any other judgments or decrees. A decree for the payment of a fixed sum of money found to be already due and payable to a wife for the past support of herself and her children is to be regarded as a final decree."[22] In following this rule, the United States Supreme Court has held that where a wife obtained a judgment for a lump sum for all arrears of alimony installments due under an order directing the husband to pay her a stated amount at regular intervals, in the decree-granting state, this judgment was final and not subject to modification and therefore entitled to full faith and credit.[23]

The real difficulty of enforcing the payment of accrued installments under a foreign alimony decree is encountered where the decree is subject to modification by the issuing court. It is common practice for courts to reserve, in the decree awarding alimony, the power to vary, modify or annul it and statutes conferring such power exist in the majority of states.[24] An example of such a power to modify a decree is found in the following South Carolina Statute:

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19. ORE. COMP. LAWS 1939 § 9 (915). See Mason v. Mason, 148 Or. 34, 34 P. 2d 328 (1934), "This amendment takes away the power to set aside, alter or modify such decree or any portion thereof as regards installments which have accrued prior to the filing of such motion."
20. See Note, 157 A. L. R. 181 (1945).
21. 279 Mass. 217, 181 N. E. 264 (1932).
22. *Accord*, Creaden v. Krogh, 75 Ga. App. 675, 44 S. E. 2d 136 (1948).
23. Barber v. Barber, 323 U. S. 77 (1944).
24. 2 VERNIER, AMERICAN FAMILY LAW 275 § 106 (1932), *e.g.*, N. J. STAT. ANN. § 2:50-37 (1939); ILL. ANN. STAT. c. 40 § 19 (Cum. Supp. 1948).

> —Either party may apply to the court which rendered the said judgment for an order and judgment decreasing or increasing the amount of such alimony payments or terminating such payments, and the court, after giving both parties an opportunity to be heard, and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the husband, decreasing or increasing or confirming the amount of alimony provided for in such original judgment, or terminating such payments.[25]

Does such a decree have the finality required for it to be extended full faith and credit in another jurisdiction? This question was first dealt with by the United States Supreme Court in *Barber v. Barber*.[27] In that case, a court of the state of New York, having jurisdiction over the parties and subject matter, granted Mrs. Barber a divorce and ordered her husband to pay alimony in periodic installments for the support of his wife. The New York court reserved the power to modify the alimony decree upon application of the parties. The husband failed to pay any of the alimony and moved to Wisconsin, where a suit was brought on the equity side of the Federal court to recover the arrears of alimony. On appeal, the United States Supreme Court affirmed the judgment of the lower court granting relief to the plaintiff. In dealing with the effect of the New York decree, the court stated:

> The decree . . . is a judgment of record, and will be received as such by other courts. And such a judgment or decree, rendered in any state of the United States, the court having jurisdiction, will be carried to judgment in any other state, to have there the same binding force that it has in the state in which it was originally given. For such a purpose, both the equity courts of the United States and the same courts of the states have jurisdiction.
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> . . . [The husband] places her in a situation to sue him for a divorce *a mensa et thoro*, and to ask the court having jurisdiction of her suit to allow her from her husband's means, by way of alimony, a suitable main-

25. § 11, Act No. 137 of the Acts and Joint Resolutions of South Carolina, (1949).
27. 21 How. 582, 591 (U. S. 1858).

> tenance and support. When this has been done, it becomes a judicial debt of record against the husband, which may be enforced by execution or attachment against his person, issuing from the court which gave the decree; and when that cannot be done on account of the husband having left or fled from that jurisdiction to another, where the process of that court cannot reach him, the wife, by her next friend, may sue him, wherever he may be found or where he shall have acquired a new domicile, for the purpose of recovering the alimony due to her, or to carry the decree into a judgment with the same effect that it has in the state in which the decree was given. Alimony decreed to a wife in a divorce or separation from bed and board, is as much a debt of record, until the decree has been recalled, as any other judgment for money is. When it is not paid the wife can sue her husband for it in a court of equity, as an incident of that condition which gave to her the right to sue him, by her next friend for a divorce.[28]

Thus, at least by way of dicta, the court established the rule that a foreign alimony decree is a debt of record and entitled to full faith and credit, even though it is subject to recall.

Some thirty years after the *Barber* case, the Supreme Court had occasion again to discuss the effects of a foreign decree which provides for payment of alimony and which further provides that such payment may be modified by the issuing court in the case of *Lynde v. Lynde*.[29] The plaintiff-wife had obtained a decree in a New Jersey court against her husband for back alimony due and payable, and had also obtained an order that the husband pay to her permanent alimony in weekly installments in the future. She sued the defendant in a New York court seeking enforcement of the New Jersey decree. It was held that the amount which was fixed and already due could be enforced in the foreign jurisdiction, but as the provision for the payment of alimony in the future was subject to modification, it was not a final judgment for a fixed sum which would be given full faith and credit. The *Lynde* case, it seems, did not overrule the *Barber* case which established the general rule that a judgment for alimony as to past

28. [21 How. 582, 591, 595 (U. S. 1858)].
29. 181 U. S. 183 (1901).

installments was within the protection of the full faith and credit clause, but merely established an exception to this general rule, to wit, that where the payment of the alimony is so discretionary with the issuing-court that a vested right to receive it does not exist, it does not have the required finality to entitle it to full faith and credit in a foreign state.

This interpretation was placed on the *Barber* and *Lynde* cases by the United States Supreme Court in the celebrated case of *Sistare v. Sistare*[30] in an effort to clear up the confusion which had resulted from the apparent conflict in these two cases.[31] In the *Sistare* case, the New York Court had granted the wife a separation from bed and board and the court ordered the husband to pay support money to her. A New York statute provided as follows:

> Judgment for separation may be revoked.—Upon the joint application of the parties, accompanied with satisfactory evidence of their reconciliation a judgment for a separation forever, or for a limited period, rendered as prescribed in this article, may be revoked at any time by the court which rendered it, subject to such regulations and restrictions as the court thinks fit to impose.[32]

The husband moved to Connecticut where the wife sued him for payments which were overdue and unpaid. On appeal to the United States Supreme Court the general rule was set out as follows:

> . . . generally speaking, where a decree is rendered for alimony and is made payable in future installments, the right to such installments becomes absolute and vested upon becoming overdue, and is therefore protected by the full faith and credit clause, provided no modification of the decree has been made prior to the maturity of the installments, since, as declared in the *Barber* case, 'alimony decreed to a wife in a divorce of separation from bed and board is as much a debt of record, until the decree has been recalled, as any other judgment for money is.' . . . this general rule, however, does not ob-

30. 218 U. S. 1 (1909).
31. Israel v. Israel, 148 F. 576 (3rd C. C. A. 1906), decided after the Lynde case but before the Sistare case, held that the full faith and credit clause of the United States Constitution did not require enforcement of installments of ailmony due and payable in another state.
32. N. Y. CODE OF CIVIL PROCEDURE, § 1767.

> tain where, by the law of the state in which a judgment for future alimony is rendered, the right to demand and receive such future alimony is discretionary with the court which rendered the decree, to such an extent that no absolute or vested right attaches to receive the installments ordered by the decree to be paid, even though no application to annul or modify the decree in respect to alimony has been made prior to the installments becoming due.

However, it was held that the instant case does not come within the exception set out in the *Lynde* case as the New York statute did not expressly give the power to revoke or modify the accrued installments and therefore the decree must be recognized in Connecticut.

