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DIVORCE - ALIMONY - ENFORCEMENT AND INTERPRETATION OF FOREIGN DECREE FOR PAYMENT OF ALIMONY IN INSTALLMENTS

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DIVORCE — ALIMONY — ENFORCEMENT AND INTERPRETATION OF FOREIGN DECREE FOR PAYMENT OF ALIMONY IN INSTALLMENTS — Plaintiff brought suit in Georgia to enforce a final divorce decree obtained by her husband in Florida. The decree granted plaintiff $30 a week for the support of herself and three minor children placed in her custody. It further provided that if the plaintiff should remarry, the weekly payments should be reduced to $22.50, and that when any child married or reached maturity, the weekly payments should be reduced $7.50 for each such child. Plaintiff sought to recover $30 per week for 129 weeks. Her husband claimed that plaintiff should recover only $7.50 per week for her own support because she had abandoned their children and he had assumed full responsibility for their support. The lower court found for the defendant. *Held*, one judge dissenting, judgment affirmed since a proper construction of the Florida decree required the mother to retain custody of the children to be entitled to receive the payments for their support. *Dyal v. Dyal*, 65 Ga. App. 359, 16 S. E. (2d) 53 (1941).

The enforceability of equity decrees of one state in the law courts of another is well settled.[1] Among the equity decrees recognized as creating debts, and therefore enforceable under the full faith and credit clause,[2] are decrees for installment payments of alimony.[3] To be amenable to extrastate enforcement the decree must be final, and when the court handing down the decree retains a power of modification in order to deal adequately with later changes of cir-

[1] Pennington v. Gibson, 16 How. (57 U. S.) 65 (1853); Post & La Rue v. Neafie, 3 Caines (N. Y.) 22 (1805); Evans v. Tatem, 9 Serg. & R. (Pa.) 252 (1823).

[2] U. S. Constitution, Art. IV, § 1.

[3] Barber v. Barber, 21 How. (62 U. S.) 582 (1858). But see Audubon v. Shufeldt, 181 U. S. 575, 21 S. Ct. 735 (1900), and Wetmore v. Markoe, 196 U. S. 68, 25 S. Ct. 172 (1904), to the effect that the decree for the future payment of alimony does not create a debt dischargeable under the Federal Bankruptcy Act.

cumstance, the decree has been held not to be final.[4] However, the power of modification does not render the decree unenforceable provided such power does not extend to past-due installments.[5] Although the principal case does not discuss the problem of the decree's finality as affecting the Georgia court's power to enforce the Florida decree, it apparently takes the latter view since the Florida court has held that an overdue installment of alimony is not subject to modification.[6] But even if the Georgia court can enforce the Florida decree, it certainly cannot modify the decree as to the past-due installments in question unless the Florida court could do so.[7] If the Florida court had retained such power the Georgia court would be powerless to enforce it, because the decree would not be final. The majority of the court in the principal case denied that a modification of the Florida decree was being effected.[8] Relying on the dual premise that the same defenses are available to the husband in Georgia as would be available in Florida,[9] and that the Florida law courts will recognize equitable defenses,[10] the court reaches its decision through an interpretation of the foreign decree. The dissent looked upon such an interpretation as equivalent to modification, and inconsistent with the full faith and credit clause. The dividing line between "interpretation" and "modification" is often rather blurred but it is apparent that the Florida court intended that full payment to the wife should

[4] Lynde v. Lynde, 181 U. S. 183, 21 S. Ct. 555 (1900); and Israel v. Israel, (C. C. A. 3d, 1906) 148 F. 576. See Jacobs, "The Enforcement of Foreign Decrees for Alimony," 6 LAW & CONTEM. PROB. 250 (1939), where it is pointed out that many state courts mistakenly believed that the Lynde case overruled Barber v. Barber, 21 How. (62 U. S.) 582 (1858), which provided for extrastate enforcement of the installment alimony decree.

[5] Sistare v. Sistare, 218 U. S. 1 at 16-17, 30 S. Ct. 682 (1910). But see Holton v. Holton, 153 Minn. 346, 190 N. W. 542 (1922), which went farther in holding that even when the decree is subject to modification as to accrued installments, it is entitled to enforcement in another state so long as no application for such modification has been made.

[6] Duss v. Duss, 92 Fla. 1081, 111 So. 382 (1926), so held at least where the decree is final and not interlocutory. A Florida decree of alimony was enforced in a suit for back payments despite retention of the power to modify, where there was no modification of the overdue part, in Roberts v. Roberts, 174 Ga. 645, 163 S. E. 735 (1932).

[7] Even where the court which framed the decree has the power of modification, the court of another state probably will not modify the decree. Barns v. Barns, 9 Cal. App. (2d) 427, 50 P. (2d) 463 (1935). Hence the latter certainly should not do so where the first court has no power to modify. In Little v. Little, 146 Misc. 231 at 233, 262 N. Y. S. 654 (1932), where it was held that the sections of the Civil Practice Act which authorized New York courts to modify provisions for the payment of alimony were not broad enough to permit the court to modify a foreign decree, the court said: "The proper remedy of the defendant would seem to be to obtain a modification in the courts of the State in which the judgment of divorce was originally rendered."

[8] Principal case, 16 S. E. (2d) at 58.

[9] Hampton v. M'Connell, 3 Wheat. (16 U. S.) 234 (1818); and Britton v. Chamberlain, 234 Ill. 246, 84 N. E. 895 (1908).

[10] Hobbs v. Chamberlain, 55 Fla. 661, 45 So. 988 (1908). See generally, Levin v. Gladstein, 142 N. C. 482, 55 S. E. 371 (1906).

be conditioned upon her maintaining the custody of the children. Any difficulty could have been avoided if the Florida court in framing the decree had made specific provision for the contingency of the wife's giving up the custody of the children; then interpretation by the Georgia court, verging on modification, would have been unnecessary.[11]

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[11] See Desvernine, "Grounds for the Modification of Alimony Awards," 6 LAW & CONTEM. PROB. 236 at 248 (1939). The author points out that much agitation for the modification of decrees would be quieted were the original awards framed with a view to the changes that were reasonably certain to occur. The essential soundness of the decree would still be preserved. While the suggestion is in regard to the modification of the decree by the court which rendered it, it would seem to be equally applicable to the enforcement of the decree by the courts of a sister state.