South Carolina Law Review

Volume 8 | Issue 2 Article 4

Winter 1955

Equity Decrees and Their Standing in Sister States

James D. Sumner
University of California at Los Angeles

NOTES

EQUITY DECREES AND THEIR STANDING IN SISTER STATES*

Great improvement has been made in procedure in our country in recent decades. Rules pertaining to the bringing of suits and the conduct of trials have been greatly simplified. In conjunction with this progress the blurred distinctions between law and equity have been narrowed, and many states have abolished the separate courts of equity. Others have gone even further along these lines and have entirely abolished the distinction between legal proceedings and equitable actions. Whether these attempts have been successful is beyond the scope of this discussion. Changes are still being made in procedure, and perhaps in not too great a period of time the demarcation between equitable and legal relief will be of historical interest only. However, that time has not arrived, and one proof of this lies in the failure of many courts to respect properly the equity decrees of another state.

Suppose a court issues a decree ordering a defendant to perform a specified act, such as opening a drainage ditch. Must a court of another state recognize this decree under the Full Faith and Credit Clause by way of defense, or by allowing suit to be brought on it?

The history of the Full Faith and Credit Clause fails to reveal any intent on the part of its framers to limit its operation to judgments of law courts. The term "judicial proceedings" appeared in the Articles of Confederation, as well as in the various proposals submitted to the Constitutional Convention. Since this broad term was inserted in the clause, it would seem that the framers intended that all types of legal proceedings, and not just those of law courts, were to receive due respect. Moreover, there has never been any classification of judicial proceedings by the Congress. Therefore one would expect to find full faith and credit being given all judicial determinations. Such has not been and is not now the case. Equity decrees have not been treated in the same manner as law judgments.

At the outset it should be pointed out that there are two well-known types of decrees which are given recognition — in fact the Supreme Court requires that they be accorded the privileges of Ar-

*This article is a modified portion of a thesis submitted to the faculty of the Law School, Yale University, in fulfillment of the requirements for the degree of Doctor of the Science of Law.

ticle IV, Section 1, of the Constitution. One of these is the divorce decree. The other type for which the Supreme Court requires comity is the decree calling for the payment of money.[1] There was considerable authority for enforcing money decrees even before the problem came before the Supreme Court. In an early English case it was held that no action would lie on a decree for the payment of money.[2] A number of reasons were given for the holding; the foremost one being that the decree did not give rise to a common law debt. The inadequacy of the assigned reasons, and in particular the stated one, resulted in a subsequent holding to the effect that suit would lie on such a decree.[3]

The enforcement of a foreign money decree was sought in a New York court even before the matter arose in England. In 1805 a party who had obtained a money decree in New Jersey sued on it in New York and the latter court held that the plaintiff could recover.[4] This case was the beginning of a trend that has remained practically unbroken in the United States. In 1858, in *Barber v. Barber*,[5] the Supreme Court of the United States extended the protection of Article IV, Section 1, to such judicial proceedings. In the *Barber* case a federal district court in Wisconsin was directed to enforce a New York alimony decree. The Supreme 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.[6]

That money decrees are to be awarded full faith and credit has been reiterated in a number of subsequent cases.[7] The only real difficulty encountered with such orders is determining whether they are final, since full faith and credit is only required for final decrees.[8] Of

1. *E. g.*, Sistare v. Sistare, 218 U.S. 1 (1910); Lynde v. Lynde, 181 U.S. 183 (1901); and Barber v. Barber, 21 How. 582 (U.S. 1858). These cases are discussed below. In general see Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 CHIC. L. R. 620 (1953-1954).
2. Carpenter v. Thornton, 3 B. & Ald. 52 (1819).
3. Henley v. Soper, 8 B. & C. 16 (1828).
4. Post v. Neafie, 3 Caines 22 (N.Y. 1805).
5. 21 How. 582 (U.S. 1858).
6. *Id.* at 591.
7. Barber v. Barber, 323 U.S. 77 (1944); Sistare v. Sistare, 218 U.S. 1 (1910); and Lynde v. Lynde, 181 U.S. 183 (1901).
8. See Sistare v. Sistare, 218 U.S. 1 (1910). The requirement of finality is discussed in Sumner, *Full Faith and Credit for Judicial Proceedings*, 2 U.C.L.A. L. REV. 441, 462 (1955).

course the money decree is not enforceable in another state if it is subject to collateral attack upon a recognized ground.[9]

There is doubt as to whether other types of equity decrees must be enforced. No firm ruling has been given by the Supreme Court although one is needed. The case of *Fall v. Eastin*[10] is in point. In this case the husband in a divorce proceeding brought by the wife was ordered by a Washington court to convey Nebraska land to his wife, the court having judicial jurisdiction over him. The husband escaped the jurisdiction of the Washington court without abiding by the decree. He mortgaged and later conveyed the property to a third party. A deed was executed by a Washington official pursuant to court order. Thereafter the wife brought suit in Nebraska setting up the Washington decree and praying that her title be quieted by the cancellation of the deed and mortgage. Nebraska denied relief and this was affirmed by the Supreme Court.

