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Uniform Support of Dependents Law

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for so long a period. Furthermore, it is fair to infer that actual proof of the original ouster has become lost through the lapse of time.

It is to be noted that the new Section 41-a applies to past, present and future occupancies but the legislature in its endeavor to remove the source of grievance has not lost sight of the rights of the co-tenants out of possession. Their rights are adequately guarded by the safety clause as found in sub-section (2) which limits the retroactive application of the new statute so that a tenant in common who has been out of possession for more than fifteen years has a reasonable time to assert his rights and thereby prevent the tenant in possession from obtaining a title by adverse possession.

The statutory amendment is a recognition by the legislature of the need for freer and less complicated rules of law relating to transfers of real property and to that end it is submitted that the new amendment will facilitate the clearing of titles.

JOSEPH C. BRUEN.

UNIFORM SUPPORT OF DEPENDENTS LAW.—Every year over a hundred thousand men desert their wives and families. There are at least a million deserted dependents in the United States, three-quarters of whom are children under sixteen.[1] The direct cost of supporting these dependents is over fifty million dollars. Indirectly many more millions are spent fighting the resulting crime, juvenile delinquency, illness and allied ills.[2] Add to this what price you will for the human misery which always accompanies the disintegration of a home and some idea of the import of this social cancer will be realized.

Fortunately there are some restrictions on the impunity with which husbands may abandon their families. Applicable within New York State there are laws forming a tight network of protection for wives and children. Chiefly administered by the Children's Court and the Domestic Relations Court of New York City, their jurisdiction unfortunately ends at the state and city line.[3] When once the delinquent husband had fled the state, they were powerless. To be sure there was one weapon available to the authorities but so cum-

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[1] According to figures obtained from the Abandonment Bureau of the Kings County District Attorney's office, in 1948 in Brooklyn alone 1,558 women and children were abandoned.

Number of children under 16	977
Number of pregnant wives	22
Number of non-pregnant wives	559

Not all cases were reported.

[2] Woodbury, *Runaway Husbands,* LADIES HOME JOURNAL, September 1949, p. 34.

[3] N. Y. CHILDREN'S CT. ACT §§ 30-34; N. Y. DOM. REL. CT. ACT §§ 91-159.

bersome and ineffective did it prove that it was rarely used. Under Sections 50 and 480 of the Penal Code, abandonment in certain cases was made a felony for which the errant husband could be criminally extradited,[4] tried, and if convicted, sentenced to jail.[5] The expense of this method was prohibitive for it necessitated sending police officers to other states. Even the prohibitive cost might not have been a deterrent, if at this point any concrete relief, other than punitive, could have been evolved. Unfortunately it could not, and the futility of criminal over civil laws was amply demonstrated, for now in addition to having as public charges the wife and children, we also had the husband. Understandably the courts were reluctant to sentence husbands to jail and frequently they were released upon their promise to support their dependents; a promise easily made and soon forgotten.

Amazingly enough this deplorable state of affairs was allowed to exist unchecked until 1948, at which time the New York State Legislature took the first faltering step in a new approach to remedy the evil. By Chapter 790 of the Laws of 1948 which added Section 30-b of the Children's Court Act and Section 91-a of the Domestic Relations Court Act, the evil was summarily ended by conferring additional jurisdiction and powers upon all Children's Courts and the Family Court of the City of New York in support proceedings against persons residing in other states and territories having substantially similar or reciprocal laws.[6]

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[4] N. Y. PENAL CODE § 50 makes abandonment of a pregnant wife a felony. N. Y. PENAL CODE § 480 makes abandonment of children under sixteen a felony.

[5] N. Y. CRIM. CODE § 832.

[6] N. Y. CHILDREN'S CT. ACT § 30-b; N. Y. DOM. REL. CT. ACT § 91-a.

