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Divorce - Foreign Divorces - Whether or Not Illinois Courts will Directly Enforce a Foreign Divorce Decree with Respect to Future Alimony and Child Support Payments

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Returning to the situation in Illinois, it is apparent that the provision to be found there for service is deficient for it merely provides for substitute personal service on the non-resident motorist himself,³⁰ so could not, under fundamental canons of statutory interpretation, be construed to extend to cover service on the foreign personal representative. The result is that, for the moment, there is no available remedy in an Illinois state court for a person injured within the state as the result of an automobile collision with a non-resident motorist if the latter has no property in the state and has died prior to the commencement of suit or service of process. The defect is one which should be remedied promptly. True, there has been some conflict of authority and reasoning on the point as to the validity of these corrective statutes but some influential state supreme courts have found no serious objection to be present. Until there is a decision on the point by the United States Supreme Court there can, of course, be no really settled law but one may hazard a guess that, when that court is provided with an opportunity to pass directly on the question, it could well arrive at the conclusion that there is no basic weakness in provisions of the type here discussed.³¹

R. L. BROAD, JR.

DIVORCE—FOREIGN DIVORCES—WHETHER OR NOT ILLINOIS COURTS WILL DIRECTLY ENFORCE A FOREIGN DIVORCE DECREE WITH RESPECT TO FUTURE ALIMONY AND CHILD SUPPORT PAYMENTS—An interesting ramification involving the application of the full faith and credit clause to a foreign divorce decree developed in the recent case of *Light v. Light*.¹ The plaintiff therein had been granted a divorce from the defendant by a Missouri court. That decree allowed her custody of a minor child, child support and alimony. Subsequently, the plaintiff filed a petition in Illinois requesting that the Missouri decree be registered, under the terms of the Uniform Enforcement of Foreign Judgments Act,² as an Illinois judgment. The defendant was personally served with a summons in this action. As part of his defense, he insisted that the court was empowered by the act to give effect to the judgment only to the extent that liability had already accrued.

³⁰ Ill. Rev. Stat. 1957, Vol. 2, Ch. 95½, § 9-301. It has, however, been interpreted to apply to the principal of a driver-agent, even though the principal himself has not personally used the state highway: *Jones v. Pebler*, 371 Ill. 309, 20 N. E. (2d) 592, 125 A. L. R. 451 (1939).

³¹ See the case of *Olberding v. Illinois Central R. Co.*, 346 U. S. 338, 74 S. Ct. 83, 98 L. Ed. 39 (1953), for emphasis on the fact that the federal supreme court has apparently turned to the concept of "power," rather than "consent," in matters of this nature.

¹ 12 Ill. (2d) 502, 147 N. E. (2d) 34 (1958).

² Ill. Rev. Stat. 1957, Vol. 2, Ch. 77, § 88 et seq.

to-wit, alimony and support payments in arrears.³ The lower court granted the requested relief to the extent of arrearages, but refused to validate the Missouri decree with respect to future installments of child support and alimony. On a direct appeal to the Supreme Court of Illinois,⁴ the decision was reversed and the cause remanded with directions to register and give effect to the entire decree since the court concluded that full faith and credit⁵ should be given with respect to future installments of alimony and child support.⁶

As a general proposition, courts have been enforcing foreign divorce decrees only to the extent that liability has already accrued. They have been reluctant to give full faith and credit with respect to future liability. This reluctance has been justified on the grounds that such decrees, being subject to modification, were not final and also that the courts of equity had not been empowered to enforce them. The latter justification rests upon two grounds, namely, that a judgment for alimony is enforceable in an action of debt with an adequate legal remedy, and that equity courts have no general powers over divorce and related matters unless they are expressly conferred by statute. However, a number of jurisdictions have enforced such payments even though they took the position that the judgments were not entitled to full faith and credit.⁷ These courts felt that comity among the states required enforcement and accomplished this by adopting the foreign decree as that of the forum and enforcing it as such.