Mr. Justice Holmes concurred specially.[11] He was of the opinion that the Washington decree imposed a duty on the defendant which could be enforced elsewhere. However, the Justice did not think that the Washington decree had to be treated as cutting off the rights of the Nebraska purchaser. He did not make it clear whether this question would be governed by the internal law of Washington or that of Nebraska. Should not the priority question be controlled by the local law of Nebraska?

The *Fall* case is not noted for its clarity, and it is difficult to determine the exact ground upon which the court held that full faith and credit did not have to be given the decree. Therefore, advocates for and against the recognition of foreign equity decrees find support and comfort in the decision. In the first place respect for the Washington deed was sought. It would appear that it did not have to be recognized because the owner did not execute it and because the land was not located in Washington.[12] However, the court did deal specifically with the question in its opinion.

There was also apparently a contention by the plaintiff that the Washington decree should be regarded as operating directly on the Nebraska land. A holding to this effect would provide greater respect for judicial proceedings than that required in the past. This allegation was likewise discussed by the Supreme Court and it was

9. See a discussion of the grounds for collateral attack in Sumner, *op. cit. supra* note 8 at 464.
10. 215 U.S. 1 (1909).
11. *Id.* at 14.
12. See Pennoyer v. Neff, 95 U.S. 714 (1878).

pointed out that the Washington decree need not be treated as a source of title by Nebraska.

Full faith and credit, or conclusive effect, was also sought for the Washington decree. The original owner and the remote grantee were made parties defendant. Since the third party, the remote grantee, was not a party to the Washington suit he was not bound by it even though subject to the judicial jurisdiction of the second court. Although the owner was before the court in the first proceeding, he was not served with process nor present in the Nebraska suit. Therefore the Washington decree could not be enforced against him. However, if the land, the *res,* was before the Nebraska court, the Washington order could have been applied to it. The facts are not clear as to whether there was judicial jurisdiction over the land. Whether the same result would have been reached had a third party not been involved and if the land had been before the court is conjecturable.

There is yet another factor that was present in the *Fall* case which renders it bad precedent on the question of the credit to be paid equity decrees. The Washington decree purported to divide real property between husband and wife in a divorce proceeding. This type of relief was not available in Nebraska. Consequently, by asking for enforcement of the equity order, the plaintiff was seeking relief unavailable in Nebraska. Prior to this case it had been established that a state need not rearrange its judicial system in order to meet its constitutional obligations.[13] However, the full faith and credit issue was squarely presented to the court, and it did hold that the Washington decree was not entitled to constitutional protection. No case has been decided by the Supreme Court since *Fall v. Eastin* which involved this point. It is difficult to understand why the problem has not once been before the court in the supervening years.

However, despite, or in view of *Fall v. Eastin,* many of our courts accord to equity decrees the same courtesy as they give law judgments.[14] But even today there are many courts which refuse to pay the same respect to equity decrees that they are required by the Supreme Court to give to law judgments. A number of reasons have been given to justify this discrimination.

One is that, historically, there was and is no known procedure for the enforcement of personal decrees rendered in equity. When this reason is given, the authorities point out that the decree is nothing

13. Anglo-American Provision Co. v. Davis Provision Co., 191 U.S. 373 (1903).
14. STUMBERG, CONFLICT OF LAWS 123-130 (2d ed. 1951).

more than a form of execution of a personal duty. Dean Pound discussed this in one of his early articles. He stated:

> The analogy of enforcement of foreign judgments and of foreign money decrees on which they chiefly rely does not seem to me in point. Under modern statutes allowing enforcement of money decrees by execution they are on the same basis as money judgments. But it is to be noted that it is only money judgments that are enforced abroad, and that this 'enforcement of the judgment' is a dogmatic fiction . . . In our law the debt sued on was merged in the judgment. Hence in legal theory the original claim no longer existed, and in order to allow it to be asserted abroad it became necessary to invoke a 'quasi-contractual' obligation to pay the judgment. But in equity the suit is to compel defendant to do his duty, and that duty is not necessarily merged in the decree, so that if the decree fails of effect, an action may still be brought upon plaintiff's legal right, if he has one. Thus there was never any necessity for proceeding subsequently on a theory of enforcing the decree rather than the original claim.[15]

