

# Interstate Recognition of Support Duties

## The Reciprocal Enforcement Act in California

Albert A. Ehrenzweig\*

IN 1951, the California legislature, in conformity with a large majority of states,<sup>1</sup> enacted the Uniform Reciprocal Enforcement of Support Act<sup>2</sup> to provide for California residents and to secure in California for nonresidents, a quick, inexpensive and efficient device to reach by out-of-state process a deserting provider,<sup>3</sup> in suits both for the assessment of support and the collection of support previously assessed.<sup>4</sup> Partly discarding, partly supplementing prior attempts at solving this problem by uniform legislation,<sup>5</sup> the Act has brought some relief. No longer is it necessary for the

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\* Professor, University of California School of Law, Berkeley. I am indebted to Mr. Charles K. Mills, Member of the California Bar, and Miss Helen Kelly, LL.B., for much valuable assistance.

<sup>1</sup> By the end of 1951, thirty states had adopted the Act. 9A U.L.A. 35 (1953 Supp.). Seven additional states joined within the first two years (*ibid.*), and ten states have statutes sufficiently similar to establish reciprocity required by the Act. *Id.* at 36. *Cf. In re Susman*, 116 Cal. App.2d 968, 254 P.2d 161 (1953) and *Hodges v. Hodges*, 202 Misc. 71, 108 N.Y.S.2d 286 (Dom. Rel. Ct. 1952) concerning reciprocity with New York.

<sup>2</sup> Cal. Stats. 1951, c. 694, effective Sept. 22, 1951, as CAL. CODE CIV. PROC. §§ 1650 *et seq.*, repealed and reenacted with amendments Cal. Stats. 1953, c. 1290. The amended Act has been adopted in 17 states. 9A U.L.A. 82 (1954 Supp.).

<sup>3</sup> The terms "provider" and "dependent" will be used in this paper instead of the terms "person to support" and "person to be supported" proposed by the Restaters. (RESTATEMENT, CONFLICT OF LAWS, § 457 (1934). The Uniform Act speaks of "obligor" and "obligee," and the Oregon law (Laws 1951, c.252, § 3) of "petitioner" and "respondent.")

<sup>4</sup> See Commissioners' Prefatory Note, 9A U.L.A. 53 (1954 Supp.). The jurisdictional provisions of the Act have been upheld as constitutional. *Duncan v. Smith*, —Ky.—, 262 S.W.2d 373 (1953).

<sup>5</sup> The Uniform Desertion and Non-Support Act, which is limited to criminal remedies, was approved in 1910 and adopted by 24 jurisdictions. By enacting, in 1949, the Uniform Support of Dependents Act (N.Y. Laws 1949, c. 807) New York became the leading state in a group which still adhere to this model in preference to the Uniform Act (*supra* note 1) here under consideration. The New York Act is limited to civil provisions and must import criminal enforcement from other statutes. *Cf. In re Susman*, 116 Cal. App.2d 968, 254 P.2d 161 (1953). The enumeration of persons entitled to the benefits of the Act in Section 22 of the Uniform Support of Dependents Act has invited narrow interpretation. *Cf. Vincenza v. Vincenza*, 197 Misc. 1027, 98 N.Y.S.2d 470 (Dom. Rel. Ct. 1950); *Brockelbank, Uniform Reciprocal Enforcement of Support Act*, 5 ARK. L. REV. 349 (1951). At the present time seven jurisdictions still adhere to the New York model. See *Brockelbank, supra*, at 350; Note, 33 B.U.L. REV. 217 (1953), and in general *Brockelbank, The Problem of Family Support: A New Uniform Act Offers a Solution*, 37 A.B.A.J. 93 (1951); Note, 1 SYRACUSE L. REV. 300 (1949). Only two states, Mississippi and Nevada, have so far refused to enact any reciprocal legislation. See Note, 23 U. OF CN. L. REV. 75 (1954). On the experience in one pioneer state see Rutherford, *Pennsylvania's Uniform Support Law*, 26 TEMP. L. Q. 223 (1953). *Cf. Commonwealth v. Shaffer*, —Pa.—, 103 A.2d 430 (1954). On current international endeavors see Contini, *International Enforcement of Maintenance Obligations*, 41 CALIF. L. REV. 106 (1953).

foreign dependent to follow, either personally or through counsel, the deserting provider to California, or for a California dependent to go for this purpose into another state. Once the state of the defendant's "presence" has been ascertained, expense and effort may now be reduced to that involved in filing a complaint in a court of the plaintiff's "initiating" state which, if able to "certify" the probable existence of a "duty of support," will forward the complaint to a court of the defendant's "responding" state.<sup>6</sup> Having obtained personal or quasi-in-rem<sup>7</sup> jurisdiction over the defendant, that court may order him to furnish support, and enforce compliance with that order.<sup>8</sup>

This paper is concerned with some of the conflicts problems which face a California court dealing with duties of support in original suits for the determination of such duties as well as in suits upon sister state judgments. These problems will be discussed not only under the Act but also under the law prior to and outside it, which has been brought into new focus by a recent decision of the Supreme Court of California.<sup>9</sup> For convenience, however, the terminology of the Act will be used throughout, including the distinction between duties "imposable" under the law, and those "imposed" by a judgment, of a sister state.

#### A. Duties "Imposable" under the Law of a Sister State: Choice of Law

According to the Restaters a duty of support in one state "is of no special interest to other states and . . . is not enforceable elsewhere under principles of the Conflict of Laws."<sup>10</sup> And the Uniform Act was in part designed to combat an alleged "indifference of many states which would refuse or neglect to enforce support in favor of out-of-state dependents on the theory, often only tacitly admitted, that one state has no interest in helping another state rid itself of the burden of supporting destitute families."<sup>11</sup>

<sup>6</sup> CAL. CODE CIV. PROC. § 1676.

<sup>7</sup> See, e.g., *Katz v. Katz*, —Mass.—, 116 N.E.2d 273 (1953); *George v. George*, 20 N.J. Misc. 41, 46, 23 A.2d 599, 602 (1941); in general GOODRICH, CONFLICT OF LAWS 427 (3d ed. 1949). In the proper case the court may seek jurisdiction upon its own initiative. Cf. CAL. CODE CIV. PROC. §§ 1680, 1681. There is respectable authority for the proposition that a state may, without violating due process, take *in rem* jurisdiction over a nonresident provider in a suit for maintenance, although any decree thus issued would not be entitled to enforcement in other states. See Holmes, J., in *Blackinton v. Blackinton*, 141 Mass. 432, 5 N.E. 830 (1886), cited and discussed with approval in *Haddock v. Haddock*, 201 U.S. 562, 579 (1906), and recently relied upon again by the Supreme Judicial Court of Massachusetts in *Wiley v. Wiley*, 328 Mass. 348, 103 N.E.2d 699 (1952), where jurisdiction without personal service within the state was affirmed in a suit *inter alia* for support, except for "a personal judgment . . . for the payment of money."

<sup>8</sup> CAL. CODE CIV. PROC. § 1685. Enforcement of support duties against the parents' estate will not be dealt with in this paper. Cf. 2 ARMSTRONG, CALIFORNIA FAMILY LAW 1122 (1953).

<sup>9</sup> *Dimon v. Dimon*, 40 Cal.2d 516, 254 P.2d (1953).

<sup>10</sup> RESTATEMENT, CONFLICT OF LAWS § 458, Comment (a) (1934).

<sup>11</sup> Commissioners' Prefatory Note, in HANDBOOK, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 291, 292 (1952).

Insofar as this statement refers to a refusal to take jurisdiction over support actions determinable under a foreign law, legal authority seems limited to cases of criminal prosecution,<sup>12</sup> and intrastate venue cases not here pertinent.<sup>13</sup> The overwhelming majority of courts, even in criminal cases, have assumed jurisdiction over the defendant without regard to the origin of his duty,<sup>14</sup> often stressing the fact that the judgment against the defendant does not serve primarily the defendant's punishment but the enforcement of future support.<sup>15</sup> In civil cases, too, this seems to be prevailing practice in any state desirous not to become a haven for deserting providers,<sup>16</sup> including California.<sup>17</sup> If, by making support duties "bind the obligor present in this State,<sup>18</sup> regardless of the presence or residence of the obligee," the Uniform Act is intended to affect jurisdiction, it has, then, merely restated prevailing law.<sup>19</sup> On the other hand, the choice of law provisions of the Act have decisively affected the substantive law of support.

The general choice of law rule applicable to duties of support is any-

<sup>12</sup> In a number of cases criminal jurisdiction over failure to support committed by defendants during their absence from the state has been denied because the state "could prescribe no rule of conduct" for anybody during his absence from the state. *State v. Hopkins*, 171 La. 919, 132 So. 501 (1931). See also *Commonwealth v. Herrick*, 263 Mass. 138, 160 N.E. 531 (1928); *In re Poage*, 87 Ohio St. 72, 100 N.E. 125 (1912). In the intrastate case of *State v. Christopher*, 267 S.W. 62 (Mo.App. 1924) the court reasoned that otherwise the plaintiff could choose her own court. The better and more widely held view, however, seems to be that "the husband may be charged with the offense of failure to provide in the state in which he has permitted his wife and children to live, or in which his misconduct has induced them to seek refuge," leaving open the question whether this would be equally true "if the wife's selection of a particular state for residence was merely because she could cause him greater difficulty under its criminal statutes . . ." *Osborn v. Harris*, 115 Utah 204, 211, 203 P.2d 917, 921 (1949). *Accord, e.g., State v. Wellman*, 102 Kan. 503, 170 Pac. 1052 (1918); *Ex parte Heath*, 87 Mont. 370, 287 Pac. 636 (1930).

<sup>13</sup> See, e.g., *People v. Rose*, 350 Ill. App. 338, 113 N.E.2d 75 (1953).

<sup>14</sup> See, e.g., *State v. James*, — Md. —, 100 A.2d 12 (1953); *State v. Fleming*, — Tenn. —, 260 S.W.2d 161 (1953); *Commonwealth v. Acker*, 197 Mass. 91, 83 N.E. 312 (1908), *infra* note 45.

<sup>15</sup> See, e.g., *In re Alexander*, 42 Del. 461, 36 A.2d 361 (1944).