These two sections identical in tenor permitted the Children's Court within its territorial jurisdiction and the Family Court within the city, to take testimony in all proceedings to compel support of a wife, child and/or poor relative residing within the territorial jurisdiction of the court in any case where the person legally liable therefor resides in a state or territory of the United States having substantially similar or reciprocal laws. In such cases the court may forward transcripts of the testimony taken, all other pertinent reports, and its recommendation, to the appropriately empowered official in the other state or territory having authority to institute support proceedings. This official represents the dependent in court and having due regard for the circumstances of the various parties, the court may order the respondent to support his dependents. The respondent was given the right to cross-examine by deposition or otherwise, any person whose testimony or report has been forwarded in such proceeding.

Conversely the sections also provided that upon the petition of a wife, child and/or other poor relative, the corporation counsel or other official having power and authority to initiate and prosecute support proceedings' action on behalf of such wife, child and/or poor relative residing in any state or territory of the United States having substantially similar or reciprocal laws, in any case where the person legally liable therefor resides within the territorial jurisdiction of the court, the court could order the respondent to support his dependents. The personal appearance of such petitioner was unnecessary but transcripts of testimony and copies of reports made in connection with the

From a substantive viewpoint these two amendments probably could have accomplished their purpose. However, they were subject to two major criticisms. As amendments or additions to the Children's Court Act and the Domestic Relations Court Act, they, of course, had to be viewed in terms of the entire Act. No problem was presented when the petitioner was a resident of New York and brought her action there, for probably the reports required by Sections 113, 114, 115 and 116 of the Domestic Relations Court Act could be forwarded to the other state under the portion of the amendments which authorized the forwarding of exemplified transcripts and reports. A different problem however was presented when the petitioner was not a resident for then there existed no patent authorization for the New York court to accept the reports of a foreign court in lieu of the interview of petitioner required by Section 113, the visit to petitioner's home by a probation officer required by Section 114, the investigation after the interview of all previous records required by Section 115, the conference with other agencies required by Section 116 and finally the effort at conciliation required by Section 118.[7]

While possibly these procedural difficulties could have been remedied there was one other more serious objection to the amendments. By adding two sections to its existing law, New York had created a very clumsy model for the other states to follow. The previous paragraph pointed out a few difficulties which New York immediately encountered in construing the amendments. Multiply this by 48 and this advancement in social legislation would have been stillborn. What obviously was needed was a new, separate and uniform approach which could cut through the existing legal hodge-podge with the keenness of a surgeon's scalpel. In order then to obviate the possibility of interstate and intrastate conflict, and to provide a model act for others to copy, these two amendments were repealed in 1949, and in their stead was enacted the independent and comprehensive uniform act which is the law today.[8]

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petition were to be forwarded to the corporation counsel or official by the court of the state or territory wherein petitioner resided. The respondent had the right to cross-examine by deposition or otherwise any person whose testimony or report had been forwarded in such proceeding.

The court was further empowered in these proceedings only: to order interrogatories or depositions to be taken within and without the state; to compel support of children irrespective of a decree of legal separation of the parents or the dissolution of the marriage of the parents by a decree of divorce or annulment; to make any order necessary to carry out and enforce the provisions of this section as if the court had jurisdiction over the persons of the wife, child and/or poor relative seeking support and of the person legally liable therefor; to order costs and disbursements in the discretion of the court taxed against the respondent.

[7] N. Y. DOM. REL. CT. ACT §§ 113, 114, 115, 116, 118.

[8] Laws of N. Y. 1949, c. 807.