Thus, the *Sistare* case has formulated what may be called the "minimum" requirements to be set before a state is compelled to give full faith and credit to a foreign decree for alimony. The United States Supreme Court has consistently approved the decision of this case,[33] and it has been followed by a large number of state courts.[34] In a recent decision in the District of Columbia, the court said: "Where a foreign decree for alimony is subject to retroactive modification of accrued installments past due, the decree is not entitled to full faith and credit unless the accrued installments have been reduced to a money judgment or its equivalent in the forum possessing the right of retroactive modification."[35]

Some courts, being faced with the rule on the one hand that a judgment must be final before it need be enforced under the full faith and credit clause of the Federal Constitution and on the other with a desire to prevent the husband from avoiding his legal obligation by leaving the state, have indulged the presumptions of finality of the decree, placing the burden on the defendant to show that the power of modification does in fact exist. In the *Sistare* case, the court placed a very liberal interpretation upon the New York statute and found that it did not subject the accrued installments to modification. To support this finding, the court, in effect, laid down

33. *E.g.*, Yarborough v. Yarborough, 290 U. S. 312 (1933); Barber v. Barber, 323 U. S. 77 (1944).
34. *E.g.*, Green v. Green, 239 Ala. 407, 195 So. 549 (1940); Johnson v. Johnson, 196 Misc. 487, 92 N. Y. S. 2d 517 (1950).
35. Brown v. Brown, 75 Atl. 2d 140 (1950).

the rule that in the absence of clear and express words in a statute or alimony decree granting the power to modify, every reasonable implication will be resorted to against such power. In following this policy of preventing the defendant from escaping compliance with an alimony decree by leaving the jurisdiction of the issuing state, the Supreme Court of South Carolina, in enforcing a Maryland decree for alimony, said:

> The finality of the Maryland decree as to the right of the plaintiff to payments fully matured under its provisions must be presumed where there is no proof of any Maryland law to the contrary. The obligation to give full faith and credit to the decree sued on does not permit an assumption that the right which it declared and secured was subject to the unexpressed, unproved, and retroactive power of revocation.[38]

In construing a New Jersey statute relating to the right to modify alimony and a child's support decree, the New York court stated that every reasonable implication must be resorted to against the existence of a power to disturb the finality of an original decree, in the absence of clear language manifesting a contrary intention.[39]

In regard to the rule that finality is required before full faith and credit will be accorded a foreign judgment or order, a new note has been interposed by the United States Supreme Court of late, which may indicate a change in this heretofore excepted principle of that court. Mr. Justice Jackson, specially concurring in *Barber v. Barber*,[40] stated:

> I think that the judgment of the North Carolina court was entitled to faith and credit in Tennessee even if it was not a final one. . . . Neither the full faith and credit clause of the Constitution, nor the Acts of Congress implementing it says anything about final judgments. Both require that full faith and credit be given to "judicial proceedings" without limitation as to finality.

In *Griffin v. Griffin*,[41] before the Supreme Court in 1946, as the majority of the court found that the action was brought on an *ex parte* judgment in violation of due process, the

38. Alexander v. Alexander, 164 S. C. 466, 162 S. E. 437 (1932).
39. Smith v. Smith, 9 N. Y. S. 2d 188, 255 App. Div. 652 (1939).
40. *Supra*, note 23, p. 87.
41. 327 U. S. 220 (1946).

court left open the question of whether there could be recovery on the original decree. In a dissenting opinion, however, Mr. Justice Rutledge found that there was not a denial of due process, and, therefore, faced with a further consideration of the application of the full faith and credit clause, he stated:

> The full faith and credit clause does not in any case require that a judgment to be credited, must be endowed by the law of its origin with finality sufficient to sustain the issuance and levy of execution, although the same law may afford an opportunity for setting aside or modifying it upon the making of a specified showing. This is true, in my opinion, whether the suit is on the 1938 judgment, or on the original decree.[42]

These expressions of opinion by several members of the United States Supreme Court have led to the suggestion that it would not be surprising to see this court take the view in the future that a lack of finality will not warrant a denial of full faith and credit to a foreign alimony decree.[43]

A decree for temporary alimony or alimony *pendente lite* is oftentimes awarded to the wife during the pendency of a divorce action.[43a] This is generally not a final decree either as to installments which are to accrue in the future or as to installments that have already accrued, and it is within the discretionary power of the court, pending the suit, to change its order as to both future and past-due alimony payable thereunder.[44] Hence, it has been generally held that a decree for temporary alimony is not entitled to recognition in another state even as to installments which have already accrued prior to the application at the forum to enforce payment.[45] In criticizing this refusal by the courts to enforce a foreign decree for alimony *pendente lite,* Professor Jacobs states:

> . . . it would seem that the courts are being overly technical; that they are unduly influenced by the law concern-

42. Joined by Mr. Justice Black. See also a separate dissent by Mr. Justice Frankfurter.

43. Note, 24 TEX. L. REV. 491 (1946).

43a. Act No. 137 of the ACTS AND JOINT RESOLUTIONS OF SOUTH CAROLINA, 1949, § 8, allows the wife to receive alimony *pendente lite.*

44. Duss v. Duss, 92 Fla. 1081, 111 So. 382 (1927); Colby v. Colby, 200 La. 321, 7 So. 2d 924 (1942).

45. See note, 157 A. L. R. 185 (1945); 2 BEALE, CONFLICT OF LAWS § 1393 (1935); Kelly v. Kelly, 121 N. J. Eq. 361, 189 Atl. 665 (1937). But see, Paul v. Paul, 121 Kan. 88, 90, 245, P. 1022, 1023 (1926).

ing the extraterritorial enforcement of money judgments in general; that they have failed to consider the social problems involved in the award of temporary alimony. Here, even more than in the case of permanent alimony, is the award based upon the necessities of the wife. If the husband is able to escape his obligations by going to another jurisdiction, something is the matter with the law in this field.[46]

III—ENFORCEMENT ON GROUNDS OF COMITY AND PUBLIC POLICY

It has been thus far seen that under the full faith and credit clause of the United States Constitution and the cases decided thereunder, that in order for a judgment of one state to be enforced in another state, such judgment must be final. Under this limitation, no foreign decree for the payment of alimony which is subject to modification could be enforced in another jurisdiction. Furthermore, it would be impossible for a wife to maintain an action for future installments of alimony in any state other than the one granting the decree. She could not invoke the aid of equity to enforce a foreign alimony decree, as by contempt proceedings for disobedience to the terms of its mandate or any other equitable remedies prescribed under local statutes in a jurisdiction which treats a decree for ailmony as a mere money judgment. The general rule is to the effect that equity has jurisdiction over civil cases only where there is not a full, adequate and complete remedy at law.[47] If the alimony due under a decree of a foreign court is treated as a debt, collectable by execution upon a judgment recovered locally upon the foreign decree, the remedy at law is adequate, and equity has no jurisdiction. This was the accepted view in all of the earlier cases where attempts were made to acquire equitable enforcement of foreign alimony decrees,[48] and many courts have continued to adhere to these cases and have refused to grant equitable relief.[49]

46. JACOBS, THE ENFORCEMENT OF FOREIGN ALIMONY DECREES, 6 LAW AND CONTEMPORARY PROBLEMS, 250, 260 (1939).
47. 1 POMEROY, EQUITY JURISPRUDENCE, § 132 (5th ed. 1941).
48. *E.g.*, Wood v. Wood, 7 Misc. 579, 28 N. Y. S. 154 (1894); Bennett v. Bennett, 63 N. J. Eq. 306, 49 Atl. 501 (1901); Mayer v. Mayer, 154 Mich. 386, 117 N. W. 890 (1908).
49. Worsley v. Worsley, 64 App. D. C. 202, 76 F. 2d 815 (1935); Grant v. Grant, 64 App. D. C. 146, 75 F. 2d 665 (1935); Seltmann v. Seltmann, 322 Mass. 650, 79 N. E. 2d 11 (1948).

Equitable means of enforcement of foreign alimony decrees are denied in some jurisdictions on the grounds that equitable remedies prescribed under local statutes for the enforcement of decrees for alimony have reference only to decrees of local courts, and not to decrees of the courts of other states.[50] Other courts deny equitable relief on the ground that the state is not bound by the full faith and credit provision to grant such relief in the enforcement of foreign decrees for alimony, because that provision has no reference to the method of or remedy for enforcement of the foreign judgment.[51]

Due to the strong public policy involved, many courts have not been content with such an unconscionable result and have gone much further than the bare requirements of the full faith and credit clause of the Federal Constitution in order to make the wife's claim enforceable. Full faith and credit applies to judgments which must be recognized in another state, but even though a judgment rendered by another state is such as not to fall with the protection of this clause, recognition may be accorded such a judgment under the doctrine of comity.[52]

Minnesota was the first state to go beyond the general rule set out in the *Sistare* case in respects to the requirements of finality in order to accord full faith and credit to a foreign decree for alimony. In a 1922 case in that state, an action was brought to recover accrued installments of alimony under an Oregon decree, and the defendant contended that the decree was not a final judgment entitled to full faith and credit in Minnesota as an Oregon statute provides that a decree is subject to modification at any time after its rendition. The court, in allowing the enforcement said:

> . . . so long as a judgment for alimony is absolute in its terms and remains unmodified, or at least until an application for modification has been made, it is final as to installments of alimony which have accrued. Sound public policy forbids the adoption of a rule which would permit a husband to escape his obligation to support his wife or infant children by crossing a state line. It has

50. *E.g.*, Weidman v. Weidman, 274 Mass. 118, 174 N. E. 206 (1931); Page v. Page, 189 Mass. 85, 75 N. E. 92 (1905); Mayer v. Mayer, 154 Mich. 386, 117 N. W. 890 (1908).
51. *E.g.*, Bullock v. Bullock, 52 N. J. Eq. 561, 30 Atl. 676 (1894).
52. 31 AM. JUR. 134 § 531.