<sup>16</sup> *Conwell v. Conwell*, 3 N.J. 266, 273, 69 A.2d 712, 716 (1949). See also *State v. Tetreault*, 97 N.H. 260, 85 A.2d 386 (1952).

<sup>17</sup> "California should not serve as an asylum to the former husband." Traynor, J., dissenting in part in *Dimon v. Dimon*, 40 Cal.2d 516, 526, 540, 254 P.2d 528, 533, 541 (1953). As to absenting obligors see *Hiner v. Hiner*, 153 Cal. 254, 256, 260, 94 Pac. 1044, 1046, 1047 (1908); *Shibley v. Superior Court*, 202 Cal. 738, 741, 843, 262 Pac. 332, 333, 334 (1927); 1 *ARMSTRONG, CALIFORNIA FAMILY LAW* 397, 427. There is good reason to assume that California courts will take jurisdiction over a former resident in a nonresident's behalf even by virtue of out-of-state service. *Cf. Allen v. Superior Court*, 41 Cal.2d 306, 259 P.2d 905 (1953); *Myrick v. Superior Court*, 41 Cal.2d 519, 261 P.2d 255 (1953); 2 *ARMSTRONG, CALIFORNIA FAMILY LAW* 1174; *Ehrenzweig and Mills, Personal Service Outside the State*, 41 CALIF. L. REV. 383 (1953).

<sup>18</sup> The words "present in this state" were added by the 1953 amendment. The impact of this amendment is not clear.

<sup>19</sup> *But cf. Commissioners' Prefatory Note in HANDBOOK, supra* note 11, at 292.

thing but clear. Neither the English domicile rule<sup>20</sup> nor the nationality rule on the Continent<sup>21</sup> are suitable as models. For domicile and citizenship, while rarely changeable and readily determinable as between European countries, can be easily fabricated as between the States of the Union for the purpose of evading unfavorable support laws. Equally exposed to abuse is the Restatement rule favoring the *lex fori*,<sup>22</sup> which is justifiable only under the above stated assumption that support duties existing in one state are of "no special interest to other states."<sup>23</sup> It is not surprising, therefore, that authority for the *lex fori* rule is scarce. In its only discussion of the subject, the Supreme Court has announced that "the character and extent of the father's obligation, and the status of the minor, are determined ordinarily not by the place of the minor's residence but by the law of the father's domicile."<sup>24</sup> Such a rule would, indeed, ordinarily refer to the *lex fori*, since jurisdiction over the provider more often than not is limited to the state of his domicile. But the Court's announcement is a mere dictum,<sup>25</sup> lacks support in precedent,<sup>26</sup> and is open to serious objections on grounds of policy. Such a rule would enable any deserting provider, "by the expedient of choosing a domicile other than the state where [his dependent] is rightfully domiciled, to avoid the duty which that state may impose . . ."<sup>27</sup>

Any state with lenient support laws could thus easily become a deserters' refuge. California which permits support suits of both legitimate and illegitimate children against their fathers<sup>28</sup> and by parents against their children<sup>29</sup> would only rarely be in this position. But the problem is not negligible by any means even in this state. A divorced husband might choose California as his domicile in order to avail himself of the rule recently confirmed by the supreme court of the state under which a divorced wife is

<sup>20</sup> *Coldingham Parish Council v. Smith*, [1918] 2 K.B. 90, 96. *Cf.* 1 RABEL, *CONFLICT OF LAWS* 604 (1945).

<sup>21</sup> *Cf. Id.* at 604, n.252.

<sup>22</sup> RESTATEMENT, *CONFLICT OF LAWS* § 458 (1934).

<sup>23</sup> See note 10, *supra*.

<sup>24</sup> *Yarborough v. Yarborough*, 290 U.S. 202, 211 (1933).

<sup>25</sup> The case merely held that a foreign divorce decree approving a lump sum settlement for the minor plaintiff was a bar to relitigation at the place of the latter's new residence.

<sup>26</sup> The only cases relied upon are *Coldingham Parish Council v. Smith*, [1918] 2 K.B. 90 and *Macdonald v. Macdonald*, 8 Bell & Murray (2d Ser. Court of Session) 830 [court and year of decision omitted by the Supreme Court], both of which concern a parent's liability to his adult son, a problem not necessarily identical with those arising from children's support. *Cf.* STUMBERG, *CONFLICT OF LAWS* 346 (2d ed. 1951). In most cases purportedly applying the domicile or forum rule the actual result is not determined by it. See, e.g., *Luntsford v. Luntsford*, 117 F. Supp. 8, 9 (W. D. Mo. 1953), where the father would probably have been liable under the law of California.

<sup>27</sup> Stone, J., dissenting in *Yarborough v. Yarborough*, 290 U.S. 202, 213 (1933).

<sup>28</sup> *Cf.* 2 ARMSTRONG, *CALIFORNIA FAMILY LAW* 1092 *et seq.*

<sup>29</sup> *Id.* at 1161.

denied any subsequent claim to alimony.<sup>30</sup> Conversely, under the domicile rule a California dependent entitled to support under California law, would be precluded from obtaining relief against a deserter the law of whose new domicile refuses such relief, as would the law of Georgia in a case involving an "unalterable" prior decree for the payment of a lump sum.<sup>31</sup>

None of the current choice of law rules seems to be clearly established in California. In the *Dimon* case<sup>32</sup> a nonresident wife who had obtained an *ex parte* divorce in Connecticut, was denied the right to alimony under California law, while Justice Traynor declared his preference for the law of the state where the wife was domiciled at the time of the decree.<sup>33</sup> Since neither party was resident or domiciled in California, the majority apparently resorted to California law without reference to a rule of choice of law, although some support might have been found for the application of the *lex fori*. Thus, the United States Supreme Court in *Estin v. Estin*<sup>34</sup> permitted survival in New York of a New York maintenance decree after a Nevada *ex parte* divorce, under New York law partly on the ground that "New York was rightly concerned lest the abandoned spouse . . . perhaps become a public charge."<sup>35</sup> Moreover, the California court in *Rediker v. Rediker*<sup>36</sup> invoked California (rather than Florida) law to support the holding that a Florida divorce decree did not imply a finding of a valid pre-existing marriage.<sup>37</sup> But all of these cases leave unsettled the California rule of choice of law in support cases.

<sup>30</sup> *Dimon v. Dimon*, 40 Cal.2d 516, 254 P.2d 528 (1953). Under California law a foreign *ex parte* divorce like any other divorce apparently terminates a prior maintenance order. *Cardinale v. Cardinale*, 8 C.2d 762, 68 P.2d 351 (1937); Justice Traynor, dissenting in part, *Dimon v. Dimon*, *supra* at 537, 254 P.2d at 539. *Contra*: *Pope v. Pope*, — Ill. —, 117 N.E.2d 65 (1954). See in general, Annotation, 28 A.L.R.2d 1378 (1953).

<sup>31</sup> *Cf. Yarborough v. Yarborough*, 290 290 U.S. 202 (1933); GEORGIA CODE § 30-207 (1933); *Martin v. Martin*, 209 Ga. 850, 76 S.E.2d 390 (1953).

<sup>32</sup> *Dimon v. Dimon*, 40 Cal.2d 516, 521, 254 P.2d 528, 530 (1953).

<sup>33</sup> *Id.* at 540, 254 P.2d at 541 (dissenting on other grounds).

<sup>34</sup> 334 U.S. 541 (1948).

<sup>35</sup> *Id.* at 547. Justice Frankfurter in his dissent at 551, points out correctly that this reasoning would fail to apply if a third state were to pass upon the survival under the law of the rendering state. If New York chose to terminate its maintenance order, that third state could not protect itself against the plaintiff becoming a public charge within its jurisdiction. See also *Sutton v. Leib*, 342 U.S. 402 (1952); *Estin v. Estin*, 334 U.S. 541 (1948); *Meredith v. Meredith*, 204 F.2d 64 (D.C. Cir. 1953); *Campbell v. Campbell*, 107 Cal. App.2d 732, 238 P.2d 81 (1951); *Pope v. Pope*, — Ill. —, 117 N.E.2d 65 (1954), all in effect declaring applicable the law of the forum.

<sup>36</sup> 35 Cal.2d 796, 221 P.2d 1 (1950).

<sup>37</sup> See also *Chirgwin v. Chirgwin*, 26 Cal. App.2d 506, 79 P.2d 772 (1938), where a California court refused to enforce arrears accrued under a New York decree entered subsequent to a Nevada *ex parte* divorce because "the courts of this state are bound to recognize the termination of the marital status prior to the rendition of the judgment in the New York action, which judgment could only be rendered in favor of the wife against her husband, while he was still her husband" (at 512). The derivation of this proposition from California authority (at 509), while doubtful as to judgments in the light of *Treimies v. Sunshine Min. Co.*, 308 U.S.

The Uniform Act purports to solve the problem of choice of law. According to that Act as embodied in Section 1670 of the California Code of Civil Procedure, a dependent may "elect" to claim any duty of support imposable under the law of the state where he was "present when the failure to support commenced,"<sup>38</sup> without regard to the law prevailing at the deserter's residence or in the responding state. But this provision will require cautious application in several respects.

1. To be fully effective, the clause relating to the "commencement of the failure to support" must be given "legal" rather than "factual" significance so that the failure to support will be held "commenced" whenever the dependent enters a state recognizing a duty to support. Otherwise that state would forever be precluded from enforcing its own public policy favoring the dependent's protection, if the state where the relationship between the parties was "factually" established denied such relief. In California there is some authority for this "legal" construction of the clause. In *Dixon v. Dixon* a divorce decree obtained in Oklahoma during the parties' residence in that state, had limited the period of support to the plaintiff's minority. The California court found a failure to support because plaintiff under the law of California, in contrast to that of Oklahoma, had not yet come of age.<sup>39</sup>

2. The election rule, whether related to the factual or legal commencement of the failure to support, may face serious difficulties whenever the interest in uniformity and cooperation against desertion is outweighed by a stronger public policy of the forum. In *Commonwealth v. Mong*,<sup>40</sup> the Supreme Court of Ohio, acting as a court of the responding state, refused to permit a Pennsylvania father to recover from his Ohio son under Pennsylvania law, and insisted upon the application of Ohio law which excluded liability to a parent who had abandoned the plaintiff as an infant under

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66 (1939), would seem tenable in cases where the effect of a Nevada decree upon the continued existence of the maintenance order of another state has not yet been adjudicated. See also *McGrew v. Mutual Life Ins. Co.*, 132 Cal. 85, 64 Pac. 103 (1901), *dismissed on other grounds*, 188 U.S. 291 (1903) where a Hawaii statute vesting in the husband his wife's personal estate upon a divorce decreed for her adultery, was held inapplicable as to the effect of the Hawaiian divorce decree otherwise entitled to recognition in this state, because the alleged forfeiture "must have flowed from the said Hawaiian statute . . . and not from anything decreed in the judgment," and "the law which governs personal property is the law of the domicile." 132 Cal. at 90, 64 Pac. at 105; *Luntsford v. Luntsford*, 117 F. Supp. 8, 9 (W.D. Mo. 1953), where plaintiff, a California resident, prevailed against her husband in a suit for accumulated claims for necessities for their son.