This Act, since it purports to be complete in itself, contains both substantive and procedural provisions. Section 2111 states its short title and purpose.[9] Section 2112 consists of definitions of terms used in the Act many of which are important, for they are defined to secure a broad coverage, and in some cases differ from previous definitions. For example the definition of a "child" in the Domestic Relations Court Act was one who actually or apparently was under sixteen;[10] a "child" under the new Act is one who actually or apparently is under seventeen.[11]

For the purpose of this law a husband is charged with liability for the support of his wife and children under seventeen and any other dependent whether they reside in the same or any other state having similar or reciprocal laws. In like manner where the husband is dead, missing or incapable of supporting his dependents, the liability for support falls upon the wife. Where the child is seventeen or over and is likely to become a public charge, the parents are also severally liable. Divorce or separation will not relieve the respondents of these responsibilities.[12]

Under this Act the court is given jurisdiction regardless of the state of last residence of either party and whether or not the respondent has ever been a resident of the initiating state or the dependent a resident of the responding state. The responding state is given the power to order the respondent to pay any reasonable and proper sum as justice requires. Providing the respondent is given a fair opportunity to answer, the courts of both states are given power to take testimony by deposition or written interrogatories, limiting the testimony where proper.[13]

Section 2115 permits this Act to be employed in any of the following cases: (a) Where the petitioner and respondent are residents of or domiciled or found in the same state. (b) Where petitioner resides in one state and the respondent is a resident of or is domiciled or found in another state having similar or reciprocal laws. (c) Where the respondent is not and never was a resident of or domiciled in the initiating state and the petitioner resides or is domiciled in such state and the respondent is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws. (d) Where the respondent was or is a resident of or domiciled in the initiating state and has departed or departs from such state leaving therein a dependent in need of and entitled to support under this Act and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.[14]

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[9] N. Y. UNCONSOL. LAWS § 2111.
[10] N. Y. DOM. REL. CT. ACT § 2.
[11] N. Y. UNCONSOL. LAWS § 2112.
[12] *Id.* § 2113.
[13] *Id.* § 2114.
[14] *Id.* § 2115.

Under Section 2116 a procedure is delineated which includes the method of payment. Punishment for violations of the Act are set at whatever the punishment is for a contempt of such court or probation order in any proceeding cognizable by such court.[15]

Section 2117 describes the duties of the petitioner's representative; 2118 provides that this Act shall be an additional remedy in no way impairing existing remedies, civil or criminal.[16] Section 2119 provides for a uniform interpretation, and finally Section 2120 orders that any invalidity adjudged by a court of competent jurisdiction shall apply only to that part of the Act involved leaving unaffected all other portions.[17]

Doubtlessly when the uniform Act is submitted to the acid test of judicial construction minor flaws will be discovered which will make revision necessary. Already one such flaw has been discovered, and it is a source of serious annoyance in the New York area at least. The definition of state in the Act read, ". . . shall mean and include any state and territory of the United States and the District of Columbia." Overlooked in this definition was the technical distinctions between territories of the United States and possessions. The Kings County District Attorney's office is already concerned over this problem for in New York's heterogeneous population, there are many former residents of United States possessions.

However, on the whole the Act is carefully drawn and except for one fact would undoubtedly solve the problem. The heart of the Act is its reciprocity; and it is immediately apparent that while there remains only one state yet to enact the law the remedy cannot be completely effective, for to that one state will flock all the errant husbands.[18] Indicated, therefore, is the strong and steady exertion of public opinion upon the various state legislators to hasten the passage of this salutatory law which various private and semi-public organizations, taking the initiative, have introduced in the respective states.

HAROLD V. MCCOY.

AN ACT TO AMEND THE CIVIL PRACTICE ACT IN RELATION TO JOINDER OF PARTIES AND CAUSES OF ACTION.—The New York Legislature, in March, 1949, enacted a law [1] amending the Civil Practice Act with respect to permissive joinder of parties, which was for-

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[15] *Id.* § 2116.
[16] *Id.* §§ 2117, 2118.
[17] *Id.* §§ 2119, 2120.
[18] So far the Act has been enacted in Indiana, Iowa, Oklahoma, Maine, New Hampshire, New Jersey, Illinois, Delaware and New York. In addition the Virgin Islands have adopted the law.

[1] Laws of N. Y. 1949, c. 147.