> been well said that the courts should follow a course which will tend to unify the remedial agencies of the country by making them enforceable in all its parts. It would be a reproach to our system of legal administration if one could escape from the operation of a judicial decree by going into another state, for this is one country and so far as possible it should have one law.[53]

While the court in this case stated that it was following the *Sistare* case, it seems that the limitation established by the *Lynde* case was disregarded. This case seems to extend the limitation that foreign alimony decrees need not be accorded full faith and credit where they are subject to modification by the issuing state, to the rule that full faith and credit applies where the accrued installments have not been actually modified and no application for modification appears to have been made prior to the action, even though these installments were subject to modification. Although this case may be open to criticism as an application of the general rules governing the conditions under which full faith and credit will be accorded a judgment of another state, it may be justified on the basis of comity.[54]

Led by California, some states have gone even further than this and have established the foreign decree as a domestic judgment, thus allowing a recovery of accrued installments, even though such installments are subject to modification.[55] This treatment of a foreign alimony decree will be dealt with in more detail in the following discussion on equitable enforcement.

As has been previously pointed out, the right to equitable means of enforcing a foreign alimony decree as by sequestration or contempt, in many cases the only method whereby the wife could obtain relief, was denied by the courts in the earlier decisions. There was nothing to require the courts to grant equitable relief in the enforcement of foreign alimony decrees. But here, as in the case of accrued alimony which was subject to modification, some states have applied the principle

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53. Holton v. Holton, 153 Minn. 346, 351, 190 N. W. 542, 544 (1922).
54. JACOBS, THE ENFORCEMENT OF FOREIGN DECREE FOR ALIMONY, 6 LAW & CONTEMP. PROB. 250, 264 (1939).
55. Palen v. Palen, 12 Cal. App. 2d 357, 55 P. 2d 228 (1936); Straus v. Straus, 4 Cal. App. 2d 461, 41 P. 2d 218 (1935); Cummings v. Cummings, 97 Cal. App. 144, 275 P. 245 (1929).

of comity to prevent the husband from evading his legal obligation to support his wife by crossing a state line.

After the *Lynde* case, which had denied a New York woman the statutory remedies for the enforcement of a New Jersey alimony decree, New York amended its civil code to remedy this situation.[56] Section 1171[57] provides that where an alimony order of another state is awarded in a suit for divorce on grounds available for divorce in New York, and the action has been brought to judgment in New York, the equitable remedy of sequestration is available to the plaintiff for enforcement of the decree. Section 1172[58] provides for the enforcement of foreign alimony decrees by contempt proceedings when the same requirement set out in Section 1171 are met. While Section 1172 does not expressly limit the situation to cases where a divorce was obtained on grounds of adultery, it has been held that this Section must be read with Section 1171 which placed this limitation on the applicability of these Sections.[59] Thus, the limitation of enforcement of foreign decrees to those based upon adultery, qualifies the application of Section 1172, as well as Section 1171.[60]

It was not until 1927 that a state court threw off the chains of restrictions placed on the enforcement of foreign alimony decrees by all of the earlier cases in this country which had adhered to the strict analysis of *Sistare v. Sistare*. This step was taken by the Mississippi Court in the celebrated case of *Franchier v. Gammill*.[61] Here, a suit was brought seeking to establish and enforce a decree for alimony rendered by a Nevada court. As the plaintiff asked the court to direct payment of installments in the future, it was only maintainable in equity, and the relief at law could be given only for what was due. The defendant contended that as a decree for alimony is a mere debt collectable by execution upon a judgment recovered locally upon the foreign decree, and the remedy at law for its enforcement being complete and adequate, equity has

56. JACOBS, THE ENFORCEMENT OF FOREIGN DECREES FOR ALIMONY, 6 LAW & CONTEMP. PROB. 250, 270 (1939).
57. CIV. PRAC. ACT, § 1171.
58. NEW YORK CIV. PRAC. ACT, § 1172.
59. Moen v. Thompson, 61 N. Y. S. 2d 257 (1946).
60. See NEW JERSEY STAT. ANN. (1939) § 2:50-37, which permits the wife to bring a separate action for alimony based upon a local or foreign decree for divorce. Thus, the New Jersey court may enter a domestic decree for alimony based upon a foreign divorce. Discussed in Levy v. Levy, 17 N. J. Misc. 324, 9 Atl. 2d 779 (1939).
61. 148 Miss. 723, 114 So. 813 (1927).

no jurisdiction to undertake its enforcement.[62] The court, however, refused to be restricted to the general rule for the enforcement of money judgments. The social interest involved in this case led to a refusal by the court to sit back and allow the defendant to avoid making the alimony payments. In so holding for the plaintiff, the court said:

> It is our view that, 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 relationship, and that they may not become public charges and derelicts, the decree for alimony, with the extraordinary power of enforcement by attachment and contempt proceedings, should be established and enforced by our equity court, which has full and sole jurisdiction of all matters of divorce and alimony; because to hold that a foreign judgment for alimony can be enforced in this state only by execution, the same as judgments at law, would be to impair or to deprive a foreign judgment for alimony of its inherent power to enforcement by attachment and contempt proceedings. Thus, as we view it, to so hold would be to disregard the "full faith and credit" clause of the federal law, which we interpret to mean that the judgment, with its peculiar right of enforcement, as one for alimony, should be established and enforced by the equity courts of our state in the same manner, and to the same extent, as it could have been enforced by our court if originally obtained in our state.

Thus, the Mississippi court in the *Fanchier* case, recognized the practical difficulties attendant upon the necessity of repeated suits in cases of installment payments and the ease with which a law enforcement can be evaded, as creating a need for equitable enforcement.

Two years later, an action was brought in an equity court in California on a New York alimony decree in which the plaintiff asked for back payments then due and for an order for future payments against the defendant who owned property in California. The defendant contended that the court is

62. This contention is supported by abundant authorities in many jurisdictions. *E.g.*, Davis v. Davis, 29 App. D. C. 258 (1907); Page v. Page, 189 Mass. 85, 75 N. E. 92 (1905).

not bound to enforce future payments of alimony under the full faith and credit clause of the Constitution, and, therefore, the court should not so enforce the New York decree. The court cited *Fanchier v. Gammill* with approval, and held in effect that the New York decree is established as a decree of the California court and shall be enforced as such so long as it remains unmodified by the courts of New York.[63] The California courts have continually ordered that foreign decrees providing for future payments of alimony be established as a California court's decree, with the same force and effect as if entered in California.[64]

Minnesota was the next state to allow equitable enforcement of an alimony decree of another state by treating the decree as though it had been rendered by a Minnesota court. In *Ostrander v. Ostrander*,[65] the court said:

> Transplantation of the parties from one state to another has not reduced the obligation to the ordinary category of "a debt of record." Migration of the parties across a state line has wrought no change in the nature and basis of alimony needed for the support of a foreign wife and the child of herself and her 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 mere removal of the debtor across a state line.

In the year following the decision of the *Ostrander* case, an action was commenced in the Washington court praying that an alimony decree rendered in California be enforced by that court in equity by contempt proceedings against the husband, if necessary. The court granted the equitable enforcement to the California decree quoting with approval, excerpts from the *Fanchier case*.[66]

In 1936, the Connecticut court allowed the application of equitable remedies in the enforcement of a New York alimony decree so far as the amount of installments which were in

63. Cummings v. Cummings, 97 Cal. App. 144, 275 P. 245 (1929).
64. Creager v. Superior Court, 126 Cal. App. 280, 14 P. 2d 552 (1932); Bruton v. Tearle, 7 Cal. 2d 48, 59 P. 2d 953 (1936); Gough v. Gough, 225 P. 2d 668 (1951).
65. 190 Minn. 547, 551, 252 N. W. 449, 450 (1934).
66. Shibley v. Shibley, 181 Wash. 166, 42 P. 2d 446 (1935).

arrears at the time of the action. However, the court refused to enforce the payment of future installments on the ground that the foreign decree was subject to modification in the state of its rendition.[67]

In the same year, the Oregon court reviewed the authorities on both sides of this question, and adhered to the rule adopted by the California, Mississippi and Washington courts, to the effect that a foreign decree for alimony may be enforced by the same equitable remedies as are available for its enforcement in the courts of the state where it was rendered.[68]

In *Johnson v. Johnson*,[69] the plaintiff brought an action on a Florida alimony decree praying for judgment for the amount of accrued unpaid alimony, for all future monthly installments as they become due in accordance with the provisions of the foreign decree, and further, that the decree of the Florida court for alimony be established in this state as a foreign judgment to be enforced by appropriate equitable remedies as is usual in such cases. Citing the Washington, Mississippi, and Minnesota cases as authority for its view, the South Carolina Supreme Court concluded, ". . . that a decree for alimony granted by a foreign court may be established and enforced by and through the equity courts of this state, and that our equity courts may assume jurisdiction thereof."