<sup>38</sup> Concerning the constitutionality of this provision, see Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?*, 17 Mo. L. Rev. 1 (1952).

<sup>39</sup> *Dixon v. Dixon*, 216 Cal. 440, 14 P.2d 497 (1932). See also *Macdonald v. Macdonald*, 8 Bell & Murray (2d Ser. Court of Session) 830, 837, relied upon by the Supreme Court in *Yarborough v. Yarborough*, 290 U.S. 202, 211 (1933): "The whole duties and liabilities of personal status are undeniably changed according to the law of every new domicile."

<sup>40</sup> — Ohio St. —, 117 N.E.2d 32 (1954).

sixteen years of age. In this case the fact that the dependent was the real deserter may have induced the judgment. But the court's reasoning, not being limited to the facts, seems in terms directed against the Uniform Act's "novel legislation" depriving Ohio citizens of their "right to equal protection."<sup>41</sup> It would seem that here for once<sup>42</sup> resort to public policy would have reached the same result without endangering the general purpose of the Act.

3. Finally, the election provision, if related to the legal commencement of the failure to support, could make certain states Nevadas of support. A needy brother, divorcee, or child, originally domiciled in a state denying them relief, may establish a new domicile in a state where a failure to support would legally commence, and then seek enforcement of this new duty in any state where the defendant has taken refuge—a possibility which would seem particularly undesirable when the plaintiff's original domicile was in California. Apparently for this reason the Commissioners have disavowed the election rule. Their drafting committee at the 1952 meeting rejected the rule as "hurriedly drafted,"<sup>43</sup> and, in accordance with what was referred to as the "original intention," recommended adoption of a provision making the law of the defendant's "presence" primarily decisive,<sup>44</sup> in order to prevent the wife from choosing "the applicable law as her interest might dictate."<sup>45</sup>

This recommendation, adopted by the Commissioners, was based on Dean Stimson's analysis of *Commonwealth v. Acker*,<sup>46</sup> decided by the Supreme Judicial Court of Massachusetts almost half a century ago. In that

<sup>41</sup> 117 N.E.2d at 33. Three judges dissented on the ground that the Uniform Act could have been thus disregarded only if the court had chosen to pass upon the constitutionality of the election provision (at 34). The majority's "equal protection" argument, referring to the greater rights of "all Ohio citizens similarly situated" (at 33), would, if generally applied, exclude much of our existing conflicts law. Whether or not Mong was "similarly situated" as sons of domestic fathers is of course the question to be decided. In a similar case the New York court refused to take jurisdiction as an initiating state on behalf of a resident father against his children resident in New Jersey, under whose law they would have had a valid defense *inter alia* on the ground that it would have been unwise to extend the new law "during the experimental initial state beyond its primary and original motivation." *Vincenza v. Vincenza*, 197 Misc. 1027, 1034, 98 N.Y.S.2d 470, 478 (Dom. Rel. Ct. 1950). See Note, 102 U. PA. L. REV. 938 (1954).

<sup>42</sup> We should abandon the "unruly horse" of public policy whenever we can. "Once you get astride of it, you never know where it will carry you." *Richardson v. Mellish*, 2 Bing. 229, 252, 130 Eng. Rep. 294 (1824).

<sup>43</sup> The word "hurriedly" has been deleted in HANDBOOK, *supra* note 11, at 298.

<sup>44</sup> The test of "presence," while explainable under the ideology of the law on jurisdiction as now generally construed, may create new difficulties with the gradual breakdown of the jurisdictional power-concept now in progress. See Ehrenzweig and Mills, *Personal Service Outside the State*, 41 CALIF. L. REV. 383 (1935).

<sup>45</sup> Special Committee on Review of Uniform Desertion and Non-Support Act, National Conference of Comm'ers on Uniform State Laws, First Tentative Draft, p. 2 (mimeo), Sept. 8, 1952.

<sup>46</sup> 197 Mass. 91, 83 N.E. 312 (1908).

case a British father resident in Massachusetts was held to be subject to the criminal law of that state against nonsupport although the child had remained in Nova Scotia. According to Dean Stimson this case stands for the general proposition that "the applicable law is the law to which the person alleged to be under a duty was subject at the significant time and not the law to which the person claiming the right was subject."<sup>47</sup> It is submitted, however, that both this case and Dean Stimson's comment lack significance for the present question for two reasons.

In the first place the *Acker* case involved criminal prosecution while our problem is one of civil enforcement. It may very well be possible and indeed desirable in a criminal case to apply the law of the defendant's state in view of the punitive purpose of criminal sanctions, while applying the plaintiffs domiciliary law to his civil claim which is primarily designed to afford relief rather than punishment. Indeed, in at least one noncriminal case citing the *Acker* case, a duty of support was found under the law of the forum and provider's residence only because there was no evidence as to the law of the dependents' domicile and it was to be "presumed that in all civilized countries a parent is obliged to support his minor children."<sup>48</sup>

Secondly, the *Acker* case, even if properly applicable to civil cases, would merely stand for the proposition that a deserting father is liable according to the law of his domicile without regard to the law of his dependent's domicile. Of course, this holding does not in any way compel the conclusion that a deserting father may by invoking the law of his domicile escape a liability imposed upon him by his dependent's law. While the *Acker* case with its holding of liability is conducive of discouraging desertion, the Commissioners' interpretation of this case as establishing the converse rule of nonliability, and the incorporation in the amended Act of a general rule based on the defendant's domicile, is subject to the same criticism as that raised by Justice Stone in his dissent in the *Yarborough* case:<sup>49</sup> It amounts to an invitation to prospective deserters to choose for their future residence a state with a law favorable to them.

We should commend, therefore, the wisdom of the California legislature which, while adopting the amended Act, refused to abandon the original text of Section 1670 notwithstanding its alleged "hurried" draftsmanship.<sup>50</sup> It may be advisable, however, to amend this text by identifying

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<sup>47</sup> Stimson, *Simplifying the Conflict of Laws: A Bill Proposed for Enactment by the Congress*, 36 A.B.A.J. 1003, 1005 (1950).

<sup>48</sup> Vogel's Case, 257 Mass. 3, 153 N.E. 175 (1926) (employee's duty to support his children for purposes of determining dependency under workmen's compensation).

<sup>49</sup> *Supra* text at note 27.

<sup>50</sup> *Supra* note 43. *But cf.* REPORT OF CALIF. COMM'N ON UNIFORM STATE LAWS 5, 1951-1952, recommending adoption of the amendments including "a clarification of the section determining the law applicable in fixing the duty of support." See also COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION PROGRAM FOR 1953, pp. 41, 122 (1953).

more clearly the law of the state of the dependent's present domicile as one of the laws under which the failure to support may be determined.<sup>51</sup>

Such a clarification, while forestalling evasatory change of domicile by the defendant, would of course further encourage choice of domicile by the plaintiff for the purpose of securing application of a law favorable to him. In order to prevent such abuse it might be desirable to add a provision making the law of the dependent's former domicile applicable whenever an evasatory purpose of the change of domicile has been proved. Better yet, the court's discretion might be substituted for the dependent's election on the model of the Minnesota Act,<sup>52</sup> and the problem would be greatly reduced in scope under the scheme proposed in conclusion for a future wholesale revision of the Uniform Act, which would transfer jurisdiction in most cases to the initiating state.<sup>53</sup>

## B. Duties "Imposed" by the Decree of a Sister State: Enforcement

### 1. Manner of enforcement

In most states, including California, a domestic support decree will enable a deserted dependent currently to enforce his claim by the use of equitable remedies such as proceedings in contempt.<sup>54</sup> No such remedy is available to him for the enforcement of a sister state decree,<sup>55</sup> whether or not

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<sup>51</sup> See *supra* text at note 39. The following amendment of Section 1670 of the Code of Civil Procedure might be advisable to achieve this purpose: "Duties of support enforceable under this title are those imposed or imposable under the laws of any state where the alleged obligor or the alleged obligee was present during the period for which support is sought [or where the obligee was present when the failure to support commenced,] at the election of the obligee." Cf. Colo. Laws 1951, c.151, § 4 inserting "or where the obligee is where the failure to support continues." The Maryland version speaking of "duties imposed or imposable under the laws of Maryland upon the alleged obligee (sic)" is hardly commendable. The Massachusetts law [MASS. GEN. LAWS, c. 273A, § 4 (1931)] probably leaves the Uniform Act intact although omitting the words "at the election of the obligee."

<sup>52</sup> Minn. Laws 1951, c. 122, § 5, Subd. 4: "The district court shall, at its discretion, enforce the duties of support owed under the law of (1) the state where the obligee resided when the obligor failed to support the obligee, or (2) this state . . . for the whole period of non-support."

<sup>53</sup> See Appendix, *infra*.

<sup>54</sup> CAL. CIV. CODE §§ 139, 140; CAL. CODE CIV. PROC. §§ 1209, 1219, 1222; Thomas v. Thomas, 14 Cal.2d 355, 94 P.2d 810 (1939); 1 ARMSTRONG, CALIFORNIA FAMILY LAW 389, 413.

