

Support and Maintenance--New York Uniform Support of Dependents Law Held Constitutional (Landes v. Landes, 1 N.Y.2d 358 (1956))

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not only from the lawful claims of third persons having title paramount to the lessor, and the unlawful entry of the lessor, but also from any interference by the landlord with the tenant's leasehold rights. Therefore, the giving of the option was an act which the landlord was not legally bound to do, and hence, a breach of the covenant. It would then appear that the conclusion of the minority is logical. Public policy, however, would seem to require the Court's decision. To hold otherwise might deter landlords from negotiating with the City and curtail operation of the statute²⁰ where a leasehold interest exists. However, the case should be strictly limited and freely distinguished.



SUPPORT AND MAINTENANCE — NEW YORK UNIFORM SUPPORT OF DEPENDENTS LAW HELD CONSTITUTIONAL.—A proceeding was commenced in California under the California Reciprocal Enforcement of Support Act by a mother, resident of California, against her former husband, resident of New York, to enforce support of their minor child. The petition was forwarded to the New York Domestic Relations Court. Pursuant to the reciprocity provisions of the New York Uniform Support of Dependents Law that court ordered respondent to make support payments by depositing specified sums into court. On appeal, respondent attacked the procedure as unconstitutional. In affirming the order granting support, the Court *held* that the procedure did not violate the compact clause, the due process clause or the equal protection clause of the Federal Constitution. *Landes v. Landes*, 1 N.Y.2d 358, 135 N.E.2d 562 (1956).

Prior to the enactment of reciprocal support legislation the remedies available to a dependent where an obligor left the jurisdiction were cumbersome, expensive, and rarely if ever accomplished the desired social ends. In the main, criminal liability was ineffective. Although a husband-father could be prosecuted under certain circumstances,¹ the result of such a prosecution was merely an added financial burden upon the state. Often, the cost of extradition discouraged prosecution.²

The effectiveness of the civil remedies available to a dependent was usually limited to those cases where the obligor could be located

²⁰ N.Y.C. ADMIN. CODE § B15-30.0.

¹ N.Y. PEN. LAW §§ 50, 480.

² U.S. CONST. art. IV, § 2, cl. 2, provides for extradition of a felon "*who shall flee from justice.*" In many cases an obligor may not have fled from justice. He may have entered another state to secure employment. See Brockelbank, *The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A.B.A.J. 93, 94 (1951).

within the jurisdiction.³ Where the obligor had left the jurisdiction, the obligee could proceed by an action quasi in rem by sequestering the property of the obligor located in the state before judgment.⁴ In such cases, however, the decree would, necessarily, be limited to the value of the sequestered property. Where no property was available, and the absent obligor had established a new domicile, it was virtually impossible for a destitute dependent to obtain a support order because of the inability to acquire personal jurisdiction. Assuming, however, that a dependent was fortunate enough to obtain personal jurisdiction prior to the obligor's departure, and a support order was granted thereon, his condition was not improved to any great extent. Very often, the dependent lacked the necessary funds to pursue the obligor into another state. Even if the funds were available the order was entitled to full faith and credit only as to past accrued amounts.⁵

It was against this background that the New York Uniform Support of Dependents Law was enacted.⁶ Basically, the law is a simple two-state procedure enabling a dependent residing in one state to enforce support obligations against an obligor residing in another state without the necessity of acquiring a prior in personam judgment.⁷ Under the statute, a dependent may institute a proceeding in the county wherein he resides.⁸ Upon a finding that the responding state has a substantially similar or reciprocal law,⁹ the court certifies that the respondent cannot be served with process within the state and forwards the petition to the appropriate court of the responding

³ N.Y. CHILDREN'S Ct. ACT §§ 30-34; N.Y.C. DOM. REL. Ct. ACT §§ 91-159.

⁴ N.Y. CIV. PRAC. ACT §§ 232, 1171-a.

⁵ *Sistare v. Sistare*, 218 U.S. 1 (1910); *Barber v. Barber*, 62 U.S. (21 How.) 582 (1858); *Barber v. Barber*, 323 U.S. 77, 80 (1944) (dictum). Some state courts, however, have enforced decrees of future support through comity. See, e.g., *Rule v. Rule*, 313 Ill. App. 108, 39 N.E.2d 379 (1942); *Ostrander v. Ostrander*, 190 Minn. 547, 252 N.W. 449 (1934); *McKeel v. McKeel*, 185 Va. 108, 37 S.E.2d 746 (1946).

⁶ Laws of N.Y. 1949, c. 807.

⁷ "This act shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter." N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2118. In the case of *Morse v. Morse*, 3 Misc. 2d 163 (App. T. 1st Dep't 1956), the plaintiff had obtained a California divorce decree which provided for alimony of \$675 a month. The defendant failed to make payments and the plaintiff commenced proceedings under the California reciprocal support act. The Domestic Relations Court ordered the defendant, then a resident of New York, to make support payments of \$400 a month. In the present action the plaintiff sought a recovery for arrears of \$675 monthly up to the time the defendant began to pay \$400 monthly, and for accrued arrears of \$275 monthly since then. The court held, in giving judgment for the plaintiff, that the order of the Domestic Relations Court awarding \$400 a month to the plaintiff was not a bar to the present action.

⁸ N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2116(a).

