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Conflict of Laws - Status of Foreign Statute - Non-Recognition of Support Obligation

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CONFLICT OF LAWS—STATUS OF FOREIGN STATUTE—NON-RECOGNITION OF SUPPORT OBLIGATION—The State of California, Department of Mental Hygiene, brought suit in Texas against defendant, a California resident until his removal to Texas in 1954, to recover money expended by the state in support of defendant's mother, an incompetent inmate of a California state institution since 1944. California law requires an adult son to contribute to his parents' support[1] while a similar provision of the Texas law imposes such an obligation on a parent but not on a child.[2] In accordance with the applicable California statute of limitations,[3] the state sued for the monthly payments which had accrued during the four-year period immediately pre-

1 Cal. Welfare & Inst. Code Ann. (Deering, 1952) §6650.
2 Tex. Civ. Stat. (Vernon, 1952) art. 3196a.
3 Cal. Code Civ. Proc. (Deering, 1953) §345.

ceding the filing of suit. The trial court's judgment for the full amount claimed was reversed by the court of civil appeals, which held that the enforcement of the claim for the period after defendant moved to Texas would violate the public policy of Texas, and that the forum's two-year statute of limitations applied to that portion of the claim maturing before defendant's removal to Texas. On appeal, *held,* affirmed in part and reversed in part, three judges dissenting. California cannot by statute impose a continuing obligation on defendant which will be enforced for the period after the defendant became domiciled in Texas; but California may recover payments accruing while defendant was a California citizen and within four years of suit, as the California statute of limitations applies and maintenance of the suit with judgment for these accrued amounts is not against the public policy of Texas. *California v. Copus,* (Tex. 1958) 309 S.W. (2d) 227, cert. den. 356 U.S. 967 (1958).

Until recently the attitude of a state toward support obligations created by the statute of a sister state was manifested by the rule: "No state will directly enforce a duty to support created by the law of another state."[4] That this attitude has undergone a reformation is indicated by the adoption of the Uniform Reciprocal Enforcement of Support Act by a majority of the states, including both Texas and California.[5] Nevertheless, in the principal case the majority reasoned that to enforce the statute for the period after defendant became a resident of Texas would deprive him of equal protection of the laws. Since Texas law does not impose a comparable support obligation, it was felt that defendant would be denied equality with other Texas citizens if the California obligation was enforced against him by the Texas court.[6] This argument, however, apparently fails to recognize that the constitutional requirement of equal protection applies only to all persons similarly situated. Defendant, having previously been a California resident, is not similarly situated with Texas citizens who have never resided elsewhere and who have never been subject to the laws of another jurisdiction. Thus for the Texas court to hold defendant liable for the California support obligation after his removal to Texas would not seem to constitute a denial of equal protection of the laws. As pointed out by the dissent, a reasonable classification of defendant under California law should not become unreasonable merely by virtue of his crossing state

4 CONFLICT OF LAWS RESTATEMENT §458 (1934).

5 Ehrenzweig, "Interstate Recognition of Support Duties," 42 CALIF. L. REV. 382 (1954); Tex. Civ. Stat. (Vernon, 1950, Supp. 1957) art. 2328b; Cal. Code Civ. Proc. (Deering, 1953) §1650 et seq. This action could have been brought within the terms of the Uniform Act, but California made no attempt to comply with the act.

6 This same reasoning controlled the decision in Commonwealth of Pennsylvania ex rel. Department of Public Assistance, Mercer County Board of Assistance v. Mong, 160 Ohio St. 455, 117 N.E. (2d) 32 (1954), brought under the Uniform Act. The case is distinguishable from the principal case in that the defendant was not domiciled in the imposing state when the obligation arose. For a criticism of the basis for the decision, see 102 UNIV. PA. L. REV. 938 (1954).