<sup>55</sup> At least there is no constitutional compulsion to make domestic remedies available for foreign decrees. Lynde v. Lynde, 181 U.S. 183, 187 (1901). Scoles, *Enforcement of Foreign "Non-Final" Alimony and Support Orders*, 53 COL. L. REV. 817, 823 (1953). See Comment, 41 CALIF. L. REV. 692, 694 (1953). Occasionally a power to enforce equitably a foreign decree has been held implied in statutes providing for such remedies regarding domestic decrees. See, e.g., Ostrander v. Ostrander, 190 Minn. 547, 252 N.W. 449 (1934); *Ex parte Helms*, .... Tex. ...., 259 S.W.2d 184 (1953) (including attorneys' fees). Sutherland, *Discretion to Reduce Accrued Alimony*, N. Y. LAW REV. COMM. REP. 249, 265 (1948); Note, 29 CALIF. L. REV. 754 (1941); Note, 6 S.W.L.J. 320, 323 (1952).

the decree be subject to modification under the law of the rendering state.<sup>56</sup> The requirement now firmly established of a new suit for the enforcement of sister state judgments, which has been found inadequate in general,<sup>57</sup> is particularly inappropriate as to duties of support.

The dependent's situation may be even more precarious as to arrears accrued under a foreign decree for future alimony which under the law of the rendering state is subject to modification.<sup>58</sup> While judgment upon such a decree has been said by a California court to be permissible on grounds of "comity,"<sup>59</sup> due process seems to demand in the light of the Supreme Court decision in *Griffin v. Griffin*,<sup>60</sup> that the defendant be given "an opportunity to raise defenses otherwise open to him under the law" of the rendering state, including the defense of a change of circumstances. Similar problems arise in relation to the "comity" recognition of a foreign alimony decree by its "establishment" "as the decree of the California court with the same force and effect as if it had been entered in this state, including the punishment for contempt if the defendant fails to comply."<sup>61</sup> This recognition is highly beneficial since otherwise the dependent, who cannot sue on each installment as it becomes due, would "somehow [have to] survive until enough arrearages to be worth the cost of suit accrue."<sup>62</sup> Here

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<sup>56</sup> *Handschy v. Handschy*, 32 Cal. App.2d 504, 510, 90 P.2d 123, 126 (1939). As to the present status of this case, see Comment, 41 CALIF. L. REV. 692, 702 (1953). Apparently in order to secure recognition, the power to modify alimony accrued under a decree for future support has been expressly abolished in California [Cal. Stats. 1951, c. 1700 amending CAL. CIV. CODE § 139], although this had been the law in this state at least since 1933. 1 ARMSTRONG, CALIFORNIA FAMILY LAW 375; Comment, 41 CALIF. L. REV. 692, 696 (1953).

<sup>57</sup> See Yntema, *The Enforcement of Foreign Judgments in Anglo-American Law*, 33 MICH. L. REV. 1129, 1165 (1935).

<sup>58</sup> Questions arising in that situation were expressly left undecided in *Barber v. Barber*, 323 U.S. 77 (1944) and *Griffin v. Griffin*, 327 U.S. 220 (1946), noted in 34 CALIF. L. REV. 760 (1946). *But cf.* Justice Jackson's concurring opinion in *Barber v. Barber*, *supra* at 86. A presumption may be recognized against the first forum's right to modify. See *Wolk v. Leak*, .... Fla. ...., 70 So.2d 498, 500 (1954). *But see, e.g.,* *Quinlan v. Quinlan*, 128 N.Y.S.2d 132 (S.C. 1953). *Cf. Buswell v. Buswell*, .... Pa. ...., 105 A.2d 608 (1954); *Woodhouse v. Woodhouse*, .... N.J. ...., 105 A.2d 517 (1954).

<sup>59</sup> *Biewend v. Biewend*, 17 Cal.2d 108, 109 P.2d 701 (1941); *Gough v. Gough*, 101 Cal. App.2d 262, 225 P.2d 668 (1950), *hearing denied* Feb. 15, 1951. As to the court's reliance on the doctrine of comity, see Ehrenzweig, *Conflict of Laws*, 3 SURVEY OF CALIFORNIA LAW 141 at 143 (1951).

<sup>60</sup> *Griffin v. Griffin*, 327 U.S. 220 at 228, 235, 236, 247, 249 (1946). As to a possible reconciliation of this case with *Biewend v. Biewend*, *supra* note 59, which recognized a "continuing jurisdiction" of the first forum and thus excludes modification by the second forum under its own law, see Comment, 41 CALIF. L. REV. 692, 710 (1953).

<sup>61</sup> *Biewend v. Biewend*, *supra* note 59, at 112.

<sup>62</sup> *Scholla v. Scholla*, 201 F.2d 211, 215 (D.C. Cir. 1953), *cert. denied*, 345 U.S. 966 (1953), noted 66 HARV. L. REV. 1132 (1953). At least the dependent will not be defeated by the invocation of California public policy. *Biewend v. Biewend*, 17 Cal.2d 108, 113, 109 P.2d 701 (1941) (alimony after remarriage); *Morrow v. Morrow*, 40 Cal. App.2d 474, 480, 105 P.2d 129, 132 (1940); 1 ARMSTRONG, CALIFORNIA FAMILY LAW 390. See also *Schneider v. Schneider*, 125 N.Y.S.2d 739 (S.C. 1953) relying on the *Biewend* case.

too, however, it would seem that under the *Griffin* case the defendant must be allowed to raise defenses that would have been open to him in the rendering state.<sup>63</sup> On the other hand, it is not clear whether the establishing decree may be modified like a California decree. The supreme court of the state has once answered this question in the negative.<sup>64</sup> But, as Professor Armstrong has pointed out, "from a practical standpoint, it would seem preferable that request for modification of such an order should be addressed to the California courts, especially when both parties live here . . . ."<sup>65</sup>

The Act is silent as to the manner in which the courts of the responding state are to enforce support decrees of sister states. This silence has apparently induced most courts of this state to limit the exercise of their jurisdiction under the Act to original suits not yet adjudicated elsewhere.<sup>66</sup> Nevertheless, the express terms of the Act leave no doubt as to the extension of this jurisdiction to include suits upon alimony decrees imposed in sister states. For, the duties of support enforceable under the Act (Cal. Code Civ. Proc. § 1670) include "any duty of support imposed . . . by any court order, decree or judgment . . . ." [§ 1653(6)].<sup>67</sup> And the statute now refers expressly to "previous orders of support" (§ 1689).

Notwithstanding general dissatisfaction with present enforcement procedures, however, the Act has refrained from any reformatory measures. The requirement remains that in order to enforce a sister state decree a new suit must be brought in the state of enforcement. The principal reason for this conservative approach was apparently the consideration that enforcement of a foreign judgment without personal service in the enforcement state might violate due process. As will be shown later, the service requirements could be met without generally compelling relitigation, by adopting registration proceedings on the model of the Judicial Code<sup>68</sup> which can,

<sup>63</sup> *Griffin v. Griffin*, 327 U.S. 220 (1946). For a careful analysis of the "establishment" doctrine see Comment, 41 CALIF. L. REV. 692, 700 (1953). As to reciprocal favors granted to California decrees by a "neighboring state" see *Cousineau v. Cousineau*, 155 Ore. 184, 63 P.2d 897 (1936). Cf. *Shibley v. Shibley*, 181 Wash. 166, 42 P.2d 446 (1935).

<sup>64</sup> *Biewend v. Biewend*, 17 Cal.2d 108, 109 P.2d 701 (1941). For a discussion in this respect of this case as well as of *Cummings v. Cummings*, 97 Cal. App. 144, 275 Pac. 245 (1929), *hearing denied*, April 22, 1929; *Barns v. Barns*, 9 Cal. App.2d 427, 50 P.2d 463 (1935); *Thomas v. Thomas*, 14 Cal.2d 355, 94 P.2d 810 (1939); see Comment, 41 CALIF. L. REV. 692, 708 (1953) who suggests that CAL. CODE CIV. PROC. § 1913 impliedly recognizes a power in the second court to modify a prior foreign decree. *But cf.* *Kahn v. Kahn*, .... Cal. App.2d ...., 268 P.2d 151 (1954) (apportionment of foreign award for wife and children).

<sup>65</sup> 1 ARMSTRONG, CALIFORNIA FAMILY LAW 392.

<sup>66</sup> This is clearly indicated by the forms used in filing complaints under the Act, none of which seems to refer to existing orders or judgments. The forms available at the District Attorney's Office in San Francisco are in this respect similar to the sample forms recommended by the Council of State Governments. RECIPROCAL STATE LEGISLATION TO ENFORCE THE SUPPORT OF DEPENDENTS 17 (1952).

<sup>67</sup> See also CAL. CODE CIV. PROC. § 1689 (added in 1953) referring to previous orders of support.

<sup>68</sup> See *infra* text at notes 92 *et seq.*

moreover, easily be made to serve such needs for modification of the decree as may be considered imperative.

## 2. Modification

By requiring the forum in a suit upon a sister state judgment to admit "mitigating defenses" available under the law of the rendering court<sup>69</sup> the Supreme Court not only seems to approve of recognition by "comity" as practiced in California,<sup>70</sup> but also seems to assume a power in the second forum, at least in the provider's favor, to modify the first forum's decree<sup>71</sup> notwithstanding the latter's "continuing jurisdiction."<sup>72</sup> The question whether California law actually confers such a power<sup>73</sup> has not yet been authoritatively decided. A decision in the affirmative would render moot the much litigated question whether the existence of a support decree in a sister state precludes the bringing of a new suit.<sup>74</sup> Once modification of a sister state decree is held permissible upon the assertion of a change of circumstances—and such an assertion can almost always be made in sup-

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<sup>69</sup> *Griffin v. Griffin*, 327 U.S. 220 (1946).

<sup>70</sup> See note 59 *supra*.

<sup>71</sup> Thus "unseating" Section 464 of the Restatement of Conflict of Laws according to which an alimony judgment of a sister state can be sued upon only if and insofar as "not subject to reduction." Sutherland, *supra* note 55 at 269. Jackson, J., concurring in *Barber v. Barber*, 323 U.S. 77, 86 (1944) would apparently permit judgment upon the foreign reducible decree subject to later revision in the rendering state. See also *Robison v. Robison*, 9 N.J. 288, 88 A.2d 202, *cert. denied*, 344 U.S. 829 (1952); *Anonymous v. Anonymous*, ..... Misc. ...., 123 N.Y.S.2d 196 (Dom. Rel. Ct. 1953); Scoles, *supra* note 55, at 823.

<sup>72</sup> *Cf. Reynolds v. Reynolds*, 21 Cal.2d 580, 583, 585, 134 P.2d. 251, 254, 255 (1943), discussed 1 ARMSTRONG, CALIFORNIA FAMILY LAW 377, and in general Comment, 41 CALIF. L. REV. 692, 710 (1953).

