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Conflict of Laws: Alimony: Enforcement of Foreign Decrees

Charles C. Curran

not accept, it is contributory negligence. Thus, in the instant case, the court could hold the plaintiff guilty of contributory negligence as a matter of law only if the evidence established, without the possibility of reasonably finding to the contrary, that the hazard was not one such as a man of ordinary care and prudence would accept under the same or similar circumstances.

The court holds here that although the defendant L violated the law in so parking her car, yet it was not negligence as a matter of law to enter the car. Therefore it was properly a jury question whether the plaintiff was negligent in attempting to so enter. The mere fact that the negligence of the host was a contributing cause of the accident will not necessarily make the assumption of risk by the guest amount to contributory negligence as toward the negligent third party. *Wiese* v. *Polzer,* 212 Wis. 337, 248 N.W. 113 (1933).

R. A. McD.

CONFLICT OF LAWS—ALIMONY—ENFORCEMENT OF FOREIGN DECREE.—Plaintiff was awarded a divorce decree in South Dakota ordering the defendant to pay the plaintiff as permanent alimony, $75 monthly. The parties have since removed to Minnesota, and defendant is now delinquent in his payments. The purpose of this action is not to recover that amount as a debt by ordinary judgment and execution, but to compel its payment through whatever power the Minnesota courts may have, on the equity side, to resort to sequestration, receivership or even contempt proceeding against defendant. *Held,* that Minnesota courts will enforce a foreign alimony degree in the same manner as a decree of its own courts. *Ostrander* v. *Ostrander,* (Minn. 1934) 252 N.W. 449.

The question raised in this case was whether the local statute (Mason's Minn. St. 1927, Sec. 8604), authorizing resort to sequestration and contempt proceedings to compel the payment of alimony, includes an action brought to compel the payment of unpaid installments under a foreign decree for alimony. The court held that the local action on that decree was itself a case where "alimony" is decreed and hence the statute applies.

A decree of a court having jurisdiction of the subject matter and parties awarding divorce and incidentally alimony is entitled to the same faith and credit in other states as it has in the state where rendered, and an unconditional and final award of alimony, when the same remains unpaid, may be enforced by appropriate proceedings in other states. *Cheever* v. *Wilson,* 9 Wall. 109, 19 L.Ed. 604 (1870); *Moore* v. *Moore,* 208 N.Y. 97, 101 N.E. 711 (1913); *Van Orden* v. *Van Orden,* 58 N.J. Eq. 545, 43 Atl. 882 (1899); *Sistare* v. *Sistare,* 218 U.S. 1, 30 Sup. Ct. 682, 54 L.Ed. 905, 28 L.R.A. (N.S.) 1068, 20 Ann. Cas. 1061 (1910); *Holton* v. *Holton,* 153 Minn. 346, 190 N.W. 542, 41 A.L.R. 1415 (1922). In accord with the instant case, *Franchier* v. *Gammill,* 148 Miss. 723, 114 So. 813 (1927); *Cummings* v. *Cummings,* 97 Cal. App. 144, 275 Pac. 245 (1929); *Creager* v. *Sup. Ct. of Santa Clara Co., et al,* 126 Cal. App. 280, 14 P. (2d) 552 (1932), have held that equity will enforce the payment of alimony awarded in conjunction with a foreign divorce decree. These courts have taken the position that to hold that a foreign alimony decree could not be enforced in equity would be to disregard the "full faith and credit" clause of the federal law, which they 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 that state in the same manner and to the same extent as it could have been enforced by its own courts, if originally obtained in that state. The full faith and credit clause does not make it obligatory upon the courts to enforce foreign alimony decrees by the modes of

execution provided by the law of the state which rendered the judgment for alimony, as such matters are governed by local practice and statutes, *Sistare* v. *Sistare,* supra; *Lynde* v. *Lynde,* 181 U.S. 183, 21 Sup. Ct. 555, 45 L.Ed. 810 (1901). South Dakota statutes, (Comp. L. 1929), provide that the court may require reasonable security for the payment of alimony, and may enforce the same by the appointment of a receiver, and may use any other remedy applicable to the case. Under the above cases it would seem that the Minnesota court was within its powers in enforcing the South Dakota decree by all the remedies that it had as its command.

The Wisconsin statutes, sec's. 247.23, 247.30, Wis. Stats. 1933, provide that the court may impose alimony as a charge on specific real estate or require sufficient security for the payment thereof, and upon neglect or refusal to pay such alimony the court may enforce the payment by execution or otherwise as in other cases; under sec. 295.03, Wis. Stats. 1933, the courts in this state have been given the additional power of enforcing the payment of alimony by contempt. It is a general principle of the law of divorce in this country that the courts, either of law or equity, possess no powers except such as are conferred by statute; and that to justify any act or proceeding in a case of divorce whether it be such as pertains to the ground or cause of action itself, to the process, or mode of enforcing the judgment or decree, authority therefor must be found in the statute and cannot be looked for elsewhere or otherwise asserted or exercised. *Barker* v. *Dayton,* 28 Wis. 367 (1871); *Swanson* v. *Swanson,* 161 Wis. 5, 152 N.W. 452 (1915); *In Re Gibic,* 170 Wis. 201, 174 N.W. 546 (1919). A judgment for alimony entered in a court of another state having general jurisdiction should be given the same faith and credit as in the state where rendered. *Estate of Wakefield,* 182 Wis. 208, 196 N.W. 541 (1923); *Mallette* v. *Sheerer,* 164 Wis. 415, 160 N.W. 182 (1916); *In Re Gibic,* supra. In *Kunze* v. *Kunze,* 94 Wis. 54, 68 N.W. 391 (1896), it was held that a divorce judgment which decrees the payment of alimony, and which in the state where rendered has the effect of a judgment at law for the payment of alimony may be enforced by an action at law in another state. The Minnesota court has taken a broad view, and has given the foreign decree the same means of enforcement as its own decrees.

C. C. C.

CONSTITUTIONAL LAW—TAXATION.—An action was brought by the plaintiffs on behalf of himself and all other taxpayers similarly situated, against Edward J. Barrett, Auditor of Public Accounts, and others, to restrain by injunction the expenditure of public money appropriated for the enforcement of a Retailers' Occupation Tax Act. The defendants demurred to the pleadings of the plaintiffs, which attacked the constitutionality of the Act. On a hearing, the demurrer was sustained, and the bills of plaintiffs were dismissed for want of equity. The plaintiffs appealed to the Illinois Supreme Court. *Held,* that the Act was constitutional and that the decree of the Sangamon circuit court should be affirmed. *Reif et al.* v. *Barrett, Auditor of Public Accounts, et al.,* (Ill. 1934) 188 N.E. 889.

In the State of Illinois the legislature is confined to three forms of taxation by virtue of the limitations of the State Constitution; these forms are: (1) property tax on a valuation basis; (2) occupation tax; and (3) franchise or privilege tax. *Bachrach* v. *Nelson,* 349 Ill. 579, 182 N.E. 909 (1932). Relying upon this Constitutional limitation, the appellants based their chief attacks against this Act on the ground that the Retailers' Occupation Tax was in reality an income tax, or a property tax, not levied on the valuation basis.