The statement by Dean Pound pretty well sets forth the argument usually given to support the view that equity decrees should not get extra-state enforcement. The short answer to this argument is that no new and unknown remedy is being sought. All that the second court is being asked to do is to require a person to render, or refrain from doing, an act, the merits of the controversy having already been determined by a sister state court. The relief that is sought is the type of relief that courts grant every day. Thus it is not unique. The only way in which the proceeding differs from an original action is that there is no necessity to hear the evidence nor to make a determination on the merits. This has been done by another competent tribunal.

Those courts which refuse to give full faith and credit to many equitable decrees do give conclusive effect to divorce decrees and those calling for the payment of money. If there is no procedure for the enforcement of equity decrees, there would seem to be no way in which to give conclusive effect to the two types mentioned. Yet lack of procedure is not mentioned by these courts. While it is true that divorce decrees are usually submitted as defenses, the fact remains that decrees for the payment of money are used as causes of action.

15. Pound, *The Progress of the Law — Equity*, 33 HARV. L. R. 420, 424 (1920).

Since remedies are found for them, remedies would seem to be available for those dealing with other things.

A second reason that is frequently given for not enforcing an equity decision of another state is that a decree in equity does not operate upon the matter in question, but rather it only binds the person to obedience to the rendering Chancellor. This reason was stated at an early date in the following manner:

> A decree is not like a judgment of the King's Bench or Common Bench, for such a judgment binds the right of the party; but a decree does not bind the right but only the person to obedience, so that if the party will not obey then the Chancellor may commit him to prison until he will obey, and this is all that the Chancellor can do.[16]

So firmly embedded in some of our legal systems is this view that it has been held that a decree cannot even be enforced in another court located in the same state.[17] In *Bullock v. Bullock* it was said:

> It is a misuse of terms to call the burden thereby imposed on respondent a 'personal obligation'. At the most, the decree and order imposed a duty on him, which duty he owed to the court making them. That court can enforce the duty by its process, but our courts cannot be required to issue such process, or to make our decrees operate as process.[18]

These arguments have been well answered by two authorities who contend that the orders of a court of equity do have the same effect as those of a law court. One said:

> Is it not time for judges and writers to stop talking language suitable to the time of Coke in discussing the power of equity, and to recognize that a court of equity is a legal tribunal with powers to adjudicate and settle controversies as finally as a court of law?[19]

And the other authority wrote that statements which assume the correctness of the distinction between orders of law courts and of equity assume "that equity has made no progress since the time of Coke".[20] Even assuming that differences are present, all courts en-

16. Y.B. 27H. VIII 14, 6.
17. 3 BEALE, SUMMARY OF THE CONFLICT OF LAWS, CASES ON CONFLICT OF LAWS 537 (1902).
18. 52 N.J. Eq. 561, 30 Atl. 676, 679 (1894).
19. Cook, *The Powers of Courts of Equity*, 15 COL. L. R. 228, 233 (1915).
20. Barbour, *The Extra-Territorial Effect of the Equitable Decree*, 17 MICH. L. R. 527, 529 (1919).

force decrees calling for the payment of money — as a matter of fact they are required to do so. How can those authorities, who contend that the decree is nothing more than a personal obligation — or form of execution — which is owed to the court, reconcile the fact that money decrees are treated differently? The justification given is that the new obligation created where a payment of money is called for arises not from principles of equity, but from the operation of legislation which has placed money decrees upon the same basis as judgments at law. In other words, the rendering state has taken steps through its legislature to place money decrees in the same bracket as law judgments, and hence they are treated the same elsewhere. While this is a plausible answer, it is absolutely untrue. No such distinction has ever been made in the cases. If this were the reason for the irreconcilable treatment, would it not be given in at least a few of the decisions? Moreover, the legislation referred to simply renders the decree of chancery equal to a law judgment. No classification of decrees is found in the statutes, and none should be made by the courts. If decrees are given statutory advantages which they did not previously enjoy, such advantages should accrue to the benefit of all, and not just certain ones, unless the statute provides otherwise.

