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Article 12

Domestic Relations - Denial of Equitable Enforcement of Foreign Alimony Decree

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In the case under discussion the Court distinguished for the first time between solicitation by drummers and solicitation by a branch office. The decision acknowledges the tax immunity where drummers are employed but points out that the advantages gained by employing a local branch office make transactions consummated by the use of such a branch office local in nature. The Supreme Court decision was based on logic and common sense for it cited no supporting cases. By maintaining a branch office, the Massachusetts corporation intended to keep close to the Illinois trade. The trade might think the seller too remote to transact business if solicitors were the sole means of contact between the vendor and the vendees. The local office also affords service to machines after they are in the consumers' hands and stands ready to offer engineering and technical advice. After the foreign corporation has gained the confidence of its customers through its local operations and has received the protection of the state, there is no reason why it should not bear the burden of a local business.

Norton Company v. Department of Revenue of the State of Illinois stands as a new development in the application of the *Dilworth* case inasmuch as it upholds a tax on solicitation through a branch office. The case also exemplifies three views as to what constitutes interstate commerce. The majority opinion holds the middle ground. The conservative view is expressed in Reed's dissent that only proceeds from direct sales should be taxed and the liberal view in Justice Clark's dissent which extended the reasoning of the majority of the Court to apply to all types of transactions carried on by the Norton Company. It would seem that despite mechanical or artificial distinctions sometimes made to arrive at decisions as to the validity or invalidity of particular taxes, the decisions are predicated on practical judgment as to the likelihood of the tax being used to place interstate commerce at a competitive disadvantage.

DOMESTIC RELATIONS–DENIAL OF EQUITABLE ENFORCEMENT OF FOREIGN ALIMONY DECREE

Plaintiff recovered a New York decree for divorce and alimony payable in installments, and sought to enforce it in Illinois. While the plaintiff was allowed to set up the past due installments as a foreign judgment and recover same as a debt, it was held that equitable relief, by way of civil contempt for failure to pay future alimony installments, was properly denied. *Tailby v. Tailby*, 342 Ill. App. 664, 97 N.E. 2d 611 (3d Dist., 1951)

The *Tailby* decision is the third case to be decided in Illinois as to whether equity will enforce a foreign alimony decree. The first was *Rule*

141 (1889); Asher v. Texas, 128 U.S. 129 (1888); Carson v. Maryland, 120 U.S. 502 (1887). Contra: Re Rudolph, 2 Fed. 65 (C.C. Nev., 1880); Dunston v. City of Norfolk, 177 Va. 689, 15 S.E. 2d 86 (1941); Collier v. Burgin, 130 N.C. 632, 41 S.E. 874 (1902).

v. Rule[1] wherein plaintiff sought to enforce her Nevada decree for periodic alimony. The authorities being divided on the question and it being one of first impression in Illinois, the court felt free to choose the rule more in accord with principles of equity and justice and granted the plaintiff equitable relief. In 1949 the Illinois Supreme Court considered *Clubb v. Clubb*.[2] Plaintiff there sought to have her English decree for divorce and alimony established and enforced by equitable means in Illinois. The court held that the full faith and credit clause applied only to judgments of sister states and not to judgments of foreign countries, and that the principle of comity did not require that the English decree be recognized. The court further said that "jurisdiction of courts of equity to determine divorce cases and *all matters relating thereto* is conferred only by statute. . . ."[3] Because the Illinois divorce statute does not provide for equitable relief in these instances,[4] such remedies are not available.

The decision in the *Tailby* case summarily sidestepped *Rule v. Rule*, although the latter was directly in point, and based its holding on the statement in the *Clubb* case that divorce proceedings and "all matters relating thereto" are purely statutory. The authorities for the above statement cited in the *Clubb* case are three decisions of the Illinois Supreme Court: *Arandt v. Arandt*,[5] *Smith v. Smith*,[6] and *Smith v. Johnson*.[7] *Smith v. Johnson*, the first case to consider specifically the question of the extent of equitable jurisdiction in divorce matters, merely said that divorce proceedings are statutory; there was no mention of the fact that "all matters relating thereto" are also limited by statute. The court, in *Smith v. Smith*, added the phrase "all matters relating thereto" which was subsequently included in the *Arandt* and *Clubb* cases. It is submitted that this additional phrase was erroneous. In *Smith* v. *Johnson*, the parties and the court conceded that equity would have general jurisdiction, apart from the statute, in matters concerning the welfare of children. If the court has this general equity power, the additional phrase in *Smith v. Smith* seems wrong, especially as *Smith v. Johnson* was cited as authority. Furthermore, other Illinois Supreme Court decisions, while reiterating the general rule and citing *Smith v. Smith* as authority, were confined to the sole proposition that jurisdiction in divorce suits is purely statutory. They did not state that the court has no equity jurisdiction over "all matters relating there-

[1] 313 Ill. App. 108, 39 N.E. 2d 379 (2d Dist., 1942).
[2] 402 Ill. 390, 84 N.E. 2d 366 (1949).
[3] 402 Ill. 390, 400, 84 N.E. 2d 366, 371 (1949). Italics by the writer.
[4] Ill. Rev. Stat. (1949), c. 40.
[5] 399 Ill. 490, 78 N.E. 2d 272 (1948).
[6] 334 Ill. 370, 166 N.E. 85 (1929).
[7] 321 Ill. 134, 151 N.E. 550 (1926).

to."[8] It appears, then, that the statement that all matters relating to divorce are limited by statute, is merely dictum. What is then left is the rule that divorce proceedings alone are purely statutory.