<sup>73</sup> *Cf. Starr v. Starr*, ..... Cal. App.2d ..... , 263 P.2d 675 (1954). For decisions in other states to this effect see, e.g., *Lopez v. Avery*, ..... Fla. ...., 66 So.2d 689 (1953); *Anonymous v. Anonymous*, ..... Misc. ...., 123 N.Y.S.2d 196 (Dom. Rel. Ct. 1953). *But cf. In re Kendall*, 126 N.Y.S.2d 684 (S.C. 1953).

<sup>74</sup> Such suits were permitted, e.g., in *Werner v. Werner*, ... Misc. ...., 127 N.Y.S.2d 278 (Dom. Rel. Ct. 1953); *Setzer v. Setzer*, 251 Wis. 234, 29 N.W.2d 62 (1947); *Ambrose v. Ambrose*, 200 Misc. 595, 102 N.Y.S.2d 837 (Dom. Rel. Ct. 1951); *Conwell v. Conwell*, 3 N.J. 266, 69 A.2d 712 (1949); *James v. James*, ..... Misc. ...., 59 N.Y.S.2d 460 (Dom. Rel. Ct. 1946); *Lopez v. Avery*, ..... Fla. ...., 66 So.2d 689 (1953). *But cf. Scholla v. Scholla*, 201 F.2d 211 (D.C. Cir.), *cert. denied*, 345 U.S. 966 (1953), dismissing a suit for increased alimony on grounds of full faith and credit because of an existing Florida decree, while conceding the possibility of modification in the forum in case of a change of circumstances. *Cf. Judge Washington's dissent, Scholla v. Scholla*, 201 F.2d at 214; and in general STUMBERG, CONFLICT OF LAWS 344 *et seq.* (2d ed. 1951). For California compare *Davies v. Fisher*, 34 Cal. App. 137, 166 Pac. 833 (1917) (domestic decree supplementing foreign divorce failing to provide for support) [2 ARMSTRONG, CALIFORNIA FAMILY LAW 1098] with *White v. White*, 83 Cal. App. 356, 256 Pac. 579 (1927) (distinguishing the preceding case on grounds of need). Kansas has limited the domestic remedy to a period of two years after the sister state decree. KAN. GEN. STAT. § 60-1518 (1949). See also N.Y. Laws 1953, c. 663, Leg. Doc. No. 65(k). As to the related problem of enforcement of the decree of a sister state in which there is pending a petition for modification, see *Wolk v. Leak*, ..... Fla. ...., 70 So.2d 498, 501 (1954).

port as in custody cases<sup>75</sup>—a new action would no longer be needed to obtain an increase or reduction of alimony assessed in a sister state. Even this liberalization of California law, however, would by itself not effectively assist a nonresident dependent unable to afford the expense of relitigating his case at the deserter's California residence.

The Uniform Act now has removed this difficulty. Since the California court as responding court conducts its proceedings "in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed" (Cal. Code Civil Proc. § 1682), that court, when ordering "the defendant to furnish support" (§ 1683), is clearly not bound by the foreign decree, but has the power to increase or reduce the amount previously determined. Here, however, the Act has failed to go all the way.

Let us assume that plaintiff, after having obtained a New Jersey support decree in the amount of \$100 a month, was left destitute by her husband's departure to California. She files an action in California for the "establishment"<sup>76</sup> of the New Jersey decree. Defendant moves for a reduction of the award in view of his changed financial condition. Assuming in the light of the *Griffin* case<sup>77</sup> that full faith and credit does not preclude the modification of a foreign support order provided the defendant is given an opportunity to defend, and that California law would permit such modification,<sup>78</sup> there is no reason why defendant should not prevail. The California judgment thus modifying and establishing the New Jersey decree would replace the latter as to future relations of the parties unless and until modified again by either the California or the New Jersey court.<sup>79</sup>

Not so under the Uniform Act. Suppose that the plaintiff, unable to afford the expense of hiring a California attorney, has chosen to file her action in a court of New Jersey as initiating state, and that defendant now obtains a reduction of his obligation in the California court as that of the responding state under the Act. And suppose again that he thereafter moves back to New Jersey where his wife again seeks to enforce the original order. The defendant will find he is unable to use the California decree as a defense since any order under the California Act "shall not supersede any previous order of support."<sup>80</sup>

The draftsmen of this provision may not have intended this absurd result. It seems likely that they had in mind only a decree increasing a

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<sup>75</sup> See Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 MICH. L. REV. 345, 352 (1953).

<sup>76</sup> See text at note 61 *supra*.

<sup>77</sup> See note 60 *supra*.

<sup>78</sup> See text at note 73 *et seq. supra*.

<sup>79</sup> *Biewend v. Biewend*, 17 Cal.2d 108, 109 P.2d 701 (1941); Scoles, *supra* note 55, at 824. On continuing jurisdiction see note 72 *supra*.

<sup>80</sup> CAL. CODE CIV. PROC. § 1689.

prior award, and failed to consider attempts at collecting under a prior order reduced in another state.<sup>81</sup> For, the Act merely provides for the crediting of the amounts paid pursuant to either order against that accruing "under both."<sup>82</sup> However this may be, under the Act as it now reads, both the provider and the dependent will have to fight their battles all over in every responding state. This result, I submit, is undesirable and points to a serious shortcoming of the Act which affects its fundamental structure and will be briefly discussed.

### C. Possible Reform?

Abroad, the enforcement of support duties between parties resident in different countries has been solved by releasing it entirely from the compulsions governing litigation unaffected by public interest. It would be of little value, however, here to discuss, let alone recommend, the adoption of a similar system of "extralittigious proceedings."<sup>83</sup> Such a reform would be virtually impossible in this country because of deep-rooted "jurisdictional" requirements. It has taken much ingenuity to devise the "uniform" scheme enabling two states to cooperate in producing a valid judgment against a defendant not subject to the jurisdiction of the plaintiff's state. Indeed, it was necessary for this purpose to ignore the possibility of doctrinaire objections against "improper delegation" or "abdication" of judicial power.<sup>84</sup>

One concession of this scheme to jurisdictional doctrine, however, could and should perhaps yield to modern needs; the concession namely that only the court of the responding state with personal jurisdiction over the defendant can make the final order. We have seen some of the unfortunate results of this concession. In order to frustrate the provider's attempt at evading the law of his deserted domicile, a statutory choice of law rule has had to permit application of the law of the dependent's domicile, thus inviting in turn fraud on the law by the plaintiff. And the inevitable multi-

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<sup>81</sup> It may well be that the California draftsmen would have refused to recommend the adoption of this provision had it been clear that California courts are free to deviate from foreign decrees. See text at note 73 *supra*. The fact that New Jersey seems to favor such discretion [Conwell v. Conwell, 3 N.J. 266, 69 A.2d 712 (1949)] may have induced the legislature of that state to omit the "superseding" provision. N. J. Stat. 1953, c. 197.

<sup>82</sup> This provision had been "requested by an official in California." This is the only explanation given for its adoption by the drafting committee apparently without any examination of its rationale and implications. Committee Report, *supra* note 45, at 13. HANDBOOK, *supra* note 11, at 305 eliminates even this comment. Nor is there any clue in the RESOLUTIONS OF THE INTERSTATE CONFERENCE ON RECIPROCAL NON-SUPPORT LEGISLATION, COUNCIL OF STATE GOVERNMENTS 26 (1952). The original draft had "under the other" for "under both," which was clearly preferable.

<sup>83</sup> See in general Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 MICH. L. REV. 345, 372 (1953).

<sup>84</sup> Comment, 45 ILL. L. REV. 252 (1950). See also *Duncan v. Smith*, ..... Ky. ...., 262 S.W.2d 373 (1953), upholding the Act as not conferring "extraterritorial jurisdiction."

licity of support orders obtained in each state of the defendant's presence has induced the draftsmen of the Act to provide for their cumulative effect, thus greatly increasing the existing confusion regarding recognition and modification of foreign orders. Most serious, however, seems the continued lack of a sole court with deciding power which would ex officio supervise the proper prosecution of the dependent's interest, a lack particularly serious in the case of deserted children. It might be worth while to examine whether the recent and continuing liberalization of a jurisdictional doctrine largely based on historical misconceptions of medieval power ideologies<sup>86</sup> would not justify a reconsideration of what I believe to be the erroneous assumption of a need for the concentration of the ultimate decision in the *defendant's* court. The interest of that court in the case is necessarily incidental, both (1) in original suits involving duties imposable under the *law* of a sister state and (2) in suits upon such duties imposed by *courts* of sister states.

(1) In her book on California Family Law, Professor Armstrong suggested that the then impending decision in the case of *Allen v. Superior Court* concerning personal jurisdiction acquired by out-of-state personal service over formerly resident motorists would be equally applicable in support cases.<sup>86</sup> Subsequently, the supreme court of the state held in the *Allen* case that such service was sufficient to confer personal jurisdiction.<sup>87</sup> If this decision should eventually be held to be predicated upon a cause of action accrued within the state,<sup>88</sup> there would be no reason why a California court should not in a support action acquire personal jurisdiction against a deserting father personally served in the state of his new residence, the cause of action having accrued at his original domicile in California, even if the action was not commenced prior to the defendant's departure.

Assuming that the California rule will be upheld by the United States Supreme Court, there would thus become possible a greatly simplified and more efficient machinery for the interstate enforcement of support duties, at least in the numerically most important cases in which the initiating state is that of the provider's former domicile and place of failure to support. As to such cases uniform legislation could authorize and direct the

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<sup>85</sup> Cf. Ehrenzweig and Mills, *Personal Service Outside the State*, 41 CALIF. L. REV. 383 (1953).

<sup>86</sup> 2 ARMSTRONG, CALIFORNIA FAMILY LAW 1174.

<sup>87</sup> *Allen v. Superior Court*, 41 Cal.2d 306, 259 P.2d 905 (1953). *Accord*, *Myrick v. Superior Court*, 41 Cal.2d 519, 261 P.2d 255 (1953). Personal service upon the defendant outside the state has long been considered reconcilable with due process in suits for money judgments based on divorce decrees recovered upon personal service within the state. Cf. *Richardson v. Richardson*, 265 S.W.2d 651 (Tex. Civ. App. 1954).