An action was brought in Kentucky in which the plaintiff sought equitable enforcement by contempt proceedings of an Illinois judgment for accrued payments for support, and also for future payments as provided for under the decree. The court allowed the equitable enforcement as to the accrued payments, but refused to allow the equitable remedy to extend to future installments on the ground that the latter was subject to modification.[70]

In 1942, the Illinois court joined the line of decisions which adhere to the rule that an alimony decree in one state may be

67. German v. German, 122 Conn. 155, 188 Atl. 429 (1936).
68. Cousineau v. Cousineau, 155 Ore. 184, 63 P. 2d 897 (1936).
69. 194 S. C. 115, 8 S. E. 2d 351 (1940).
70. Glanton v. Renner, 285 Ky. 808, 149 S. W. 2d 748 (1941). See, Espleland v. Espleland, 111 Mont. 365, 109 P. 2d 792 (1941), where the point was not directly decided, but the court intimated that though a foreign decree for the payment of future alimony is not within the full faith and credit provision, it may be enforced in Montana under the principle of comity. See also, Sorenson v. Spence, 65 S. D. 134, 272 N. W. 179 (1937), where the South Dakota court enforced a decree for the support of children even though it was not required to under the full faith and credit clause of the Constitution.

established as a foreign decree and enforced in their local courts, and thus allowed enforcement for future payments as well as arrears on a Nevada alimony decree.[71] Two years later, the Florida court, after citing the authorities on both sides of this problem, elected to follow the doctrine of *Fanchier v. Gammill* and allowed the equitable enforcement of a Georgia alimony decree.[72]

Virginia was the next state to hold in accord with the above outlined cases. In an action brought on an alimony decree issued by the Florida court praying for judgment against the defendant for both accrued and future installments of alimony and support money in accordance with the provisions of the Florida decree, the Virginia court ordered equitable enforcement of the decree. After citing a number of the cases which support this view, the court said:

> We agree with the reasoning in these latter cases, which in our opinion, is sound and in line with the public policy of this state. It is elementary that a husband's duty to support his wife and children is not merely contractual, but is one in which the public has a vital interest. The obligation, wherever incurred, is the same and cannot be avoided or lessened by the simple device of crossing a state line. Since the appellant has become a resident of Virginia, the public policy of this state now demands that his obligation be performed as fully as if it had been incurred here in the first instance.[73]

The latest state to allow equitable enforcement of a foreign alimony decree is Tennessee. The plaintiff was granted an alimony decree in Georgia and prays to have this decree enforced in Tennessee, where the husband is now a resident, by contempt proceedings. In allowing the equitable enforcement of the decree, the Supreme Court of Tennessee said:

> We are of the opinion that it is not consistent with sound public policy and justice to refuse to enforce in this state alimony judgments of a sister state by the equitable remedy of sequestration or attachment for contempt, etc., to the same extent as we enforce such judgments when

71. Rule v. Rule, 313 Ill. App. 108, 39 N. E. 2d 379 (1942).
72. McDuffie v. McDuffie, 155 Fla. 63, 19 So. 2d 511 (1944), followed in Sackler v. Sackler, 47 So. 2d 292 (Fla.) (1950).
73. McKeel v. McKeel, 185 Va. 108, 115, 37 S. E. 2d 746, 750 (1946).

> originally rendered in our courts; provided, of course, this foreign judgment is enforceable by these equitable remedies in the state which originally rendered such judgment.

The trend of the later cases on the enforceability of foreign alimony decrees is reflected by this statement appearing in an annotation on this subject:[74]

> There is an increasingly respectful authority for the view that though a foreign decree of alimony is not under the full faith and credit provision entitled to recognition and enforcement extra-territorially, as respects installments not accrued at the time, it may be so enforced under the rules of comity by establishing the foreign decree as a local decree and clothing it with all the equitable remedies by which the enforcement of a local decree of alimony may be secured.

IV—REQUIREMENTS PREREQUISITE TO ENFORCEMENT

We have seen that under the doctrine of the *Sistare* case, full faith and credit must be accorded foreign alimony decrees when the decree is not subject to modification and is therefore final. Does this rule apply to a foreign alimony decree which is final but against the public policy of the forum? A further question which arises is, how far will a state court, which enforces a foreign alimony decree which is not final on the grounds of comity, go in enforcing a decree which is contrary to the laws of the forum? Most of the states which enforce foreign alimony decrees subject to modification, do so by treating the decree as a domestic judgment as though it was originally rendered in the forum. Will these courts enforce a decree of another state where the grounds for issuing the decree are not grounds for such a decree in the forum?

It seems to be well settled that a valid judgment in another state can not be denied enforcement under the full faith and credit clause of the United States Constitution on the grounds that it would have been contrary to the public policy of the forum to allow action on the original claim.[75] Under this generally accepted interpretation of the full faith and credit

74. Thones v. Thones, 185 Tenn. 124, 203 S. W. 2d 597, 599 (1947).
75. Biewend v. Biewend, 17 Cal. 2d 117, 109 P. 2d 701 (1941).

clause of the United States Constitution, it seems that once the amount of due alimony installments have been reduced to a valid judgment, this judgment must be recognized and enforced in any state in which it is brought, public policy of such enforcing state to the contrary notwithstanding. It also seems apparent from this general proposition that full faith and credit must be accorded a foreign decree with regard to accrued installments of alimony not subject to modification, even though the original decree is based on law repugnant to the public policy and laws of the state where enforcement of the decree is sought.[76] In a North Carolina case, it appeared that the plaintiff was awarded a complete divorce and alimony in a Florida court, and brought this action in the North Carolina court to have this decree made a judgment of that court as if said judgment was originally rendered by the courts of North Carolina. The court found that the alimony decree was not subject to modification as to past due installments by the Florida court and was therefore final and entitled to full faith and credit. The defendant contended that the Florida alimony decree should not be enforced in North Carolina, as such decree was granted in violation of the laws of North Carolina, in that no allowance for future support may be awarded where a divorce *a vinculo matrimonii* is granted in that state. The Supreme Court of North Carolina concluded that there is no principle of law upon which full faith and credit can be denied the Florida judgment, even though such a decree could not have been rendered under the laws of North Carolina.[77]

A somewhat different situation is involved, however, in the cases where an alimony decree is subject to modification and therefore not required to be given full faith and credit in another state, but is enforced in the state on the grounds of comity. Such a rule of comity is subject to the principle that foreign laws will not be given effect when contrary to the settled public policy of the forum.[78] There has been a great deal of difficulty and uncertainty when judicial attempt is made to determine the meaning of the term "public policy,"[79]

76. Lockman v. Lockman, 220 N. C. 95, 16 S. E. 2d 670 (1941).
77. 15 C. J. S. 853, § 4; Klaxon Co. v. Stentor Electric Mfg. Co., 313 U. S. 487 (1940).
78. McGirl v. Brewer, 132 Or. 422, 285 P. 208, 213, "The phrase 'public policy' is a term which seems difficult of precise definition."
79. International Harvester Co. v. McAdams, 142 Wis. 114, 124 N. W. 1042 (1910).

but a mere variance between the law of the forum and the law of the state where the cause arose does not alone warrant such denial of enforcement.[80] As set forth in the restatement: "There is a strong public policy favoring the enforcement of duties validly created by the law governing their creation. Denial of enforcement of a foreign claim will result in an undeserved benefit to the defendant."[81] It has generally been held that to justify a court in refusing to enforce foreign laws because it would be against public policy, "it must appear that it would be against good morals or natural justice, or for some other reason would be prejudicial to the state or its citizens."[82]

This question of the effects of public policy on the enforcement of foreign alimony decrees by comity, arose in California. As has been observed previously, the courts of California will grant enforcement of a foreign decree for future payments by treating the decree as though it has been entered in California. In the instant case, the defendant claims that a Missouri decree for future alimony was not enforceable under the full faith and credit clause and rules of comity should not extend to the enforcement of this decree as the plaintiff has remarried and the law of California provides that a divorced wife who remarries, is no longer entitled to alimony. The court held that while the Missouri law differs from that of California in permitting alimony payments to continue after the remarriage of the divorced wife, such a right is not perforce inharmonious with local public policy and therefore not sufficient to prevent the court from enforcing the decree on grounds of comity. Quoting from the opinion of the court: "It offers no threat to either the moral standards or the general interests of the citizens of this state. To

80. RESTATEMENT, CONFLICT OF LAWS § 617, comment c. (1934).

81. Keane Wonder Mining Co. v. Cunningham, 222 F. 821 (9th C. C. A. 1915); Rubin v. Schupp, 127 F. 2d 625 (9th C. C. A. 1942); Personal Finance Co. of New York v. General Finance Co., 133 Pa. Super. 582, 3 Atl. 2d 174 (1938).

