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Courts--Equitable Enforcement of Foreign Alimony Decree

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of compelling to pay,¹⁰ which is based on a money judgment against one or all the tort-feasors. In Kentucky¹¹ the court has said, "There must have been a satisfaction of the judgment before the suit can be entertained, as the right to contribution rests on an implied contract and is enforced accordingly."

As an agent is liable for his torts, independently of his principal, and as an agent can be sued jointly with the principal when it is shown that both were at fault,¹² and since only the agent may be liable in a given case, the contention that the payment was voluntarily made seems sufficient to defeat the right to contribution.

—CHARLES W. CALDWELL.

COURTS — EQUITABLE ENFORCEMENT OF FOREIGN ALIMONY DECREE. — Complainant had been granted a divorce and alimony in a Florida Court, which retained jurisdiction. She went into equity in Georgia and obtained a writ of *ne exeat*, a decree for accrued alimony and counsel fees, and an injunction to prevent defendant from removing any of his property from the county. The court declared in general terms that the foreign decree must be given full faith and credit in Georgia. *Roberts v. Roberts*.¹

Courts have allowed as a matter of course the bringing of a suit on a foreign decree for accrued alimony.² Future alimony is not the basis for such a decree unless it be shown that the original decree is not subject to modification by the foreign court.³ A contrary result was reached in a recent California case where future installments of alimony were covered by the decree though the foreign court retained jurisdiction, it being stipulated that in case of modification the California decree should operate subject thereto.⁴ These foreign decrees, whether sued upon in law or equity, are entitled to full faith and credit under the Federal Constitution.⁵ Though equity may grant relief on a decree

¹ *Consolidated Coach Co. v. Wright*, 231 Ky. 713, 22 S. W. (2d) 108 (1929).

² *Lee v. Standard Oil Co.*, 105 W. Va. 579, 44 S. E. 292 (1928).

³ 163 S. E. 735 (Ga. 1932).

⁴ *Sistare v. Sistare*, 218 U. S. 1, 30 S. Ct. 682 (1909); *Barber v. Barber*, 21 How. 582, 16 L. ed. 226 (1858).

⁵ *Lynde v. Lynde*, 181 U. S. 183, 21 S. Ct. 555 (1900).

⁶ *Cummings v. Cummings*, 97 Cal. App. 144, 275 Pac. 245 (1929).

⁷ *Sistare v. Sistare*, *supra* n. 2.

of a court of a foreign nation,⁶ full faith and credit obviously does not apply.

There is an obvious advantage in bringing suit in equity since there are open two means of enforcement — execution⁷ and contempt proceedings.⁸ Execution is usually available by statute on a money decree.⁹ The defendant may have no property on which to levy, but if he has a good income then contempt proceedings might be effective. Although there is no West Virginia decision on the point, it is believed that contempt proceedings would be upheld.¹⁰ It may be, as in Michigan, that by statute contempt proceedings are available only on a domestic alimony decree.¹¹ Contempt proceedings may be brought in both the foreign and domestic jurisdiction with respect to accrued alimony.¹²

Other equitable means of enforcement which have been resorted to in effectuating foreign alimony decrees include: attachment and sale to satisfy the decree;¹³ appointment of a receiver for a spendthrift trust, of which defendant is beneficiary, to make the income available for the accrued alimony;¹⁴ and an injunction to prevent defendant from removing his property as well as a writ of *ne exeat* as in the principal case.¹⁵

Since divorce and alimony are commonplace and prevalent in the United States and in view of the mobile character of the people it seems that only by rather complete equitable enforcement of foreign alimony decrees will they be fairly effectuated.

—BONN BROWN.

⁶ *Boissevain v. Boissevain*, 130 Misc. 161, 223 N. Y. Supp. 616 (1927).

⁷ *Bullock v. Bullock*, 51 N. J. Eq. 444, 27 Atl. 435 (1893); *Post v. Neafie*, 3 Caines 22 (N. Y. 1805).

⁸ *White v. White*, 233 Mass. 39, 123 N. E. 389 (1919); *Miller v. Miller*, 21 Pa. Co. Ct. 252 (1898); *Fanchier v. Gammill*, 148 Miss. 723, 124 So. 365 (1928).

By statute in New York contempt proceedings are available for enforcement of a judgment for accrued alimony only where the ground for divorce was adultery, and not where the grounds were extreme cruelty or desertion. *Beech v. Beech*, 211 App. Div. 720, 208 N. Y. Supp. 98 (1925); *Miller v. Miller*, 219 App. Div. 61, 219 N. Y. Supp. 203 (1926); *Hardy v. Hardy*, 136 Misc. 759, 240 N. Y. Supp. 826 (1930); *Barber v. Warland*, 139 Misc. 398, 247 N. Y. Supp. 455 (1930).

⁹ See for example, W. VA. REV. CODE (1931) c. 38, art. 3, § 1.

¹⁰ In one instance the defendant's counsel conceded that his client could be cited for contempt for failure to obey the court's decree on a foreign alimony decree. *Stewart v. Stewart*, 27 W. Va. 167, 175 (1885).

¹¹ *Mayer v. Mayer*, 154 Mich. 386, 117 N. W. 890 (1908).

¹² *Gasteiger v. Gasteiger*, 5 N. J. Misc. 315, 136 Atl. 497 (1927).

¹³ *Stewart v. Stewart*, *supra* n. 9.

¹⁴ *Moore v. Moore*, 208 N. Y. 97, 101 N. E. 711 (1913).

¹⁵ *Cummings v. Cummings*, *supra* n. 4.