<sup>88</sup> Rather than the defendant's residence within the state either at the time the accident occurred or of the commencement of the action. See Ehrenzweig and Mills, *supra* note 85 at 391.

court of the initiating state to make the final decision upon personal out-of-state service. Due process would be complied with by giving the defendant an opportunity to be heard in the court of the responding state. What has been said in the case of *Smith v. Smith*,<sup>89</sup> upholding the constitutionality of the California Act, would apply equally to the procedure here proposed:<sup>90</sup>

. . . [T]here is nothing inherently wrong in allowing the courts of two sovereigns to participate in the taking of evidence in a single case with the court of one sovereign acting in an ancillary capacity to the deciding court in another forum . . . . If it be said that the defendant is at a disadvantage in having to take the testimony of the plaintiff and other witnesses in the initiating state, the answer is that he may always choose to return to that state to conduct his defense more directly and efficiently.

A similar reasoning applies to the defendant's right to cross-examine the plaintiff and his witnesses.<sup>91</sup> To be fully effective this proposed procedure would, however, have to be supplemented by a device facilitating the enforcement of the initiating state's decree.

(2) The progress achieved in the enforcement of sister state judgments in this country has been said to represent "a somewhat singular phenomenon of retarded legal development," "as contrasted with the evolution of the judgment extension acts in the British Empire."<sup>92</sup> Indeed, the nations of the Commonwealth have, by legislative action over more than a century,<sup>93</sup> succeeded in eliminating much of the hardship imposed on foreign judgment creditors by the Anglo-American law of jurisdiction. Insofar as here pertinent this legislation enables such a creditor to transform his foreign title into one equivalent to a domestic judgment by a process of "registration" without the expense and delay inherent in the American "suit on the judgment."

That the adoption of a similar system in this country would not be contrary to American conceptions of fair notice and opportunity to defend, is established by the fact that Congress, in conscious imitation of the British model,<sup>94</sup> has provided the mechanics for nationwide registration of federal

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<sup>89</sup> *Smith v. Smith*, ..... Cal. App.2d ..... , 270 P.2d 613 (1954).

<sup>90</sup> *Id.* at 270 P.2d 623. *Accord*, *Duncan v. Smith*, ..... Ky. .... , 262 S.W.2d 373 (1953).

<sup>91</sup> *Smith v. Smith*, *supra* note 89, at 270 P.2d 622, 623. *Cf.* *Commonwealth v. Shaffer*, ..... Pa. Super. .... , 103 A.2d 430 (1954).

<sup>92</sup> Yntema, *supra* note 57, at 1165. As to current federal legislative proposals see Mayers, *Ex Parte Divorce: A Proposed Federal Remedy*, 54 COL. L. REV. 54 (1954); Comment, 45 ILL. L. REV. 252, 261 (1950).

<sup>93</sup> The history of this legislation goes back to 1801. See 52 A.B.A. REP. 292, 297 (1927). The experience of Australia with a federal constitution patterned on that of this country, is particularly significant. See Cowen, *Full Faith and Credit, the Australian Experience*, 6 RES JUDICATAE 1 (1952).

<sup>94</sup> REPORT OF ADVISORY COMMITTEE ON RULES FOR CIVIL PROCEDURE (1937), (Note accompanying Rule 77 of the Draft which in substance has since become Section 1963 of the Judicial Code).

judgments.<sup>95</sup> Moreover, for over thirty years the American Bar Association has urged Congressional adoption of a similar scheme for the interstate registration of state court judgments under the Full Faith and Credit Clause of the Constitution.<sup>96</sup>

In the absence of such legislation, the only feasible way towards progress is through uniform acts which, in contrast to congressional legislation, must comply with due process requirements to the effect that the registering state, too, must obtain personal or quasi in rem jurisdiction. Accordingly, Section 7 of the Uniform Enforcement of Foreign Judgments Act, adopted by the National Conference of Commissioners on Uniform State Laws in 1948, provides that "the registered judgment shall become a final personal judgment of the court in which it is registered," if personal jurisdiction over the judgment debtor has been obtained by that court and the debtor within a statutory period "fails to plead," or "if the court after hearing has refused to set the registration aside."<sup>97</sup>

California has not adopted this Act. In evaluating the feasibility of such adoption in this state, it should be considered that existing law includes a statute which similarly provides for the extension of a judgment to affect a person not originally subject to the jurisdiction of the court.

According to Section 989 of the California Code of Civil Procedure a judgment can subsequently be made to "bind" a joint debtor of the defendant in the same manner as though he "had been originally served with the summons." To secure due process all that is required is a summons issued upon the plaintiff's affidavit (§ 991) and properly served, "to show cause why he should not be bound" (§ 990). Although this statute may be traced back to 1851,<sup>98</sup> its constitutionality has not been questioned in the light of the subsequent decision in *Penmoyer v. Neff*,<sup>99</sup> now considered the leading case on the constitutional requirements of proper service in personal actions.<sup>100</sup>

<sup>95</sup> Judicial Code, § 1963. *Cf., e.g.,* Gullet v. Gullet, 188 F.2d 719 (5th Cir. 1951).

<sup>96</sup> See 52 A.B.A. REPS. 79, 294 (1927). See also Ross, "Full Faith and Credit" in a Federal System, 20 MINN. L. REV. 140 (1935). For a criticism of the Restatement of Conflict of Laws regarding its complete neglect of the Commonwealth legislation, see Yntema, *supra* note 57, at 1167.

<sup>97</sup> 9 U.L.A. 380. The Act has been adopted in seven states. 9 U.L.A. 124 (Supp. 1953).

<sup>98</sup> Cal. Stats. 1851, c. V, § 368. *Cf. Note*, 9 So. CALIF. L. REV. 240, 255 (1936).

<sup>99</sup> 95 U.S. 714 (1877).

<sup>100</sup> In *Tay, Brooks & Backus v. Hawley*, 39 Cal. 93 (1870) the supreme court of the state disapproved a similar provision as inconsistent with the Constitution and with "principles of jurisprudence of universal recognition" (at 97) but did not then declare it unconstitutional, nor has it done so since. In the following cases the pertinent sections have been judicially construed. *Waterman v. Lipman*, 67 Cal. 26, 6 Pac. 875 (1885); *Cooper v. Burch*, 140 Cal. 548, 74 Pac. 37 (1903); *Colquhoun v. Pack*, 32 Cal. App. 97, 161 Pac. 1168 (1916); *Carson v. Lampton*, 23 Cal. App.2d 535, 73 P.2d 629 (1937); *Christina v. Baker*, 28 Cal. App.2d 412, 82 P.2d 722 (1938); *Fried v. Municipal Court*, 94 Cal. App.2d 376, 210 P.2d 883 (1949).

I submit that a combination of a similar statute, possibly on the model of the Uniform Enforcement of Judgment Act, with the Federal system of registration would prove highly satisfactory in the enforcement of support decrees of sister states. The draft of a proposed amendment to the Uniform Reciprocal Enforcement of Support Act is set forth in an Appendix to this paper.

APPENDIX  
PROPOSED AMENDMENTS OF THE CALIFORNIA  
RECIPROCAL ENFORCEMENT OF SUPPORT ACT

*Yale M. Lyman\**

*Note:* The following statute is proposed as an addition to the present Uniform Reciprocal Enforcement of Support Act,<sup>100</sup> Cal. Code Civ. Proc. Sec. 1650-1690. The draft contains two distinct divisions (called Subchapters B and C in order to fit within the structure of the present Act) corresponding to the separate problems of (1) adjudicating initial support orders, and (2) recognizing and enforcing previously imposed orders. Subchapter B enables the courts of the states where the relationship giving rise to the duty of support existed to impose initial support orders. This is in contrast to present provisions for adjudication solely by the court of the *state to which* the obligor escaped. Subchapter C gives the obligee an opportunity to *register* previously adjudicated orders, rather than sue upon them, as is the present exclusive tedious practice.

SUBCHAPTER B

ADJUDICATION BY INITIATING STATE<sup>101</sup>

§ 1691.<sup>102</sup> Personal Service by Initiating State.—Where the alleged obligor was a resident<sup>103</sup> of the initiating state during the period for which support is sought or when the failure to support commenced,<sup>104</sup> and at the time of

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\* LL.B., June 1954, University of California School of Law, Berkeley.

<sup>100</sup> 9A U.L.A. 49, 82 (Supp. 1954).

<sup>101</sup> Both social policy and choice of law considerations call for a single adjudication by the initiating state, rather than the two-state procedure with final adjudication in the responding state provided by the present Act. See text at notes 20-45, *supra*. If the relatively cumbersome two-state technique was adopted in deference to possible constitutional objections to out-of-state personal service upon former residents, two cases upholding out-of-state personal service may well have laid these doubts to rest and given the proposed statute a constitutional foundation. See *Allen v. Superior Court*, 41 Cal.2d 306, 259 P.2d 905 (1953); *Myrick v. Superior Court*, 41 Cal.2d 519, 261 P.2d 255 (1953); *Ehrenzweig and Mills, supra* note 84; text at notes 84-90, *supra*.

<sup>102</sup> The section numbering is a continuation of the Uniform Reciprocal Enforcement of Support Act as presently numbered in CAL. CODE CIV. PROC. §§ 1650-1690.

<sup>103</sup> Limitation to residents should prevent fraud and evasive tactics by the plaintiff (see text preceding note 42, *supra*) and may be necessary to satisfy due process requirements (see *Ehrenzweig and Mills, supra* note 84 at 391).