It has been pointed out that those states which generally deny extra-territorial effect to decrees other than money orders, enforce those based upon a consensual relationship. In other words, if there was a contract or some sort of voluntary agreement upon which the order was based, a decree is given greater validity than it would otherwise get.[21] Quite necessarily this involves investigation of the original cause of action. For purposes of full faith and credit, the Supreme Court has held that the merits cannot be overhauled when there is a judgment at issue.[22] Since an equitable decree is a product of a determination on the merits, a second court should likewise be precluded from inquiring into the merits upon which the order was based. Dean Pound's statement[23] that there is no merger with a decree is a conclusion — not a justification. No reason can be given for not applying the principle of *res judicata* to all types of judicial decisions. As a matter of fact, in one situation the doctrine of *res judicata* is held to be applicable. If a court refuses to grant a requested decree and renders a decision for the defendant, any attempt thereafter by the plaintiff to obtain relief on the same facts is

21. Note, 21 HARV. L. R. 210 (1907-8).
22. See Fauntleroy v. Lum, 210 U.S. 230 (1908).
23. See note 15 *supra*.

barred under the doctrine. If litigation is to be cut off once there has been a judicial determination against the plaintiff, it should be terminated where the ruling was in favor of the plaintiff. As previously indicated, one of the purposes of the comity clause is to prevent the retrial of issues that have been adjudicated.[24] Society is interested in giving each party his day in court, and the question of whether there can be a subsequent litigation is not, or should not be, determined by the factor of who won in the original suit. Some courts follow the view that the Full Faith and Credit Clause requires that an equitable decree be regarded as *prima facie* evidence of the initial claim rather than conclusive evidence of it.[25] This contention closely parallels that conduct which was permitted under the Articles of Confederation, and under the original interpretation given Article IV, Section 1, of our Constitution.[26] It has long been settled that the latter requires that a judgment be treated as a conclusive decision on the merits. There is no apparent basis for requiring less faith for a decree because it is one of equity. If any credence for it is required, it is the credence demanded by the clause and federal act — a conclusive one. Moreover, this type of respect is given to money decrees. It would seem to follow that a decision ordering the defendant to do or refrain from doing an act should be regarded as conclusive as a decision calling for the payment of money. And it should be noted that the courts are not being asked to enforce an original obligation. What is wanted is the enforcement of the decree and therefore we are not concerned with the cause of action. The courts do not look behind money decrees to see if there was an antecedent obligation. If the courts do not go behind them, why should they go behind others? Also there is the point that all decrees are based upon some obligation which society deems to be owed by the defendant. What difference should it make because one court seeks to enforce the obligation by decreeing the payment of money, while in another instance some other act might be ordered as a discharge of the obligation?

While it has been demonstrated that the presence or absence of a consensual relationship determines whether a decree is to receive faith and credit in some courts,[27] this reasoning does not appear in the decisions. But irrespective of whether this basis is consciously or unconsciously used, it is not a proper criterion.

24. See Sumner, *The Full Faith and Credit Clause — Its History and Purpose*, 34 ORE. L. R. 224, 249 (1955).
25. GOODRICH, CONFLICT OF LAWS 636-642 (3d ed. 1949).
26. See Sumner, *op. cit. supra* note 8 at 442.
27. See note 21 *supra*.

A great percentage, if not most, of the decrees which courts are asked to enforce are ones involving land situated in the second state. There is anything but unanimity among the courts as to the respect to be accorded land decrees. In fact it has been discovered that there are some seven different approaches to this problem taken by the courts.[28] Some of our courts refuse to give full faith and credit to land decrees. Especially is this true when the land is located in the second forum state.

The reason given by the courts for their refusal to enforce foreign land decrees is to prevent a foreign court from interfering with land situated in another state. Now it cannot be doubted that each state has absolute control over real property located within its borders. This was not only true historically, but is a recognized principle today.[29] So firmly established is this doctrine that it is surprising that all suits involving real property have not been made local actions. However, it has been decreed otherwise in the interest of society. While most of our courts give conclusive effect today to foreign decrees even though they concern local land, others dogmatically refuse to do so. However, it is interesting to note that practically all courts having judicial jurisdiction over a defendant will order him in the proper instance to execute a deed to foreign realty. This they will do even though they refuse to order the doing of other acts which would have extra-territorial effect. As a matter of fact, this practice has been allowed since the case of *Penn v. Lord Baltimore*,[30] decided in 1750. In that case the court in its decree ordering the execution of the deed, made the following statement:

