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DRL 245: Contempt Unavailable until Foreign Judgment Has Been Entered in New York

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"threshold," then logical consistency mandates that it too be waived by the failure to make a timely objection.

DOMESTIC RELATIONS LAW

DRL 245: Contempt unavailable until foreign judgment has been entered in New York.

Since 1965, the family court has had the power to enforce an order or decree granting alimony or support entered by a court of competent jurisdiction outside the state of New York,[167] irrespective of the grounds upon which it was rendered.[168] By implication, the supreme court possesses concurrent jurisdiction over applications to enforce such decrees and orders.[169] Nevertheless, a recent case, *Cooperman v. Cooperman*,[170] indicates that other aspects of the pre-1965 enforcement procedure have remained intact.

In *Cooperman*, the plaintiff brought an action in the supreme court to have the defendant punished for contempt because of his failure to make alimony payments under a Mexican divorce decree. The court reasoned that, although the 1965 amendment to the Family Court Act broadened the jurisdiction of the supreme court to include decrees rendered on non-New York grounds, it in no way altered or abrogated the enforcement procedure contained in DRL 245.[171] Thus, in accordance with a number of preamendment decisions,[172] the *Cooperman* court concluded that the remedy of contempt was available only after the foreign decree had been reduced to a judgment of the courts of this state.

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167 N.Y. FAMILY CT. ACT § 466(c) (McKinney supp. 1965).

168 Matter of Seitz v. Drogheo, 21 N.Y.2d 181, 234 N.E.2d 209, 287 N.Y.S.2d 29 (1967). Prior to the 1965 amendment, the out-of-state decree could be enforced or modified only if it was entered on grounds recognized in New York. *See* Griffin v. Griffin, 275 App. Div. 541, 90 N.Y.S.2d 596 (3d Dep't 1949); Kelley v. Kelley, 275 App. Div. 887, 90 N.Y.S.2d 178 (4th Dep't 1949) (mem.); *see also* Boissevain v. Boissevain, 252 N.Y. 178, 169 N.E. 130 (1929) (enforcement provisions of CPA § 1172 not applicable to matrimonial decrees of foreign countries).

169 Matter of Seitz v. Drogheo, 21 N.Y.2d 181, 234 N.E.2d 209, 287 N.Y.S.2d 29 (1967). In *Seitz* it was held that the broadening of the family court's power to encompass decrees entered on non-New York grounds was a "new class of actions and proceedings" within the meaning of the state constitution. N.Y. CONST. art. VI, § 7(c) (1962). Hence, the jurisdiction to entertain enforcement proceedings automatically vested in the supreme court. *Cf.* Thrasher v. United State Liab. Ins. Co., 19 N.Y.2d 159, 225 N.E.2d 503, 278 N.Y.S.2d 793 (1967).

170 62 Misc. 2d 745, 309 N.Y.S.2d 683 (Sup. Ct. N.Y. County 1970).

171 DRL 245 is identical to CPA 1172. FOURTH REP. 392. Hence, the latter provision should facilitate construction of the former.

172 *See, e.g.*, Griffin v. Griffin, 275 App. Div. 541, 90 N.Y.S.2d 596 (3d Dep't 1949); Chamberlain v. Chamberlain, 32 Misc. 2d 308, 222 N.Y.S.2d 662 (Sup. Ct. Kings County 1961).