

# Conflict of Laws - Jurisdiction to Alter Foreign Alimony Decrees

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## NOTES

### CONFLICT OF LAWS — JURISDICTION TO ALTER FOREIGN ALIMONY DECREES

A divorced husband, relying on a statute permitting Colorado courts to modify foreign judgments, sued his former wife in a Colorado court to have set aside a property settlement which was part of a divorce decree rendered by a Florida court. He alleged that the settlement, under which he was to pay alimony to his wife for a stated duration, was obtained by the wife by fraudulent means and was therefore void. The wife, a California domiciliary at the time of the husband's suit, contended that the Colorado district court did not have jurisdiction. The district court sustained her contention.<sup>1</sup> The Colorado Supreme Court, citing no authority, *held* for defendant wife, stating that the Colorado statute granting jurisdiction to the district courts of Colorado to modify certain judgments of other jurisdictions is unconstitutional as violative of the full faith and credit clause of the United States Constitution. *Minnear v. Minnear*, 281 P.2d 517 (Colo. 1955).

The full faith and credit clause requires that a final,<sup>2</sup> valid judgment of one state<sup>3</sup> obtained without fraud<sup>4</sup> and with observance of due process,<sup>5</sup> and rendered by a court of competent jurisdiction<sup>6</sup> must be recognized by the courts of sister states.<sup>7</sup>

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1. The Supreme Court found incidentally that the lower court committed error in dismissing for lack of jurisdiction over the wife, but did not consider this point reversible error.

2. 2 BEALE, CONFLICT OF LAWS § 435 (1935); 3 FREEMAN, JUDGMENTS § 1391 (5th ed. 1925); STUMBERG, CONFLICT OF LAWS 113 (1951).

3. See RESTATEMENT, CONFLICT OF LAWS § 429 (1934), which summarizes the general principles governing validity; *Thompson v. Whitman*, 85 U.S. (18 Wall.) 457 (1873) (holding that the full faith and credit clause does not require recognition as valid or enforcement of judgments rendered by a court not having jurisdiction).

4. STUMBERG, CONFLICT OF LAWS 117 (1951); see RESTATEMENT, CONFLICT OF LAWS § 440 (1934).

5. In *Griffin v. Griffin*, 327 U.S. 220, 229 (1946), the court noted that "due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process."

6. RESTATEMENT, CONFLICT OF LAWS § 116 (1934) provides that an alimony judgment is personal and must be rendered by a court having personal jurisdiction over the defendant. GOODRICH, CONFLICT OF LAWS 428 (1949) states that "an order for payment of money as alimony, rendered by a court having jurisdiction, is entitled to recognition in another state of the United States under the full faith and credit clause. . . ."

7. Suppose that *A* secures a judgment in State *X* against *B* and *B* goes to

There is strong argument that the "recognition" required by the full faith and credit clause means that courts should give the same effect to a judgment rendered by a sister state that it would receive in the state rendering the decree.<sup>8</sup> It is not clear, however, whether full faith and credit must be accorded judgments which are subject to modification where rendered.<sup>9</sup> Most jurisdictions have statutes permitting courts which grant alimony judgments to modify them.<sup>10</sup> Assuming that the full faith

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state *Y* to attempt to evade the duty. Assuming that the judgment meets the named requisites, state *Y* would be bound to recognize *A*'s judgment against *B* and also his right to have the judgment carried out. RESTATEMENT, CONFLICT OF LAWS § 430 (1934); see Comment, *Collateral Attack upon Foreign Judgments — The Doctrine of Pemberton v. Hughes*, 29 MICH. L. REV. 661, 666 (1931).

8. The United States Supreme Court in *Barber v. Barber*, 62 U.S. (21 How.) 582, 595 (1853), stated that when an alimony judgment has been rendered by one state "it becomes a judicial debt of record against the husband, which may be enforced . . . wherever he may be found, . . . or to carry the decree into a judgment there with the same effect that it has in the State in which the decree was given." [Emphasis added.]

In *Halvey v. Halvey*, 330 U.S. 610, 614 (1947), although the case involved a custody decree, the court remarked in language seemingly broad enough to cover alimony decrees that "so far as the full faith and credit clause is concerned, what Florida could do in modifying the decree, New York may do. . . . [I]t is clear that the State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered." [Emphasis added.]

See, generally, Comment, *Interstate Recognition of Alimony Decrees*, 41 CALIF. L. REV. 692 (1953) and on this particular question *id.* at 706-713.

Thirty-seven states apparently have adopted the Uniform Reciprocal Enforcement of Support Acts, 9A U.L.A. 35 (1953 Supp.) and ten other states have statutes permitting reciprocity in enforcement of support judgments. *Id.* at 36.