82. Biewend v. Biewend, 17 Cal. 2d 117, 109 P. 2d 701 (1941). *Accord,* Harper v. Carpenter, 24 Cal. App. 2d Supp. 751, 67 P. 2d 762 (1937), where recovery of alimony installments was allowed based on a Nevada decree granting husband the divorce, even though the law of the forum provided by statute that no alimony will be awarded to a wife where the husband obtained the divorce. Followed in Morrow v. Morrow, 40 Cal. App. 2d 474, 105 P. 2d 129 (1940), where the California court allowed enforcement of a Nevada alimony decree based on a divorce procured by the husband, the court saying: ". . . there is no inconsistency in the rules of the two states that the morals of the citizens of California would suffer detriment, neither can the Nevada rule be said to be against the public policy of this state."

hold that the right created in Missouri is so immoral as to be unenforceable here, would involve a complacent attribution of moral superiority to this state."[83]

In order to invoke the United States Constitutional provision of granting full faith and credit to judicial proceedings, it has been consistently held that the foreign judgment or decree be a valid, personal and final adjudication, remairing in full force and virtue in the jurisdiction of its rendition, and capable of being enforced there.[84] The requirement of finality has already been treated in another part of this paper, so we now come to the problem of when the decree is "valid" so as to bring it within the protection of the full faith and credit clause.

It has been generally held that where there is an irregularity in the rendition of the judgment or decree, such as an irregular form in the proceeding,[85] or a mistake as to the law,[86] this would not be sufficient to deny the application of full faith and credit.[87]

A judgment or order of a state is not considered valid and entitled to full faith and credit in another state where there is a want of jurisdiction of the court rendering the judgment or order.[88] Since a decree for alimony is in its effect a mere decree for the payment of money, it is clearly a decree in personam, and not in rem, and in order to support it, there must therefore be personal jurisdiction over the defendant or jurisdiction over his property. If, as often happens, the defendant in a divorce case is served only by publication, being a nonresident, it is not possible to render a valid decree against him for alimony.[89] Thus, it has been held that full faith and credit does not require recognition of a judgment if the party against whom the judgment is urged was not a party or privy or appeared in the judgment suit.[90] This limitation on the application of the full faith and credit clause of the Constitution

83. 50 C. J. S. 443, § 868; *e.g.*, Gobin v. Citizens State Bank of Cheney, Kan., 92 Colo. 350, 20 P. 2d 1007 (1933).
84. *E.g.*, Re Osborne, 205 N. C. 716, 172 S. E. 491 (1934).
85. *E.g.*, Marin v. Augedahl, 24 U. S. 142 (1917).
86. 31 AM. JUR., 150 § 540.
87. GOODRICH, CONFLICT OF LAWS § 209 (3rd ed. 1949).
88. 2 BEALE, THE CONFLICT OF LAWS (1935); RESTATEMENT, JUDGMENTS § 116 (1942); 17 AM. JUR., DIVORCE § 764; Downs v. Downs Adm'r., 123 Ky. 405, 96 S. W. 536 (1906).
89. Wilson v. Smart, 324 Ill. 276, 155 N. E. 288 (1927); Hutton v. Dodge, 58 Utah 228, 198 P. 165 (1921).
90. Botz v. Helvering, 134 F. 2d 538 (C. C. A. 8th 1943).

has been stated by the United States Supreme Court as follows: "The requirement of full faith and credit is to be read and interpreted in the light of well-established principles of justice, protected by other constitutional provisions which it was never intended to modify or override, such as due process.[91]

These general principles were applied by the United States Supreme Court in *Griffin v. Griffin*,[92] The wife had obtained a divorce in New York and an original award of $3,000 annual alimony, in 1926. In 1936, she obtained a judgment for arrears then due in a suit in New York in which the husband appeared and defended. Then, in 1938, she obtained another judgment awarding her the amount accrued between 1936 and 1938. This latter judgment was awarded without further notice or opportunity to be heard given to the defendant. Since the husband had moved to the District of Columbia, she then brought suit in the court there on the New York judgment, and recovered a judgment for the full amount, in spite of his defense of lack of due process in the latest New York judgment. On appeal to the United States Supreme Court, held, that the petitioner was deprived of an opportunity to raise defenses in the latter New York judgment, depriving him of judicial due process, and thus the New York court had no jurisdiction over the person of the petitioner, a prerequisite to the rendition of a judgment in personam against him. The judgment having been obtained in violation of procedural due process, is not entitled to full faith and credit when sued upon in another jurisdiction.[93]

Appearance by the defendant gives the court power to render a valid personal judgment against him.[94] If the defendant is domiciled in the state, the alimony order would be valid, even though the defendant was not served personally within the state.[95]

91. Bigelow v. Old Dominion Copper Mining & Smelting Co., 225 U. S. 111, 134 (1914).
92. *Supra*, note 41.
93. Citing, National Exchange Bank v. Wiley, 195 U. S. 257 (1904); Baker v. Baker Eccles & Co., 242 U. S. 394 (1916); *c.f.* Defoe v. Defoe, 116 W. Va. 197, 179 S. E. 74 (1935); see, Adams v. Saenger, 303 U. S. 59 (1937), where the court held that if the judgment appeared on its face to be a "record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself." *Accord*, Ades v. Ades, 70 Ohio App. 487, 45 N. E. 2d 416 (1942).
94. Austin v. Austin, 173 Mich. 47, 138 N. W. 237 (1912).
95. Roberts v. Roberts, 135 Minn. 397, 161 N. W. 148 (1917).

While the full faith and credit provision of the Constitution does not require enforcement of an alimony decree rendered in another state without proper jurisdiction of the defendant, could such a decree be enforced on grounds of comity? While there is little authority on this point, it seems apparent that such an enforcement would be a violation of the due process clause of the Constitution, which, it has been pointed out, must be read in connection with the full faith and credit clause.[96] This is the view taken by the Restatement,[97] and in *Griffin v. Griffin*,[98] it was stated by way of dictum: "Moreover, due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process."

A valid alimony decree entitled to full faith and credit may be ordered against a defendant even though the court issuing the decree has no personal jurisdiction over him, where the defendant has property in the state.[99] Where the nature and situs of the property are such as to support a proceeding in rem or quasi in rem, the rule is that constructive service of process or personal service outside the state, even in the case of a non-resident, will give jurisdiction to render a decree for alimony, binding upon property belonging to him which is within the jurisdiction of the court and has been specifically proceeded against.[100] In such a case, the proceedings are directed against the property of the defendant and a claim on the property is made, out of which the court might then order a payment of alimony.[101] This jurisdiction extends only to the ascertainment of the obligation and the subjection of the property seized thereto, and not to the rendition of any personal judgment against the defendant.[102]

96. Bigelow v. Old Dominion, *supra*, note 91.
97. RESTATEMENT, JUDGMENTS § 11, comment c. (1942).
98. *Supra*, note 41.
99. 2 BEALE, CONFLICT OF LAWS § 462.1 (1935).
100. Wilson v. Smart, *supra*, note 89; Zuhlke v. Prudential Life Ins. Co., 279 N. Y. S. 833, 244 App. Div. 549 (1935).
101. Forrester v. Forrester, 155 Ga. 722, 118 S. E. 373 (1923).
102. 21 C. J. S. 125 § 83; Stevens v. Cecil, 214 N. C. 217, 199 S. E. 161 (1939); Guaranty Trust of New York v. Bell, 46 N. Y. S. 2d 137, 182 Misc. 372 (1943).