However, this rule is not applicable in the *Tailby* case. It seems to be self-evident that a suit on a foreign alimony decree is not a suit for divorce although it may be a "matter relating thereto." The rights of the parties and the merits of the case have already been adjudicated under the statutes of the divorcing court, and the successful party is merely seeking the enforcement of his or her rights. Why, then, should the court be concerned with the provisions of its own domestic divorce statute? The divorce statute of the forum has been held not to be applicable to a suit on a foreign alimony decree, as such a proceeding is not a suit for divorce.[9] Under the doctrine of *Williams v. North Carolina*,[10] the divorce of one state must be given full faith and credit by all other states, and only the jurisdiction of the divorce court may be collaterally attacked. Furthermore, the *Tailby* case is unique in its solution of the problem as neither the *Rule* case nor the cases from other states have concerned themselves with the question of whether the equity court has general jurisdiction over matters relating to divorce.[11]

The cases in other states concerning the question of equitable relief for foreign alimony decrees fall under three theories—two denying and one granting relief. Equitable relief is denied on one hand, because there is an adequate remedy at law permitting recovery of the past due alimony installments,[12] or on the other hand, because the "full faith and credit clause" has no application to the form of remedies to be afforded to foreign judgments.[13]

Those cases which grant equitable relief base their decisions on the fact that alimony is more than a debt—its basis is the duty of the husband to support his wife. The state being an interested party, the courts, in furtherance of public policy, will grant enforcement of this duty by the ex-

[8] Marcy v. Marcy, 400 Ill. 152, 79 N.E. 2d 207 (1948); Ward v. Sampson, 395 Ill. 353, 70 N.E. 2d 324 (1946); McFarlin v. McFarlin, 384 Ill. 428, 51 N.E. 2d 520 (1943); Johnson v. Johnson, 381 Ill. 362, 45 N.E. 2d 625 (1942); Anderson v. Anderson, 380 Ill. 435, 44 N.E. 2d 54 (1942).

[9] Mayer v. Mayer, 154 Mich. 386, 117 N.W. 890 (1908); Wood v. Wood, 7 N.Y. Misc. 579, 28 N.Y. Supp. 154 (C.P., 1894).

[10] 325 U.S. 226 (1945).

[11] Consult cases collected in notes 12, 13 and 14, infra.

[12] Worsley v. Worsley, 76 F. 2d 815 (App. D.C., 1935), cert. denied 294 U.S. 725 (1935); Lynde v Lynde, 162 N.Y. 405, 56 N.E. 979 (1900), aff'd 181 U.S. 183 (1901); Weidman v. Weidman, 274 Mass. 118, 174 N.E. 206 (1931); Mayer v. Mayer, 154 Mich. 386, 117 N.W. 890 (1908); Kossower v. Kossower, 142 Atl. 30 (N.J., 1928).

[13] Bullock v. Bullock, 52 N.J. Eq. 561, 30 Atl. 676 (1894).

traordinary methods of equity.[14] This theory which underlies the *Rule* decision is supported by the numerical weight of authority and the trend of recent cases.

The *Tailby* case appears to be on thin ground, while the *Rule* case is the better reasoned and the more modern view. Although the judge in the *Tailby* case was not bound to follow the view of the Second District in the *Rule* case,[15] the reasoning in *Rule v. Rule* should have been given more than a mere passing reference. With the conflict in the appellate court level between the *Rule* and *Tailby* decisions, a final determination by the Illinois Supreme Court is most desirable. Affirmance of the theory of *Rule v. Rule* would seem preferable.

LABOR LAW—INSULTING LANGUAGE ON THE PICKET LINE

Defendant while acting as a picket was arrested for singing a song which referred to workers who refused to respect the picket lines as "scabs" and "whores." Her defense was predicated on her constitutional right of free speech. The Supreme Court of Virginia in upholding her conviction declared constitutional a unique statute[1] making it a crime to use insulting language which induces one to refrain from working. *McWhorter v. Commonwealth*, 191 Va. 857, 63 S.E. 2d 20 (1951).

Some thirty-three states have enacted statutes which protect the right to work.[2] Constitutional attacks on these statutes predicated upon equal pro-

[14] Bruton v. Tearle, 7 Cal. 2d 48, 59 P. 2d 953 (1936); Creager v. Superior Ct., 126 Cal. App. 280, 14 P. 2d 552 (1932); German v. German, 122 Conn. 155, 188 Atl. 429 (1936); Ostrander v. Ostrander, 190 Minn. 547, 252 N.W. 449 (1934); Fanchier v. Gammill, 148 Miss. 723, 114 So. 813 (1927); Cousineau v. Cousineau, 155 Ore. 184, 63 P. 2d 897 (1936); Johnson v. Johnson, 196 S.C. 474, 13 S.E. 2d 593 (1941); Shibley v. Shibley, 181 Wash. 166, 42 P. 2d 446 (1935). For a further discussion of this problem and other cases falling under notes 12, 13 and 14, consult, Decree for alimony rendered in another state or foreign country as subject to enforcement by equitable remedies or by contempt proceedings, 97 A.L.R. 1197 (1935); 109 A.L.R. 652 (1937).

[15] Decisions of one Illinois Appellate Court are not binding upon another. Hughes v. Bandy, 336 Ill. App. 472, 84 N.E. 2d 664 (1949), aff'd 404 Ill. 74, 87 N.E. 2d 855 (1949).

[1] "It shall be unlawful for any person singly or in concert with others to interfere or attempt to interfere with another in the exercise of his right to work or enter upon the performance of any lawful vocation, by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed towards such person to induce or attempt to induce him to quit his employment." Va. Code (1950) c. 229, § 40–64.

[2] States not having such statutes are: Arizona, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Montana, New Mexico, North Carolina, Pennsylvania, Tennessee, Utah, and Wyoming. Interfering with another's right to work was not indictable at common law. State v. McGee, 80 Conn. 614, 69 Atl. 1059 (1908).