> The conscience of the party was bound by this agreement; and being within the jurisdiction of this court . . . , which acts *in personam*, the court may properly decree it or an agreement.[31]

And in an early case in this country the power of a court to issue such a decree was upheld, Mr. Chief Justice Marshall remarking:

> . . . the principles of equity give a court jurisdiction wherever the person may be found, and the circumstance, that a question of title may be involved in the inquiry and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction.[32]

28. CHAFEE, SIMPSON AND MALONEY, CASES ON EQUITY 103 (3d ed. 1951). Also see Currie, *Full Faith and Credit to Foreign Land Decrees*, 21 CHIC. L. R. 620 (1953-1954).
29. See Yarborough v. Yarborough, 290 U.S. 202, 217 (1933).
30. 1 Ves. Sr. 444 (1750).
31. *Id.* at 447.
32. See Massie v. Watts, 6 Cr. 148, 158 (U.S. 1810).

Not only will the courts in this country require a defendant to execute a deed to property located elsewhere in the proper instance, but such deeds are almost universally recognized. That this affects land in another state cannot be denied. As a matter of fact, obedience to the court order results in a direct effect upon foreign land. Now with a decree for the conveyance of land situated in another state, the decree itself does not affect title to the land. No one would contend this. At most an obligation is imposed on the defendant. As pointed out above, this is not just an obligation or duty deemed to be owed to the rendering court, but one which is established on the defendant and one which should be recognized by other tribunals. When suit is brought on the decree elsewhere, the second court is not asked to look upon the decree as affecting title, but as having established a duty on the defendant. It is this judicially decreed duty for which enforcement is sought. If the duty had been based on a tort claim, contract, *etc.*, it would be enforced. Since the decree imposed a duty on the defendant to convey, that duty should be enforced, and the second court should not be permitted to go behind the decrees to determine if there was a consensual relationship, *etc.* *Res judicata* should apply with as much force to a determination in equity as in law, as discussed above. This was the basis of Mr. Justice Holmes' concurring opinion in *Fall v. Eastin.*[33] He stated:

> If the husband had made a contract, valid by the law of Washington, to do the same thing, I think there is no doubt that the contract would have been binding in Nebraska . . . so I conceive that a Washington decree for the specific performance, such a contract would be entitled to full faith and credit as between the parties in Nebraska. But it does not matter to its constitutional effect what the ground of the decree may be, whether contract or something else . . . . A personal decree is equally within the jurisdiction of a court having the person within its power, whatever its ground and whatever it orders the defendant to do:[34]

But suppose a third party, a purchaser of the land, enters the picture as was true in *Fall v. Eastin.* What effect does this have? The presence of this additional party should not change the conclusions expressed above, and the decree should be recognized. However, since there is another claimant of the land, the state should determine whether the third party is to prevail over the holder of the decree. This raises no new problem. It presents nothing more than

33. 215 U.S. 1 (1909).
34. *Id.* at 14 (concurring opn.).

a problem of priority as between competing claimants to land, and the courts are confronted with these problems every day. As to which party should prevail is a question that can be answered under the recording or priority statutes found in the state wherein the land lies.[35]

The reasons which have been discussed on the foregoing pages are the ones usually given by the courts which refuse to enforce the equity decrees of other tribunals. However, there are a few other grounds which are occasionally stated. One of these is that one court will not adhere to the decree of another because to do so would permit the control of local suits by a foreign court. Obviously this reason is used to justify a refusal to recognize a foreign decree enjoining the defendant from prosecuting a suit elsewhere. This excuse is not relevant to other types of equitable orders. Decrees restraining the bringing of suit elsewhere are frequently awarded in order to prevent vexatious suits, the perpetration of fraud on other courts, the bringing of suit in an inconvenient forum, *etc.* Although there is a problem as to whether such an injunction should be rendered, the greater problem is whether such a decree will be recognized in another place. There has been no ruling by the Supreme Court on whether such a decree is entitled to full faith and credit, however, the court has denied certiorari in two cases where it was not accorded.[36] Most states refuse to recognize and enforce them. On the other hand, respect is accorded by several states and they are received as a ground for dismissal.[37] The unsoundness of the reasoning given for not recognizing decrees enjoining suit was well answered by Justice Taylor of the Illinois Appellate Court in *Allen v. Chicago Great Western R. R.:*