V—ENFORCEMENT WHERE ORIGINAL DECREE ORDERS THE CONVEYANCE OF LAND LYING OUTSIDE THE DECREEING STATE

Quite frequently, in granting a divorce and alimony decree, the court will order the husband to convey land to his wife as a means of providing for her support. The rule seems to be well established that equity has the power to compel the conveyance whenever the husband or the land ordered to be conveyed is within the jurisdiction of the court.[103] As to land situated within the state, the legislature may confer on courts of equity, a jurisdiction which shall operate on such land in some way other than by merely directing a party to do some act concerning the property. This power has been very generally exercised.[104] Thus, the land could be conveyed to the wife, as for example by the sheriff, even though the defendant may not have been personally served with process within the state.[105]

If the land ordered to be conveyed lies outside the state issuing the order but the court has jurisdiction over the defendant-owner of the land, conveyance may be compelled by equitable enforcement in the state having such personal jurisdiction over the defendant.[106] The principle on which this jurisdiction rests is that the equity court, acting in personam and not in rem, holds the conscience of the parties bound without regard to the situs of the property.[107]

The problem becomes much more difficult where the land which the decree orders to be conveyed to the wife, is located in another state and the husband has left the jurisdiction of the issuing state before he can be compelled to execute the conveyance. In such a case, could the wife maintain an action in the equity court of the state where the land is located,

103. 19 AM. JUR. 52, § 24.
104. *E.g.*, Ford v. Judsonia Mercantile Co., 52 Ark. 426, 12 S. W. 876 (1890); Harris v. Pullman, 84 Ill. 20; 25 AM. REP. 416 (1899).
105. Title and Document Restoration Co. v. Kerrigan, 150 Cal. 289, 88 P. 356 (1906).
106. 2 FREEMAN, JUDGMENTS § 1384 (5th ed. 1925); 19 AM. JUR. 73, § 81; GOODRICH, CONFLICT OF LAWS § 77 (3rd ed. 1949); Peoples Loan Co. v. Allen, 199 Ga. 537, 34 S. E. 2d 811 (1945); Zentzis v. Zentzis, 163 Wis. 342, 158 N. W. 284 (1916); Bailey v. Tully, 242 Wis. 226, 7 N. W. 2d 837 (1943); White v. Warren, 214 Mass. 304, 100 N. E. 1103 (1913): "But while the Legislature of Rhode Island has no power to regulate dower in land located in this commonwealth, its courts do have power to proceed in personam, notwithstanding that the decree incidentally affects land in another jurisdiction."
107. Smith v. Fletcher, 102 Wash. 218, 173 P. 19 (1918).

based on the original order to convey, to require the husband to convey the land to her?

The early principle that courts of one state could not directly affect the legal title to land situated in another state,[108] is well illustrated by the following excerpt:

> It is a fundamental maxim of jurisprudence that every state or nation possesses an exclusive sovereignty and jurisdiction within its own territory. A consequence of this maxim is that no state can by its laws, and no court, which is but a creature of the state, can by its judgments or decrees, directly bind or affect property beyond the limits of that state. . . . Any attempt by one state to give to its courts jurisdiction beyond its own limits over persons domiciled or property situated in another state is a usurpation of authority, and all judicial proceedings in virtue therof are held utterly void.[109]

Another difficulty in attempting to enforce a decree ordering the conveyance of land lying in another state, is the traditional belief that a foreign decree in equity ordering the doing of an act, cannot form the subject of an action for specific performance in the court of equity of another state.[110]

This question was squarely before the New Jersey Supreme Court in the case of *Bullock v. Bullock*.[111] Mrs. Bullock was granted a divorce and awarded alimony by the New York court in an action in which her husband was personally served and appeared. It was further ordered that Mr. Bullock execute and deliver to her a mortgage of certain land located in New Jersey, which he owned, as security for payment of the alimony. Mr. Bullock left New York without executing the mortgage and an action was brought against him in New Jersey, praying for an order that he execute the mortgage as ordered in the New York decree. By a divided court,[112] it

108. See note, 51 A. L. R. 108 (1927).
109. 7 R. C. L. 1058.
110. See 2 BEALE, CONFLICT OF LAWS § 449.1 (1935) in which Beale attributes this principle to the fact "that there is no action known to the common law for the enforcement of a foreign judgment except the action for debt upon the judgment; and debt will lie only for a certain sum of money due."
111. 52 N. J. Eq. 561, 30 Atl. 676 (1894).
112. Six judges supported the majority view and six others voted for a dissenting opinion which took the position that the New York decree, although it did not of its own force create a lien upon the New Jersey lands, was conclusive of the plaintiff's rights to have the defendant execute a mortgage upon New Jersey lands. The deciding vote was a

was held that the action must be dismissed, as the decree ordering the defendant to convey, creates only a duty to the court pronouncing it, and, furthermore, to enforce such a decree would be to allow one state to create rights in land of another. It was pointed out in the majority opinion: "That the doctrine that jurisdiction respecting lands in a foreign state is not in rem, but one in personam, is bereft of all practical force, if the decree in personam is conclusive and must be enforced by the courts of the situs," and that such a doctrine would result in practically depriving a state of that exclusive control over its real estate which has already been accorded.[113]

In *Fall v. Eastin*,[114] a commissioner executed a deed to land in Nebraska under a decree of a court of the state of Washington in an action for divorce in which there was jurisdiction of the parties and the subject matter. The plaintiff invoked the full faith and credit clause of the Constitution of the United States to sustain the deed. The Supreme Court of the United States held that there was no violation of full faith and credit as this clause of the Constitution does not extend the jurisdiction of the courts of one state to property situated in another. Quoting with approval from *Watkins v. Holman et al*,[115] the court said:

> No principle is better established than that the disposition of real estate, whether by deed, descent, or by any other modes, must be governed by the laws of the state where the land is situated. . . . A court of chancery, acting in personam, may well decree the conveyance of land in any other state, and may well enforce its decree by process against the defendant. But neither the decree it-

concurring opinion which was based on the position that the order to execute a mortgage on New Jersey land was not a part of the New York judgment upon the issue before the court, but was a mere decretal order ancillary to execution.

113. Williams v. Williams, 83 Or. 59, 60, 162 P. 834, 835 (1917): "The decree of the superior court of Napa County, California, was void so far as it attempted to adjudicate the title to lands in Oregon. . . . No judgment of a court of another jurisdiction can have any effect *per se* upon the title to land. The only way in which the conveyance of the land beyond the jurisdiction of the court can be effected is by a decree in equity operating upon the person so as to coerce the party. The decree itself can have no direct operation upon the property."

114. 215 U. S. 1 (1909). This case went to the Supreme Court as an appeal from a decision of the Nebraska Supreme Court in Fall v. Fall, 75 Neb. 104, 106 N. W. 412 (1905).

115. 16 Pet. 25 U. S. 57 (1842).

> self nor any conveyance under it, except by the person in whom the title is vested, can operate beyond the jurisdiction of the court.

Thus, the court concluded: ". . . however plausibly the contrary view may be sustained, we think that the doctrine that the court, not having jurisdiction of the res, cannot affect it by its decree, nor by a deed made by a master in accordance with the decree, is firmly established."[116]

Beginning in the latter part of the 19th century, we find a few scattered cases which began to get away from the orthodox view that equitable decrees ordering something other than the payment of money—for example, the conveyance of foreign land—will not be enforced in another state. While these early cases did not involve alimony decrees, the same principle is involved.

As early as 1873, in the leading case of *Burnley v. Stevenson*,[117] it was held that decrees for the conveyance of land, are regarded as res judicata and if pleaded as a basis or cause of action or defense in the courts of other states, they are entitled to the force and effect of record evidence of the equities therein.[118]

In 1916, the Supreme Court of Wisconsin was faced squarely with the issue of whether it should enforce that part of an Illinois divorce and alimony decree which ordered the defendant to convey certain lands which he owned located in Wisconsin. The Illinois court had both parties before it when the decree was rendered, but the defendant had moved to Wisconsin before it could be enforced. The court adopted the general principle laid down in *Burnley v. Stevenson* with respect to recognition and enforcement in other states of decrees for the transfer of foreign land. It was concluded that the plaintiff was entitled to have the Illinois decree enforced by a judgment of the Wisconsin court, and that the defendant be ordered to convey the land to his former wife.[119]

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116. *Accord*, Tiedemann v. Tiedemann, 172 App. Div. 819, 158 N. Y. Supp. 851 (1916); Taylor v. Taylor, 192 Cal. 71, 218 P. 756 (1923); Sharp v. Sharp, 65 Okla. 76, 166 P. 175 (1916); McRary v. McRary, 228 N. C. 719, 47 S. E. 2d 781 (1948).

117. 24 OHIO ST. 474 (1873).