<sup>104</sup> Commencement of the duty of support must be given "legal" rather than "factual" significance, *i.e.*, commencement of the duty of support must occur upon the obligor's acquisition of residence in a state recognizing the duty of support. To look to the state where the factual relationship between the obligor and the obligee initially was created would frustrate the statute, for that state might not recognize a duty of support concomitant with the relationship. See text preceding note 39, *supra*.

the obligee's action has departed from the state,<sup>105</sup> and the court of the state acting as an initiating state finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support,<sup>106</sup> that court may order personal service<sup>107</sup> of the summons and a copy of the complaint on the alleged obligor, and for such purpose may direct a copy of the summons and complaint to be sent by registered mail with proper postage prepaid addressed to the obligor's last known address with request for a return receipt.<sup>108</sup>

§ 1691.1. Jurisdiction Attaches on Date of Service.—From the time of personal service of the summons and a copy of the complaint in accord with the foregoing provisions, the court of the state acting as an initiating state is deemed to have acquired jurisdiction of the parties,<sup>109</sup> and to have control of all the subsequent proceedings.<sup>110</sup>

§ 1691.2. Proceeding in Initiating State.—The court of the state acting as an initiating state shall conduct proceedings under this subchapter in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.<sup>111</sup>

However, the alleged obligor may, within the time prescribed in the summons for an answer, petition the court of the state acting as an initiating state for permission to present his defenses to the action in the court

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<sup>105</sup> Application of out-of-state personal service to obligors who have become residents or domiciliaries of other states, as well as to obligors who merely have departed, is within the rule of *Allen v. Superior Court*, 41 Cal.2d 306, 259 P.2d 905 (1953). See *Ehrenzweig and Mills*, *supra* note 84.

<sup>106</sup> To prevent evasatory tactics by the obligor and forum shopping by the obligee, the duty of support should be determined according to the law of the initiating state, subject to the discretionary power of the court of that state to apply the law of any state where the obligee formerly resided. See text preceding note 51, *supra*.

<sup>107</sup> Out-of-state personal service has previously been enacted into law. See CAL. CODE CIV. PROC. §§ 412, 413, 417; 1851 N. Y. PRAC. ACT §§ 30, 31 (Stats. 1851, c.5, p. 55); Maintenance Orders Act, 1950, 14 GEO. 6, c.37 § 15 (service throughout United Kingdom). Such service complies with the fair notice requirements of procedural due process. See *Milliken v. Meyer*, 311 U.S. 457, 461 n.7 (1940).

<sup>108</sup> Service by registered mail with request for a return receipt is already law in California. CAL. CODE CIV. PROC. § 1020 (miscellaneous notices); § 376 (absent parents); CAL. CORP. CODE § 3303 (service by Secretary of State on domestic corporations); *cf.* § 6502 (service by Secretary of State on foreign corporations; no return receipt mentioned). *But cf.* The Maintenance Orders Act, 1950, 14 GEO. 6, c.37 § 15(4) (nation-wide service, but personal service required).

<sup>109</sup> While this statement of the effect of personal service may be obvious and hence unnecessary, its inclusion was thought advisable for clarity and for uniformity in statutory language. See CAL. CODE CIV. PROC. § 416.

<sup>110</sup> See text following note 83, *supra*.

<sup>111</sup> For a similar reference to existing procedural methods, see UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 19, 9A U.L.A. 95 (Supp. 1954); CAL. CODE CIV. PROC. § 1682.

of the state in which he is present. Such petition shall be in the form of an affidavit, and shall specify the grounds relied upon for the request.<sup>112</sup>

If the court of the state acting as an initiating state, upon consideration of the petition, believes that the interests of justice would be furthered by allowing the alleged obligor to present his defenses in the court of the state where he is present, it may, in its discretion, grant such permission.<sup>113</sup> The court shall so notify the alleged obligor, take evidence upon the alleged duty of support, and transmit the record and a request to hold a hearing to the court of the state where the alleged obligor is present.<sup>114</sup>

If permission is denied, the court shall so notify the alleged obligor, ordering him to appear and answer within a specified period of time.<sup>115</sup>

§ 1691.3. Proceedings in Responding State.<sup>116</sup>—Upon receipt of the record and a request to hold a hearing, the court of the state where the alleged obligor is present, acting as a responding state, shall hold a hearing in accordance with the provisions of this title,<sup>117</sup> and thereafter shall retransmit<sup>118</sup> the record to the court of the state acting as an initiating state.

§ 1691.4. Judgment.—If the obligor does not appear, or, on appearing, fails to satisfy the court of the state acting as an initiating state<sup>119</sup> that a duty of support does not exist, that court may order<sup>120</sup> the obligor to furnish

<sup>112</sup> When the court of the state acting as an initiating state has acquired personal jurisdiction over the alleged obligor in accordance with § 1691, it may enter a valid personal judgment against him, whether or not he actually appears. The alleged obligor's constitutional rights have been preserved, since he has an opportunity to present his defenses in the initiating state. There is no constitutional requirement that he be given an opportunity to defend in a more convenient forum; therefore the potential opportunity to do so, as provided by this section, is entirely within the discretion of the initiating state. *Cf. Smith v. Smith*, 125 A.C.A. 190, 200, 270 P.2d 613, 621 (1954) (constitutionality of present act).

<sup>113</sup> In deciding whether the alleged obligor should be allowed to present his defenses in a forum more convenient to him, the court of the state acting as an initiating state might wish to utilize the decisions under the venue transfer provisions of the Federal Judicial Code, 28 U.S.C. § 1404(a) (1948). See Comment, *Factors of Choice for Venue Transfer Under 28 U.S.C. § 1404(a)*, 41 CALIF. L. REV. 507 (1953).

<sup>114</sup> *Cf.* a similar provision in The Maintenance Orders Act, 1950, 14 Geo. 6, c.37 §§ 21, 22.

<sup>115</sup> A statute designed to provide the obligor with a convenient forum for hearing while retaining control of the action in the initiating court has been successful in the British Commonwealth since 1920. The Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 & 11 GEO. 5, c.33 §§ 3(3), 4(3); Note, 93 SOL. J. 381 (1949).

<sup>116</sup> *Cf.* CAL. CODE CIV. PROC. §§ 1676 and 1680, 1683 and 1684, 1686 and 1687.

<sup>117</sup> For procedure, see UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT §§ 17, 19, 9A U.L.A. 93, 95 (Supp. 1954); CAL. CODE CIV. PROC. §§ 1680, 1682.

<sup>118</sup> See The Maintenance Orders Act, 1950, 14 GEO. 6, c.37, § 21, 22.

<sup>119</sup> The principal change effected by the proposed Act would be concentration of ultimate decision in the court of the state acting as an initiating state (the dependent's state), rather than in the court of the responding state (the obligor's state). For an exposition of the policies which make this change desirable, see text following note 83, *supra*; Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 MICH. L. REV. 345 (1953). For an analysis of the out-of-state personal service which makes this change possible, see Ehrenzweig and Mills, *Personal Service Outside the State*, 41 CALIF. L. REV. 383 (1953).

<sup>120</sup> Default after out-of-state personal service would result in a default personal judgment against the obligor. See CAL. CODE CIV. PROC. § 585(2).

support<sup>121</sup> and to pay costs, disbursements, and reasonable counsel fees,<sup>122</sup> and may subject his property to such order,<sup>123</sup> and the order shall be a personal judgment against him.<sup>124</sup>

## SUBCHAPTER C

### REGISTRATION<sup>125</sup>

§ 1692. Petition for Registration.—When a duty of support has been imposed by the court of any state, whether or not in proceedings conducted pursuant to the provisions of this Act, the obligee may petition for the registration of the order of support in the court of the state where the obligor is present. The petition shall be verified and shall state the name of the obligor and, so far as known to the obligee, his address and other pertinent

<sup>121</sup> For which law shall be used to determine existence of a duty of support, see note 106, *supra*; text preceding note 51, *supra*.

<sup>122</sup> Payment of attorneys' fees by the obligor is essential to the practical operation of this statute. Without such payment, obligees of modest means often would be forced to forego their just claims. See Ehrenzweig, *Shall Counsel Fees Be Allowed?*, 26 CAL. ST. B. J. 107 (1951); Dean v. Dodge, 220 Ark. 834, 250 S.W.2d 731 (1952) (costs and attorney's fees and the present Act).

Some financial encouragement is offered the obligee under the Act as presently enacted: CAL. CODE CIV. PROC. § 1677 allows the state to waive fees and costs for filing, service of process, stenographic services, etc. CAL. CODE CIV. PROC. § 1674 provides that the prosecuting official may, upon request of the court, represent the plaintiff. However, public prosecuting facilities and personnel are available to individual obligees only to a limited extent. See note 66, *supra*.

Realistically, a successful statute would seem to require representation by private counsel reimbursed by the obligor. On this theory, other statutes already provide for reimbursement of counsel fees to the prevailing party. See, e.g., CAL. CIV. CODE § 137.5 (divorce); CAL. CIV. CODE § 3083 (negotiable instruments); CAL. CODE CIV. PROC. §§ 796 (partition); 1031 (wages); WATER CODE § 7003 (co-owner); CAL. GEN. LAWS act 4317 (libel and slander); N. Y. CIV. PROC. ACT § 1513 (general).

<sup>123</sup> Power to subject the property of the obligor to the order of support is provided also by the present Act. CAL. CODE CIV. PROC. § 1676.

<sup>124</sup> See note 119 *supra*; cf. CAL. CODE CIV. PROC. § 417 (similar provision).

<sup>125</sup> The registration procedure, as provided by this section and those following, in effect merely shifts the burden of going forward from the obligee to the obligor. Under conventional procedures of the common law and the present Act, the obligee bears the burden of convincing the court of the obligor's state to enter a new judgment on the original order. Under the procedure proposed in this statute, the obligor must attempt to convince the court that the original order should *not* be recognized and enforced. The procedure is similar to that of the FEDERAL JUDICIAL CODE, 28 U.S.C. § 1963 (1948); the UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT, 9 U.L.A. 377 (1951); The Maintenance Orders Act, 1950, 14 GEO. 6, c.37, § 16; The Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 & 11 GEO. 5, c.33, §§ 1, 2. See REP. ADVISORY COMM. ON RULES FOR CIV. PROC. (1937), Rule 85; 52 A.B.A. REP. 294 (1927).

For an analysis of registration as a procedure to eliminate the hardship imposed on foreign judgment creditors by the Anglo-American law of jurisdiction, see text at notes 91-99, *supra*. See also MOGRE, COMMENTARY ON THE U. S. JUDICIAL CODE 384 (1949); 52 A.B.A. REP. 84, 294 (1927); Borm-Reid, *Recognition and Enforcement of Foreign Judgments*, 3 INT'L & COMP. L. Q. 49, 85 (1954); Notes, *The Maintenance Orders Act, 1950*, 95 SOL. J. 35 (1951); 100 L.J. 715 (1950); Note, *The Maintenance Orders (Facilities for Enforcement) Act, 1920*, 93 SOL. J. 381 (1949).

information, and shall be accompanied by a certified<sup>126</sup> copy of the order of support.