> In considering the matter generally, it may be asked why, in such a case, without good and sufficient reason ignore the judicial command of the district court of a sister state. What, in such a matter, does comity mean, if not reasonable mutual recognition and sanction of each other's courts and their legitimate and authenticated judicial processes. A judgment of a foreign State may be sued upon. It is recognized as a legal result, and has certain binding and substantial qualities. And why should not an injunction *pendente lite,* a direct command to a resident of the State in which the Court issues the injunction, sits, also, in

35. *Ibid.*
36. Kepner v. C. C. C. & St. Louis R. R., 322 Mo. 299, 15 S.W. 2d 825 (1929), *cert. den.* 280 U.S. 564 (1929); Frye v. Chicago Ry., 157 Minn. 52, 195 N.W. 629 (1923), *cert. den.* 263 U.S. 723 (1924).
37. Equitable Life Assurance Soc. v. Gex's Estate, 184 Miss. 577, 186 So. 659 (1939); Allen v. Chicago Great Western R. R., 239 Ill. App. 38 (1925).

> such a case as this, be recognized as having some substance, and capacity to produce in another state some appropriate estoppel? The States are not foreign to each other in the sense of being completely segregated nations; they are parts of one general government, one national entity; . . . [38]

Lastly, it is often stated that a foreign equity decree will not be enforced because it might call for an act that is against the public policy of the second state. And as part of this line of justification, it is stated that the second forum might be required to give unique relief. As to this, it can first be said that there is doubt whether the policies in our country vary this much. Therefore, what is allowable in one state probably would not be against the fundamental concepts of decency and justice in another. Moreover, the courts stating this view never stop to see if there would be a violation of public policy if the decree before it were enforced. Should not the refusal be limited to those decrees where the act is unlawful in the record state? Why condemn all decrees merely because of the possibility of being asked to enforce an order decreeing an unlawful act? With law judgments the Supreme Court has held that public policy is no defense.[39] The mere fact that a determination has been made by a court of equity, or on the equity side, rather than by a law court, should not weaken the theory of the *Fauntleroy* case. Therefore, denial of full faith and credit should seldom be permitted on the ground that the basis of the decree violates the policy of the second state. As to the unique relief point — it is settled that the forum applies its own rules of procedure. If the procedure existing in the second jurisdiction is radically different from that of the first, then the suit should be dismissed. It is probable that relief would not be sought in the second state under such circumstances. And if there is no machinery at all for the enforcement of the foreign decree, then the plaintiff is without recourse. This is now established.[40]

As shown above, the assigned reasons for refusing to enforce ordinary equity decrees appear to be illogical and unsound. However, some courts continue their persistency by stating one or more of them. If the assigned justifications are not the underlying cause for the dogmatic refusals, what then is it? One is forced to the conclusion that it is because of the independent attitude of our judges. The judges who sit on our courts dislike being bound by the decisions of others. Since a foreign equitable decree does involve a

38. 239 Ill. App. 38, 43 (1925).
39. Fauntleroy v. Lum, 210 U.S. 230 (1908).
40. See note 13 *supra*.

judicial determination, the second court, if it abides by the original decision, is deprived of its right to decide the case on the merits. Perhaps an enlightened judge would not look upon a determination by another court as an infringement on his independence. Unfortunately some of our judges are not so enlightened. The situation was the same with law judgments. Originally such judicial proceedings were not enforced, and it was only after a more enlightened outlook was taken that they were accorded different treatment in some states. In fact recognition was not accorded in some states until the Supreme Court required it under Article IV, Section 1, and the federal statute. The same is true with equity decrees. Only those for which the Supreme Court has decreed full faith and credit are enforced by some states. Others realize that in order to administer justice to litigants a court oftentimes should do more than is required.

There are several solutions to this problem. One is legislation by Congress which would extend the mandate of the Full Faith and Credit Clause to equity decrees. This is the most desirable solution because it is Congress that has been given the power to legislate under Article IV, Section 1. However, such legislation is not likely to be enacted in the near future. Attempts along these lines have met with no success in the past. A bill proposed by the American Bar Association included a provision for compulsory respect for the decree, but this bill was never passed by Congress.[41] Another solution is for the Supreme Court to hand down a firm ruling requiring faith and credit for equity decrees.

However, unless there is congressional legislation or a definite holding by the Court some of our states will continue to disregard equity decrees of sister states.

JAMES D. SUMNER, JR.*

41. 52 A.B.A. Rep. 292 (1927).

*Professor of Law, University of California at Los Angeles. A.B., 1941, Wofford College; LL.B., 1949, University of Virginia; LL.M., 1952, J.S.D. 1955, Yale University.