⁹ *Id.* § 2115.

state.¹⁰ A summons¹¹ issues out of the court of the responding state.¹² If the respondent denies liability, the court of the responding state sends a transcript of the minutes to the court of the initiating state, showing the denials entered by the respondent.¹³ The court of the initiating state takes such proof as it deems proper and forwards a transcript of such proof to the court of the responding state.¹⁴ Both parties are granted the right to reply to each other's proof by depositions and to cross-examine witnesses by written interrogatories.¹⁵ If the court of the responding state finds that the petition is supported by the evidence it will issue an order directing the respondent to make support payments into court.¹⁶ The support payments are forwarded to the court of the initiating state which in turn channels the payments to the petitioner.¹⁷

Recognition of the social problem attempted to be remedied by such legislation has led forty-seven states to adopt the Uniform Reciprocal Enforcement of Support Act,¹⁸ a law substantially similar to the New York statute. The novel procedure involved in the operation of both reciprocal laws has subjected them to constitutional attack. In *Duncan v. Smith*¹⁹ the court held that since the act granted the same privileges to non-residents as it did to residents it does not violate Article IV, Section 10, of the Federal Constitution. The procedure affords an opportunity to both the petitioner and the respondent to be heard in open court, and, therefore, does not violate due process.²⁰ Since proceedings to enforce support have always been cognizable in equity, the right to trial by jury does not apply.²¹ Similarly, since the proceedings are civil rather than criminal in nature, no right of confrontation exists;²² notwithstanding the fact

¹⁰ *Id.* § 2116(c).

¹¹ For willfully failing to appear a respondent may be punished in the same manner for such a violation in any other action. *Id.* § 2116(j).

¹² *Id.* § 2116(d).

¹³ *Id.* § 2116(f).

¹⁴ *Id.* § 2116(g).

¹⁵ *Id.* § 2116(i).

¹⁶ *Id.* § 2116(k). A willful failure to comply with an order is punishable by contempt. *Id.* § 2116(m).

¹⁷ *Id.* § 2116(l), (p).

¹⁸ See table, 9A U.L.A. 92 (Supp. 1957). The statutes of Illinois and Iowa would seem to more closely resemble the New York law. See ILL. REV. STAT. c. 68, §§ 50-59 (1953); IOWA CODE ANN. §§ 252.1-252.9 (1946). Similar legislation is under consideration in the United Nations. See Contini, *The United Nations Convention on the Recovery Abroad of Maintenance*, 31 ST. JOHN'S L. REV. 1 (1956).

¹⁹ 262 S.W.2d 373 (Ky. 1953).

²⁰ *Whittlesey v. Bellah*, 130 Cal. App. 2d 182, 278 P.2d 511, cert. denied, 350 U.S. 821 (1955); *Smith v. Smith*, 125 Cal. App. 2d 154, 270 P.2d 613 (1954); *Proctor v. Sachner*, 143 Conn. 9, 118 A.2d 621 (1955).

²¹ *Commonwealth ex rel. Warren v. Warren*, 204 Md. 467, 105 A.2d 488 (1954).

²² *Duncan v. Smith*, 262 S.W.2d 373 (Ky. 1953); *Freeman v. Freeman*, 226

that in some jurisdictions the respondent may be required to post a bond or that he may be put on probation.²³ Furthermore, the civil nature of the proceeding precludes objection on the ground that the law is *ex post facto* in violation of Article I, Section 10, of the Constitution.²⁴ The question of whether the law impairs the obligation of contracts was decided in *Smith v. Smith*.²⁵ The action was commenced by a divorced wife against her ex-husband for support of their minor children. In granting an order of support, the court held that a divorce decree is not that type of contract contemplated by the Federal Constitution. In addition to the above objections, the compact clause of the Federal Constitution has been offered as an argument against constitutionality. It must be observed, however, that the reciprocal law bears no aspect of a compact between the states since each state is free to repeal or amend the law at any time.²⁶

In the instant case, the Court of Appeals passed upon the constitutionality of the New York law for the first time; and, in disposing of the respondent's arguments, the Court adopted the same reasoning heretofore used in other jurisdictions. That such legislation is not prohibited by specific constitutional provisions has been pointed out by decisions in the various cases upholding its validity. The factual pattern of the present case illustrates the value of reciprocal support laws, but in a larger sense it demonstrates the propriety of reciprocal legislation which erases artificial barriers erected by state lines. Similar legislation in other fields will promote the ends of justice by eliminating the jurisdictional difficulties raised by a federal form of government.



TORTS — LIBEL AND SLANDER — ORAL EXTEMPORANEOUS REMARKS OVER TELEVISION HELD LIBELOUS. — Plaintiff brought an action for libel alleging extemporaneous defamatory statements over defendant-television broadcasting station by defendant-master of ceremonies as to his being deeply in debt. Defendants made a motion to dismiss contending that a complaint which alleges false oral remarks does not state a cause of action in libel. The Court in denying the

La. 410, 76 So. 2d 414 (1954); Commonwealth *ex rel.* Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954).

²³ See *Freeman v. Freeman*, *supra* note 22. See also N.Y. UNIFORM SUPPORT OF DEPENDENTS LAW § 2116(k).

²⁴ *Smith v. Smith*, 131 Cal. App. 2d 764, 281 P.2d 274 (1955).

²⁵ 131 Cal. App. 2d 764, 281 P.2d 274 (1955).

²⁶ See *Duncan v. Smith*, *supra* note 22. See also Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?*, 31 ORE. L. REV. 97, 98 (1952).