§ 1692.1. Registration of Order; Service of Summons.—When the court of this state, acting as a registering state,<sup>127</sup> receives a petition for registration of an order of support, it shall (1) register the order, and (2) take such action as is necessary in accordance with the laws of this state to have summons issued and served upon the obligor.<sup>128</sup> The Clerk of the court shall send by registered mail to the last known address of the obligor a copy of the summons, clearly designating<sup>129</sup> the order, together with a notice reciting the fact of registration, the court in which it is registered, and the time allowed for pleading. Proof of such mailing shall be made by certificate of the clerk.<sup>130</sup>

§ 1692.2. Authorization for Attachment.<sup>131</sup>—At any time after registration in the court of the state acting as a registering state, regardless of whether or not jurisdiction of the obligor has been secured or final judgment obtained in that court, that court may, upon request of the obligee, take such action as is necessary<sup>132</sup> to have the property of the obligor attached, as security for satisfaction of the registered order. Any attachment so made

<sup>126</sup> While it seems desirable that the copy of the order to be registered should in some way reflect the fact that it is an authenticated copy of the judicial proceedings of another state, the proposed statute does not designate new methods of authentication. See Commissioners' Note, UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 3, 9 U.L.A. 378 (1951). The federal government and all the states already have prescribed methods of indicating authenticity. See 28 U.S.C. § 1738 (1948) and *e.g.*, CAL. CODE CIV. PROC. § 1905.

<sup>127</sup> The term "registering state" designates the state in which a support order may be registered and enforced against the obligor. The registration procedure is applicable to *all* orders of support, irrespective of whether or not the Act was used in their procurement. Therefore the term "responding state" in the present Act is too narrow for registration drafting, and the new term, "registering state," has been utilized.

<sup>128</sup> A Uniform Act for registration of orders of support would have to comply, of course, with due process requirements as to service of process. See text following note 96, *supra*. For a similar requirement that personal service be effected by the court, see Section 17 of the UNIFORM ENFORCEMENT OF SUPPORT ACT, 9A U.L.A. 93 (Supp. 1954); CAL. CODE CIV. PROC. § 1680. No new method of personal service is prescribed by the statute; the court would act in conformity with existing state laws, *e.g.*, CAL. CODE CIV. PROC. §§ 407, 410.

<sup>129</sup> See UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 5, 9 U.L.A. 379 (1951).

<sup>130</sup> Notice by registered mail would satisfy due process for purposes of registration even in the absence of personal service. See text following note 94, *supra*; *cf.* MOORE, COMMENTARY ON THE JUDICIAL CODE 384 (1949). Service by mail would also lay the foundation for a new judgment *quasi in rem* as to the property of the obligor in the registering state. See UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 5 and Note, 9 U.L.A. 379 (1951).

<sup>131</sup> In California, as in most states, attachment is available only in narrowly circumscribed situations. See *Snapp v. Kidder*, 200 Cal. 724, 255 Pac. 183 (1927); CLARK, CODE PLEADING 154 (2d ed. 1947). Section 537(1) of the California Code of Civil Procedure allows attachment upon a duty of support only when the duty is one "existing under the laws of this state." Since the obligee seeking registration does not come within these provisions, and yet it is believed that the obligee ought to be in as good a position as other creditors, the proposed section authorizes attachment by the court of the registering state at any time after registration.

<sup>132</sup> Present state statutes would control as to the technique for attachment, *e.g.*, CAL. CODE CIV. PROC. § 542.

may be set aside upon proof that the obligor has furnished adequate security for the satisfaction of the order.

§ 1692.3. Defenses.<sup>133</sup>—Any defense available in an action for support may be presented by the obligor by appropriate pleadings, and the issues raised thereby shall be tried and determined as in other civil actions.<sup>134</sup> Such pleadings must be filed within thirty days after personal jurisdiction is acquired or within thirty days after the mailing of the summons.<sup>135</sup>

§ 1692.4. Pendency of Appeal.—If the obligor shows that an appeal from the original order is pending in the rendering state,<sup>136</sup> or that he is entitled to appeal and intends to do so, the court of the state acting as a registering state shall, on such terms as are just, postpone the hearing for such time as appears sufficient for the appeal to be concluded.<sup>137</sup>

§ 1692.5. New Personal Judgment.<sup>138</sup>—If the obligor fails to answer within thirty days after he has been personally served in the state acting as a registering state, or if, after answering, he fails to satisfy the court in the state acting as a registering state that the registration ought to be set aside, that court may render personal judgment against the obligor for the amount of the registered order, or with such modifications as the court thinks just,<sup>139</sup> together with costs, disbursements, and reasonable counsel fees.<sup>140</sup>

<sup>133</sup> Due process demands that the obligor be given an opportunity to raise defenses that would have been open to him in a civil action brought upon the foreign judgment. See Griffin v. Griffin, 327 U.S. 220 (1946); text at note 59, *supra*.

<sup>134</sup> For modification, see note 139 *infra*.

<sup>135</sup> While all states prescribe the time within which a defendant, once served, must answer, e.g., CAL. CODE CIV. PROC. § 407, it was thought advisable to prescribe a specific time limit in the statute in order to assure expeditious termination of the registration procedure.

<sup>136</sup> "Rendering state" designates the state in which the order of support was previously imposed upon the obligor. This new term is required because registration is available for *all* orders of support, irrespective of whether or not the Act was used in their acquisition. The term "initiating state," used in the present Act and limited to reciprocal proceedings, therefore had to give way to a broader term in the registration section. "Rendering state" includes both states which handed down the original support order and those which have entered judgment upon it.

<sup>137</sup> Postponement during pendency of appeal is modeled upon Section 9 of the Uniform Enforcement of Foreign Judgments Act, 9 U.L.A. 382 (1951). Inasmuch as great discretion is given the registering court, it is felt neither party will suffer substantial disadvantage.

<sup>138</sup> Judgment upon the registered order, after a hearing in the registering state, culminates the registration procedure. See The Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 & 11 GEO. 5, c.33, §§ 4(4), (6); The Maintenance Orders Act, 1950, 14 GEO. 6, c.37, § 22; also see Commissioners' Note, UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 7, 9 U.L.A. 380 (1951).

<sup>139</sup> Modification by the court of the registering state would probably be recognized as constitutional, and has much to commend it from a practical viewpoint, since the registering court is best acquainted with the circumstances of the one who must pay the judgment. See 1 ARMSTRONG, CALIFORNIA FAMILY LAW 392 (1953); cf. Jacobs, *The Enforcement of Foreign Decrees for Alimony*, 6 LAW & CONTEMP. PROB. 250, 261 *et seq.* (1939).

Modification of prior orders is made possible by the present Act. CAL. CODE CIV. PROC. § 1682; see text following note 68, *supra*. The proposed statute continues this practice, but avoids the constant relitigation which the present Act appears to engender. See text following note 74, *supra*.

<sup>140</sup> Reimbursement by the obligor of the expenses incurred in obtaining the services of

§ 1692.6. Effect of Judgment After Personal Service; Satisfaction.—A judgment by the court of the state acting as a registering state, after personal service upon the obligor, constitutes a final judgment between the parties and supersedes all prior judgments and registrations.<sup>141</sup> Satisfaction, either partial or complete, of a judgment entered upon a registered order shall operate as satisfaction of all prior judgments.<sup>142</sup>

§ 1692.7. No Personal Service.—If attachment has been made upon the obligor's property in the state acting as a registering state, but the obligor neither has been personally served nor has acted to set aside the registration within thirty days after registration and mailing of the summons, the court of the state acting as a registering state shall render judgment against the obligor for the amount of the registered order, together with costs, disbursements, and reasonable attorney's fees. A judgment so rendered shall be binding upon the obligor's interest in property attached.<sup>143</sup>

§ 1692.8. Appeal.—An appeal in the state acting as a registering state may be taken by either party from any judgment or order sustaining or setting aside a registration in the same manner as an appeal from a judgment or order in a civil action.<sup>144</sup>

private counsel is essential to the practical operation of any interstate recognition and enforcement procedure. See note 122, *supra*.

<sup>141</sup> Double collection upon several orders of support should be avoided. Unfortunately, in attempting to provide against this evil, the present Act (CAL. CODE CIV. PROC. § 1689) allows any number of orders to exist concurrently, resulting in possible harassment of the obligor and the necessity for relitigation every time the obligor moves to another state. See text following notes 74 and 79, *supra*. The proposed statute is designed to prevent double collection and to avoid relitigation by providing that the judgment upon a registered order shall supersede all prior judgments and registrations. Satisfaction of such judgment satisfies all prior judgments and registrations. Only one judgment will exist at a time; only that judgment may be presented for registration and, perhaps, modification, when the obligor moves to another state. Cf. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 15, 9 U.L.A. 383 (1951).

<sup>142</sup> Should the court of the registering state set aside the registration, the decision would become a final judgment between the parties. See text at note 96, *supra*. But cf. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 10, 9 U.L.A. 382 (1951); The Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 & 11 Geo. 5, c.33, §§ 1, 3(4).

<sup>143</sup> This section is modeled on the provision, "New Judgment Quasi in Rem" of the Uniform Enforcement of Foreign Judgments Act § 12, 9 U.L.A. 382 (1951), and is designed to subject the property of the obligor to the registered order, even when personal jurisdiction was not acquired over him. For similar statutory provisions, see UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT §§ 17, 18, 9A U.L.A. 93, 94 (Supp. 1954); CAL. CODE CIV. PROC. §§ 1680, 1681; CAL. CODE CIV. PROC. § 585(3).

<sup>144</sup> To protect the rights of both parties while administering an efficient and expeditious registration procedure, the courts should not be harassed with peremptory writs. Instead, appeal should be taken from a judgment sustaining or setting aside a registration as in other civil actions. See UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT, § 11, 9 U.L.A. 382 (1951); The Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 & 11 Geo. 5, c.33, §§ 3(6), 4(7).

§ 1692.9. Optional Procedure.—Notwithstanding the foregoing provisions, an obligee may obtain adjudication in the court where the obligor is present, and, in addition, may bring an action to enforce any imposed duty of support.<sup>145</sup>

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<sup>145</sup> Inasmuch as this Act is urged for enactment by the several states, it may be desirable to keep other remedies intact, at least until all states have passed registration statutes.