9. The case of *Griffin v. Griffin*, 327 U.S. 220 (1946), it would seem, leaves open the question whether or not full faith and credit need be given to accrued alimony installments subject to modification. Mr. Justice Jackson, concurring in *Barber v. Barber*, 323 U.S. 77, 86 (1944), states that "the judgment . . . was entitled to full faith and credit . . . even if it was not a final one." He makes a cogent argument that the full faith and credit clause does not mention "finality" of judgments. *Id.* at 87.

*Sistare v. Sistare*, 218 U.S. 1 (1910) is authority for the proposition that once alimony has accrued it becomes a "vested right" and this right being protected by the full faith and credit clause, may not be rendered nugatory by a court decision modifying the accrued amount. Of particular significance to this discussion is the fact that the court in the *Sistare* case noted that the rule requiring full faith and credit would not apply where the right to receive future alimony payments is discretionary with the court rendering the decree. *Id.* at 13.

Full faith and credit may not require a conclusive judgment. Corwin, *The Full Faith and Credit Clause*, 81 U. OF PA. L. REV. 371, 388 (1933). Yet there is authority for maintaining that it does have to be a conclusive judgment in order to merit full faith and credit in sister states. *Thompson v. Thompson*, 226 U.S. 551 (1913).

10. STUMBERG, CONFLICT OF LAWS 345 (1951); *Epps v. Epps*, 218 Ala. 667, 120 So. 150 (1929) and authorities cited in Note, 29 MINN. L. REV. 314, 315 (1936), indicate that most states have statutes permitting the modification of alimony decrees. This is logical because changes in the circumstances of the parties or the discovery of facts which would nullify the original judgment would require that courts have the necessary power to vary the alimony. See LA. CIVIL CODE art. 160 (1870); *Hillman v. Gallant*, 148 La. 82, 88 So. 661 (1920). In *Abrams v. Rosenthal*, 153 La. 459, 96 So. 32 (1923), the court noted that the

and credit clause requires that equal effect to given judgments of other states, it would follow that the courts of one state could not discharge an ex-husband from his duty to pay *accrued* alimony if the court of rendition could not properly have relieved the husband of the duty.<sup>11</sup> Likewise, if the alimony were intended as support for the wife the court could seemingly modify it if modification were possible in the state which granted the alimony.<sup>12</sup> In the latter instance there would be "recognition" of the judgment for full faith and credit purposes but nevertheless modification would be permissible because the court which originally granted the alimony judgment could alter it.<sup>13</sup> Hence the "same" credit would be given to the sister state judgment by the court of the state giving credit. The determination of which law should be applied by the court of the state of recognition in modifying a decree might cause some difficulty. Substantial authority indicates that the law of the state of the court of rendition should govern.<sup>14</sup> In dealing with a situation analogous to the principal case the Louisiana court, while giving recognition to a Wisconsin judgment, nevertheless modified it by applying its own law and rendering a new judgment.<sup>15</sup>

In the instant case the Colorado court was in effect asked to refuse recognition to the Florida judgment and render a new judgment relieving the plaintiff husband of his duty to provide alimony, or, in the alternative, to recognize the judgment and

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amount of alimony to be given is, of necessity, not a stable thing. This is because under article 160 of the Civil Code it may not exceed  $\frac{1}{3}$  of the husband's income.

11. *Boehmer v. Boehmer*, 259 Ky. 69, 82 S.W.2d 199 (1935) held that modification was possible in state granting alimony.

12. See notes 8 and 10 *supra*.

13. Ehrenzweig, *Interstate Recognition of Support Duties*, 42 CALIF. L. REV. 382, 393 (1954), discusses the possibility of modification under the California Reciprocal Enforcement Act.

14. The author of Comment, *Interstate Recognition of Alimony Decrees*, 41 CALIF. L. REV. 692, 711 (1953), states that no rigid policy as to choice of law has been established. But, seemingly, it should be that of the state of the court of rendition, and the cases of *Halvey v. Halvey*, 330 U.S. 610 (1947) and *Griffin v. Griffin*, 327 U.S. 220 (1946) so indicate.

15. In *Hillman v. Gallant*, 148 La. 82, 86 So. 661 (1920), husband and wife were living in Wisconsin. Husband sued for divorce there, but his suit was dismissed. The Wisconsin court granted the wife, then apparently separated from the husband, alimony of \$80 a month. The parties moved to Louisiana and the wife sued for and obtained a divorce in a Louisiana court which increased her alimony to \$100 a month, notwithstanding the Wisconsin judgment. After the Louisiana court had reconsidered the husband's circumstances and reduced the alimony to \$75 a month, the husband moved to Mississippi and the wife to New York. Husband reneged in paying the alimony and wife, in a Mississippi court, sued for the accrued sum. That court in *Gallant v. Gallant*, 154 Miss. 832, 123 So. 833 (1929) said that since the Louisiana judgment was subject to modification it was therefore not final. It refused to enforce the judgment.