lines.[7] Setting aside this constitutional objection, it is clear that a valid judgment for support is not vitiated by the obligor's removal from the state rendering it.[8] In furtherance of the doctrine of comity, there seems to be no reason for drawing a distinction for a statutory obligation, and the decision of the Texas court is open to some question. In addition, the legislative policy of Texas as evidenced by adoption of the Uniform Act and more recently by imposition of a secondary obligation of support upon an adult son[9] would have been effectuated through enforcement of the foreign statute.[10]

While a convincing argument can thus be made to justify enforcement of the California statute by Texas out of comity, a further argument can be advanced that its enforcement is required by the full faith and credit clause.[11] Cases such as the principal case have rarely arisen,[12] and consequently this constitutional issue has not been presented for decision. The Supreme Court has recognized that the term "public acts" as used in the full faith and credit clause includes statutory enactments,[13] and has held that statutes in certain selected areas are subject to the full faith and credit requirement. The extent to which the requirement may be broadened is not certain, but it has been indicated that in cases involving exclusive legislative jurisdiction in the foreign state, the Supreme Court will not uphold a refusal to enforce the foreign law if the full faith and credit issue is properly raised.[14] However, in the principal case both California and Texas might be recognized as having legislative jurisdiction, and with the exception of the workmen's compensation cases[15] the Supreme Court has avoided

[7] Principal case at 235.

[8] Sistare v. Sistare, 218 U.S. 1 (1910).

[9] Tex. Civ. Stat. (Vernon, 1956) Prob. Code §423.

[10] And see Dainow, "Policy Problems in Conflicts Cases," 35 TEX. L. REV. 759 (1957), cited by both the majority and dissent to support the conclusion that the public policy of Texas did not bar this action.

[11] "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. CONST., art. IV, §1. Cf. Tennessee Coal, I. & R. Co. v. George, 11 Ga. App. 221, 75 S.E. 567 (1912), affd. 233 U.S. 354 (1914), where it was said that the full faith and credit clause of the Constitution, and the laws of Congress enacted pursuant thereto, require the courts of the several states to enforce any transitory cause of action created by a statute of a sister state, not opposed to the settled policy of the state wherein it is sought to enforce the cause of action.

[12] The principal case was a case of first impression in Texas, and the dissent indicated that it might very well be a case of first impression in the United States. A similar case came before the Supreme Court of Minnesota, however, in Commonwealth of Pennsylvania v. Tappan, 215 Minn. 22, 9 N.W. (2d) 18 (1943), in which the court decided that the foreign statute was not applicable to the defendant.

[13] Chicago & A. R. Co. v. Wiggins Ferry Co., 119 U.S. 615 (1887); Broderick v. Rosner, 294 U.S. 629 (1935); Hughes v. Fetter, 341 U.S. 609 (1951); Nadelmann, "Full Faith and Credit to Judgments and Public Acts," 56 MICH. L. REV. 33 (1957).

[14] Sumner, "The Status of Public Acts in Sister States," 3 U.C.L.A. L. REV. 1 (1955).

[15] Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943); Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622 (1947).

the choice of law problem presented by such a situation.[16] Therefore, it would be difficult to speculate on the success of the full faith and credit argument if it were presented in the setting of a support case, whatever its merits may be. It should be noted that the choice of law problem illustrated by the principal case has not been completely eliminated by the adoption of the Uniform Reciprocal Enforcement of Support Act, since the section of that act which purports to offer a solution is subject to constitutional attack,[17] and some states accordingly have altered it by amendment. To the extent that this problem will arise in the future, however, current public policy would seem to call for enforcement of the foreign support statute.

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[16] Sumner, "The Status of Public Acts in Sister States," 3 U.C.L.A. L. REV. 1 (1955).

[17] The controversial provision is §7, which gives the obligee an election to claim a duty of support imposed by the law of the state where the obligor was present during the period for which support is sought, or by the law of the state where the obligee was present when the failure to support commenced. For a discussion of the constitutionality of this provision, see Brockelbank, "Is the Uniform Reciprocal Enforcement of Support Act Constitutional?" 31 ORE. L. REV. 97 (1952).