118. *Accord*, Bunlap v. Ryers, 110 Mich. 109, 67 N. W. 1067 (1896); Redwood Investment Co. v. Exley, 64 Cal. App. 455, 221 P. 973 (1923) holding that decrees for the transfer of foreign land create equitable duties which will be recognized and enforced in other states, including the states in which the land is situated.

119. Mallette v. Scheerer, 164 Wis. 415, 160 N. W. 182 (1916).

In *Matson v. Matson,*[120] a court of the state of Washington, having both parties before it, granted a divorce and alimony to a wife, and further ordered the husband to convey certain land in Iowa to his wife. He failed to make such a conveyance and moved to Iowa where he transferred the land to a grantee with notice. The former wife brought an action against him in equity praying that the deed be set aside and that the court require the former husband to convey the land to her. The court followed the decision of *Mallette v. Scheerer* and ordered the defendant to convey the land in compliance with the Washington order. The court did not mention the *Mallette v. Scheerer* case in its decision, nor did it expressly decide this case contrary to *Fall v. Eastin.* The court attempted to distinguish the facts in this case from those in the *Fall* case by pointing out that in the latter case, the husband of the plaintiff was not personally served with notice and made no appearance in the suit ordering the conveyance, while in the instant case the decreeing court had personal jurisdiction over the defendant. However, it seems apparent that the *Matson* case followed the *Mallette* case and was contra to *Fall v. Eastin.*[121]

It has been urged by some prominent writers in this field that equitable enforcement of decrees ordering conveyance of land in another state should be enforced by the courts in the states where the land is situated.[122] As has been previously pointed out, the refusal to grant relief in the *Bullock* case seems to be based on two grounds: that the decree created no binding obligation on the defendant but only a duty to the court pronouncing the decree; that to recognize the foreign equitable decree as a cause of action, would be to interfere with the control which the state of the situs of the land exercises over real estate within its borders.

To this first argument, Judge Goodrich[123] points out that this would apply equally to a decree ordering the payment of

120. 186 Iowa 607, 173 N. W. 127 (1919).
121. See also, Meents v. Comstock, 230 Iowa 63, 296 N. W. 721 (1941); Williams v. Williams, 83 Or. 59, 162 P. 834 (1917).
122. *E.g.,* BARBOUR, THE EXTRATERRITORIAL EFFECT OF THE EQUITABLE DECREE, 17 MICH. L. REV. 527 (1917), GOODRICH, ENFORCEMENT OF A FOREIGN EQUITABLE DECREE, 5 IOWA L. BULL. 230 (1920).
123. GOODRICH, CONFLICT OF LAWS § 218 (3rd ed. 1949).

money, and it does not hold good in that instance.[124] Professor Barbour, in disclaiming a distinction between a decree ordering the payment of money and doing any other act states:

> The decree assumes substantially the same form whether it be for the payment of money or the conveyance of land; it is formally but an order to the defendant to do an act, which may be the payment of $1,000 or the execution of a deed to Blackacre. Likewise, in the matter of enforcement, aside from statutory innovation, the method is the same in both types of decrees. Any argument drawn from the form of the decree or the means by which it is enforced applies equally to the decree for money.[125]

Goodrich presents a counter-argument to the second contention made against the enforcement as set out in the *Bullock* case. As has been pointed out previously, a conveyance of land in another state will be recognized as valid, where made under compulsion of an order when the defendant is before the court. Judge Goodrich reasons that there is no real distinction in regard to effecting land in another state where this type of process is used in compelling a conveyance made under an order of a court in a state where the land lies, based on the decree of another state.[126]

The contention that equitable enforcement of decrees ordering conveyance of land is situated in another state is supported by the reasoning that the defendant has had full opportunity to be heard in the original action; that there is no more interference with foreign land by the court rendering the decree than there is in any case where the conveyance made

124. *Contra*, POUND, PROGRESS OF THE LAW—EQUITY, 1918-1919, 33 HAR. L. REV. 420, 424 (1920); Fall v. Eastin, *supra*, note 114—"Whether the doctrine that a decree of a court rendered in consummation of equities, or the deed of a master under it, will not convey title, and that the deed of a party coerced by the decree will have such effect is illogical or inconsequent, we need not inquire nor consider whether the other view would not more completely fulfill the Constitution of the United States and that whatever may be done between the parties in one state may be adjudged to be done by the courts of another, and that the decree might be regarded to have the same legal effect as the act of the party which was ordered to be done. The policy of a state would not be violated."

125. BARBOUR, THE EXTRATERRITORIAL EFFECT OF THE EQUITABLE DECREE, *supra*, note 122. But see, POUND, PROGRESS OF THE LAW—EQUITY, 1918-1919, *supra*, note 124, in which it is asserted that the Mallette and the Matson cases rest upon the false analogy of the enforcement of foreign judgments and of foreign decrees.

126. GOODRICH, CONFLICT OF LAWS § 218 (3rd ed. 1949).

under compulsion is recognized at the situs of the land as conveying good title; that it would be inequitable to refuse relief to the plaintiff as to do so would allow the defendant to profit by his own wrong and perhaps in effect deprive the plaintiff of all effective relief.[127]

Professor Barbour, in support of this view, asserts that the decree creates a personal obligation upon the defendant which a court of equity at the situs should enforce just as it would a contract or trust concerning this land made in the foreign jurisdiction. In further support of this view, Barbour contends that the full faith and credit clause of the Constitution makes such enforcement of the foreign decree obligatory.[128]

VI—SUMMARY, SUGGESTED REMEDIES AND CONCLUSION

Summarizing, we find that an alimony decree of a court of competent jurisdiction is a debt of record and entitled to full faith and credit in a sister state, if it calls for a lump sum payment. Where the decree calls for periodic payments, it is enforceable as to sums due if the court issuing the original decree has not either by statute or the decree reserved a clear power of modification. In any event, if the wife gets the decreeing court to give a judgment for the sums due, such judgment will be accorded full faith and credit in any other state.

However, if the court which decrees payment of alimony reserves the power to alter or revoke the accrued installments, full faith and credit need not be accorded such decrees by any other state under the present constitutional interpretation as set out by the United States Supreme Court. The majority of courts, have refused to go beyond the constitutional requirements of full faith and credit and will not enforce decrees which are subject to modification. Nor will these courts extend the local equitable means of enforcement to foreign alimony decrees and thus restrict the wife to an action of debt. Under this view, even though the foreign decree meets the requirements of full faith and credit as to accrued installments, the wife must bring an action each time a payment

127. GOODRICH, CONFLICT OF LAWS § 139 (3rd ed. 1949).
128. BARBOUR, THE EXTRATERRITORIAL EFFECT OF THE EQUITABLE DECREE, *supra*, note 122.

falls due and it is impossible for her to have the decree enforced as to future installments.

Contrary to this view, we have seen that a growing number of states have granted relief to the wife in the enforcement of foreign alimony decrees, not because they are compelled to under the Constitution, but on grounds of comity and public policy. Some courts which take this position, grant equitable relief only to recover payments which have accrued at the time of the action, while others have established the foreign decree as a judgment of its own court so as to enforce the payments of future installments as well.

At the outset of this paper it was assumed that regardless of any personal views as to the propriety of awarding alimony in general, once having been granted by a court of competent jurisdiction, it should be enforced as any other legal obligation. The courts which limit relief to the strict compliance with the full faith and credit requirements, are, in effect, allowing the husband to evade his legal obligation by leaving the state where the original decree was issued. This result must be appalling to the sense of justice of any person whether or not he is versed in the law and would probably cause him to exclaim that "something should be done—that there is something wrong with a law that creates a right but no method of enforcement."

This problem has become more acute in recent years due to the increased mobility of our population. But still many of the courts today cling to the limitations established by the *Sistare* case and refuse to grant relief where the requirements set out therein are not met. It is submitted that the states which grant relief to the wife on the grounds of public policy and comity represent an enlightened view. Due to the fact that this position has been taken by the courts which have been faced with the enforcement of foreign alimony decrees in increasing numbers in recent years, it seems to be a safe assumption that this is the modern trend. From a standpoint of public policy, there can be little doubt that this is the better view. The alimony payments represent the means of providing the wife with the vital necessities of life, which if not paid for by the husband, the proper source of her support, she may become a ward of the state and thus compelled to rely on the public to provide for her. The undeniable social consequences of this result are obvious. Furthermore, allow-

ance of relief to the wife is not contrary to any established legal principles. The courts which deny equitable enforcement on the ground that alimony is a debt of record and enforcement only at law because the legal remedy is adequate, seem to place an unrealistic interpretation on the real situation. This is evidenced by the fact that the remedy at law is seldom invoked in an action to enforce a local order for alimony, but the usual method of enforcement is by some equitable process such as contempt proceedings against the recalcitrant husband. The only available remedy at law is execution upon the property of the husband which often takes such a long period of time to reduce the order to a judgment and then execute on property that a wife may well have died of starvation long before she can recover any alimony payments if she was compelled to rely solely on this method. Moreover, there must be assets of the husband on which to execute, which oftentimes have been concealed by the husband if such assets ever did exist. And finally, to limit the wife to an action at law, she could maintain the action only for payments which had accrued at the time the suit is instituted, thus compelling a multiplicity of suits, the expense of which would be prohibitive.