modify it. At the time of the instant case both Florida<sup>16</sup> and Colorado<sup>17</sup> had statutes permitting modification of foreign alimony decrees, and the Florida statute<sup>18</sup> permitted modification of its own alimony judgments. If the judgment had been fraudulently obtained in Florida, the Colorado court could have refused to recognize the judgment and hence could have avoided entirely the issue of modification, since fraud would have divested the judgment of a status commanding full faith and credit. Then in light of such disregard, it would have been free to determine the husband's liability since he was apparently a Colorado domiciliary and subject to its jurisdiction. The Colorado court, however, was convinced that the Florida judgment was valid in all respects.<sup>19</sup> Therefore, full faith and credit could have been accorded the judgment in two ways, first, by acceptance and affirmance of the position taken by the Florida court in the original case; or, second, by acceptance of the judgment as valid and yet admitting of modification since modification would have been permitted in Florida. The court accepted neither of these views and found that to permit modification under the Colorado statute would deprive the Florida decree of full faith and credit.

The peculiar facts of the instant case<sup>20</sup> may have compelled the court to deny the husband's request, and the result reached might well be equitable. There is a strong possibility that the court felt the statute might promote and encourage further litigation of this type.<sup>21</sup> However, as suggested, the court could

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16. FLA. STAT. ANN. § 65.15 (1943) provides that when a husband has, pursuant to a decree of "any court" been ordered to pay alimony, the Florida court may modify it if justifiable. The statute extends to "all actions or proceedings of every nature and wherever instituted whether within or without this state, and shall be deemed to be, and shall be, modified accordingly."

17. COLO. STAT. ANN. § 46-4-1 (1953). In order for a defendant to avail himself of this statute, the state of the court of rendition of the alimony judgment must have a similar statute. In this case the Florida statute seems to constitute such.

18. FLA. STAT. ANN. § 65.15 (1943).

19. The court noted that the husband had not proved that Florida permitted modification, a proof necessary to give the Colorado courts power to modify. However, the court stated that this did "not make too much difference" because the Colorado statute was unconstitutional. *Minnear v. Minnear*, 281 P.2d 517, 519 (Colo. 1955).

20. The husband had been plaintiff in the divorce proceeding and the settlement was mutually agreed upon. He had paid the alimony for many years without protesting that the judgment had been fraudulently obtained. Although he alleged fraud in his petition, he seemingly offered no evidence in support of the contention.

21. However, the Colorado court in *Potter v. Potter*, 287 P.2d 1020 (1955) found that under the Colorado Reciprocal Enforcement of Support Statute (not

have refused to tamper with the Florida judgment and yet refrained from holding the statute unconstitutional. The result of the decision might be that similar suits will be precluded even where the facts present a desirable case for modification. By holding the statute unconstitutional, it appears that the Colorado Supreme Court has unnecessarily limited the power of its state's courts to adjudicate matters involving recognition of foreign judgments.

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#### CRIMINAL PROCEDURE — THREE-YEAR PRESCRIPTION ON INDICTMENTS

On September 21, 1951, a bill of information was filed against defendants charging them with unlawful possession of narcotics. The arraignment was held on October 15, 1951, but the case was not set for trial until September 30, 1954. On the date of the trial, defendants filed a plea of prescription based upon article 8 of the Code of Criminal Procedure.<sup>1</sup> They contended that since more than three years had elapsed without trial since the date of the filing of the bill of information, the charge should be dismissed. The state contended, on the other hand, that under article 9 of the Code of Criminal Procedure<sup>2</sup> the arraignment of defendants was a prosecutive step which started a new three-year prescriptive period and that the date set for trial was within the new period. The trial court rejected the state's contention and sustained defendant's plea of prescription. On appeal, *held*, affirmed. Articles 8 and 9 of the Code of Criminal Procedure establish separate three-year prescriptive periods. Under article 8, if three years elapse in a felony case

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invoked in the instant case) a Texas decree ordering a husband to support a daughter in his wife's custody until the age of sixteen, was not a final judgment and not entitled to full faith and credit. It ordered the husband to pay additional future alimony.

1. LA. R.S. 15:8 (1950). The pertinent provisions of article 8 state: "In felony cases when three years elapse from the date of finding an indictment, or filing an information, . . . it shall be the duty of the district attorney to enter a nolle prosequi if the accused has not been tried, and if the district attorney fail or neglect to do so, the court may on motion of the defendant or his attorney cause such nolle prosequi to be entered."

2. LA. R.S. 15:9 (1950): "Whenever it shall have been established to the satisfaction of any court in which any criminal prosecution shall be pending that the prescriptive periods as herein provided have elapsed since the last date upon which any steps shall have been taken by the state in such prosecution, and that the district attorney has not entered his nolle prosequi, the court shall order the dismissal of said prosecution . . ."