Until the instant decision, the Illinois law was unsettled as to enforcement of future payments of alimony and child support. Originally, the Illinois courts held that, in a judgment for money in installments, the right of action accrued on each installment only after it had fallen due.⁸ Later, in the case of *Rule v. Rule*,⁹ the Appellate Court for the Second District of Illinois held that full faith and credit applied to future payments ordered by a foreign judgment and were, therefore, enforceable in equity. That court's answer to the question of modification was that if the render-

³ Other defenses were raised, but they are not pertinent to this discussion.

⁴ Direct appeal to the Illinois Supreme Court is authorized by Ill. Rev. Stat. 1957, Vol. 2, Ch. 110, § 75, where a constitutional question is presented by the case.

⁵ U. S. Const., Art. 4, § 1. This clause governs the decision in the instant case due to the fact that Section 1(a) of the Uniform Enforcement of Foreign Judgments Act adopts the full faith and credit clause as the criterion for determining what foreign judgments may be registered and enforced. See also Ill. Rev. Stat. 1957, Vol. 2, Ch. 77, § 88(a).

⁶ A like result appears to have since been reached in the case of *Reinhard v. Reinhard*, 19 Ill. App. (2d) 223, 153 N. E. (2d) 285 (1958), abst. opin.

⁷ See annotation with respect thereto in 18 A. L. R. (2d) 873 and cases there cited.

⁸ *Schuler v. Schuler*, 209 Ill. 522, 71 N. E. 16 (1904); *Dow v. Blake*, 148 Ill. 76, 35 N. E. 761 (1893).

⁹ 313 Ill. App. 108, 39 N. E. (2d) 379 (1942).

ing court modified the decree, the Illinois court could modify its decree accordingly. Thereafter, in an action to enforce future payments ordered under an English judgment,¹⁰ the Illinois Supreme Court determined, among other things, that no Illinois statute conferred specific authority on equity courts to enforce divorce decrees of another jurisdiction. Relying on that decision as to the authority of equity courts, the Appellate Court for the Third District of Illinois, in the similar case of *Tailby v. Tailby*,¹¹ entered judgment only for the installments then due. However, when the question arose again, in the Appellate Court of the First District, that court, acknowledging that the prior decisions were not in harmony, ordered that the foreign decree be adopted as an Illinois judgment and enforced by equitable remedies as though it had been originally entered in this state.¹² The assigned ground was that an alimony and support decree represented more than a debt because its basis is the natural obligation of a husband to support his wife and children, and to do otherwise than enforce its payment would be to disregard the full faith and credit clause of the Constitution.

Those courts originally denying enforcement of a modifiable foreign decree partially predicated their decision upon one practical procedural problem. The parties to the decree were entitled, by its very terms, to its modification if the circumstances warranted. But it was heretofore an open question as to whether a petition for such modification could be entertained by the tribunal requested to enforce its provisions or whether the parties would be forced to return to the court that originally rendered the decree. The present decision answers this question by accepting a solution formulated by a California court¹³ which concluded that the forum had the power to litigate any issue of modification, raised by either party, after it had adopted the foreign decree as its own. While the latter proceeding was in equity, the Illinois court appeared to accept it as equally applicable to proceedings arising under the Uniform Enforcement of Foreign Judgments Act.

The holding in the instant case not only harmonizes the Illinois law with respect to enforcement of future payments of alimony and child support decreed by a sister state, but also makes it clear that finality of such a decree is not a prerequisite to giving it full faith and credit. Thus, this determination would seem to point the way to giving the full faith and credit clause the standing to which it is rightfully entitled. And, without regard to its legal connotations, it assuages a troublesome area of the law with a certainty that is socially desirable.

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¹⁰ *Clubb v. Clubb*, 402 Ill. 390, 84 N. E. (2d) 366 (1949).

¹¹ 342 Ill. App. 664, 97 N. E. (2d) 611 (1951).

¹² See *Roberts v. Roberts*, 11 Ill. App. (2d) 86, 136 N. E. (2d) 590 (1956).

¹³ *Worthley v. Worthley*, 44 Cal. (2d) 465, 283 P. 19 (1955).