Another case in which the enforcement of an alimony decree has been frustrated, is one in which the husband is ordered to convey land lying in another state and he leaves the jurisdiction of the issuing state before he can be compelled to make the conveyance. It has been pointed out that such an order need not be accorded full faith and credit in the state where the land lies and the majority of states will not grant relief to the wife in such a case.

There have been a few decisions to date which have refused to allow the husband to avoid his obligation to execute the conveyance and have ordered him to comply with the foreign decree. This strongly suggests itself as the better view from a social standpoint and is supported by the sound legal reasoning of Judge Goodrich as set out in the earlier treatment of this problem.

It is encouraging to see an increasing number of states following the lead taken by the Mississippi and California courts in establishing a foreign alimony decree as a judgment of their own courts. It is hoped that a greater number of states will join in what appears to be the modern trend to-

ward ordering a conveyance of land lying within its jurisdiction under a foreign decree. However, the numerical majority of states probably still refuse to go beyond the constitutional requirements of full faith and credit and thus deny relief to the wife where she seeks equitable enforcement, recovery of accrued installments which are subject to modification and the enforcement of a decree ordering the conveyance of land situated in another state under a foreign alimony decree.

A few possible methods whereby a wife may be allowed to obtain relief in those states denying recovery, will now be discussed. While it is recognized that none of these plans is a panacea, they are suggested as tentative proposals.

(1) As the award and amount of alimony is based on the needs of the wife and the ability of the husband to pay, it seems proper that the decree should be modified when the circumstances of the parties change. If the state statute provides that one of the parties may apply at any time for a modification of the decree, there is little reason why the payments which have accrued under the decree need also be subject to modification, as, for example, the Oregon statute set out previously,[129] a wife would have no difficulty in recovering such accrued installments in a sister state. Such a statute would enable the wife to obtain relief in a sister state for accrued and unpaid installments, but would not solve the problem of enforcing a foreign alimony decree in respect to future payments and an order to convey land lying in other than the issuing state.

(2) A demand for federal legislation in this field has been made, and while federal intervention in such matters may be distasteful to the states, this may be the answer to granting relief to the wife where the states have fallen short of protecting her right to have a foreign alimony decree enforced. Such a statute would provide that every state must establish a foreign decree as a judgment of the state where enforcement is sought, so that all of the means of enforcing its own decrees would be employed to enforce the foreign decree. It is doubtful that this statute would be open to any serious Constitutional obligations. It seems that such a statute would be authorized under that part of the full faith and credit clause of the Constitution which provides: ". . . And the Congress may by general laws prescribe the manner in which such

129. See page 345 herein.

acts, records and proceedings shall be proved, and the effect therof."[130]

(3) Another possible solution to this problem would be for each state, either on a regional or a national scale, to enter into a compact whereby each agrees to recognize and enforce the decrees of any state which is a party to the agreement as a judgment of their own courts. This would be similar to a uniform act, and would be purely voluntary on the part of each state. The practical difficulty of getting the states to enter into such an agreement, however, is obvious and there is little reason to expect the states which refuse to grant relief on grounds of comity to enter into such an agreement.

(4) Professor Bradway has suggested a possible solution to the problem in the use of insurance, which has proved its effectiveness in so many phases of business economic risks in our present day society.[131] Just as many corporations and partnerships have so called "key man insurance" to compensate them for any financial losses resulting from a loss of an important person in their organization, a marriage, which has been likened to a partnership or corporation, would be protected against the economic difficulties resulting from its dissolution. Under this plan, a married couple could, on a voluntary basis, prepare in advance for the support of the wife in the event of a subsequent broken marriage. The premiums for such a policy, would be determined by actuary tables established after a reasonable period of experimentation. A body of trained experts would investigate as to the social stability of the family both for the purpose of calculating the risk and for preventing fraud.

Thus, when the family breaks down, the wife has merely to file her claim, and if it is approved, payments will be made at once. If the claim is rejected, she would not be faced with the difficult conflict of laws problem discussed in this paper by the husband leaving the state, but would bring a usual action in law against the insurance company to recover the proceeds of the policy.

This plan, due in part to its novelty, will be open to suspicion as to its workability. There are also several very obvious objections which may be raised. For example, how many people entering into marriage or who are presently happily

130. UNITED STATES CONSTITUTION, Art. IV, § 1.
131. BRADWAY, WHY PAY ALIMONY, 32 ILL. L. REV. 295 (1937).

married, appreciate the extent of the risk of a broken home sufficiently to warrant the amount of premiums they will be compelled to pay. Furthermore, it may be argued that such a policy would do more social harm than good and be against public policy as an encouragement to married people to separate and collect the insurance.

(5) Several years ago, the committee on Uniform State Laws of the National Conference appointed a special committee to investigate the situation and offer a proposed solution. This special committee drafted the "Uniform Support of Dependents Act". The purpose of the act is stated in section 1 as follows: "To secure support in civil proceedings for dependent wives, children and poor relatives from persons legally responsible for their support."[132] Under this act a petition may be filed in the court in the county of the state wherein the petitioner resides alleging that he or she is entitled to support from a named party who is not a resident of or domiciled in or cannot be found in such state. A judge of such court may then certify the petition and transmit it to the appropriate court in the state where the person liable for support is located. The court in this latter state will then take jurisdiction of the person liable for support and order him to forward the amount found to be proper, to his dependents.

This act provides for reciprocity with other states having a substantially similar law so that both the state where the dependent resides and the state where the person liable for support is located must be subject to the act. In 1949 and 1950, the states of Maine, New Hampshire, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, Kentucky, Indiana, Illinois, Iowa, and Oklahoma passed this act.[133] In 1951, South Carolina enacted similar legislation,[134] so that at the present time the Uniform Support of Dependents Act applies to these 14 states.

It is conceded that all of the above suggestions are open to many serious objections as to their application. The prime purpose in setting them out, is to provide the reader with some food for thought as to how the divorced or separated wife may

132. THE COUNCIL OF STATE GOVERNMENT, SUGGESTED STATE LEGISLATION, 1951.
133. Note 132, *supra*.
134. Ratification No. 222, approved April 13, 1951 of the ACTS AND JOINT RESOLUTIONS OF SOUTH CAROLINA, 1951.

secure relief when her husband or ex-husband has left the jurisdiction of the state granting her alimony.

If the advantages of these proposals are overcome by the disadvantages, it is submitted that the United States Supreme Court holds the key to the door which under the *Sistare v. Sistare* and *Fall v. Eastin* cases, has many times been closed on the wife in her attempt to enforce an alimony decree when the husband has crossed a state line. It may well be that the solution to this problem may be compelled to wait until the Supreme Court sees fit to remove the restrictions which these cases have placed on the application of full faith and credit. While the law which was set out in the above two cases has not been disturbed, the fact that both were decided by a divided court may be a significant factor in the possibility of reversal in the future. There is a very definite feeling by some members of the Supreme Court that the holding in these cases was not correct. Another important factor which should not be overlooked in attempting to predict the treatment which this court will give to this problem in the future, is the tendency to widen the scope of the full faith and credit clause.

It is therefore the view of this writer, that it is not unlikely that a majority of the courts will join Justice Jackson in his position that finality of judgment is not the *sine qua non* to the operation of full faith and credit. Furthermore, it would not be surprising to find this so called "liberal" court overruling the *Fall v. Eastin* case and holding that full faith and credit applies to an order of a foreign court to convey land situated in the state where enforcement is sought.

It is felt that this paper has served some purpose if it has done nothing more than make the reader conscious of the inequities which have resulted from the present day interpretation of the full faith and credit clause of the federal Constitution in the field of enforcing foreign alimony decrees.

In conclusion, it seems indeed ironical that although the states have gone to great lengths in creating equitable devices to enforce local alimony decrees, while at the same time there exists an anarchic "no mans land" between state boundaries which provide a sanctuary for recalcitrant husbands who refuse to comply with a court order to provide for the support of his divorced wife. State lines should not be a refuge for those derelict in the fulfillment of their legal obligations.