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# Enforcement of Support Obligations: A Solution and Continuing Problems

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concept of "practice of law" to specific situations. Necessarily broad, practice of law too often has meaning only *ex post facto*. Recognizing that a region exists wherein the functions of attorney and layman overlap, the courts seek to regulate the practice of law in a common sense way so as not to unduly burden the public interest with impractical technical restraints no matter how sound logically. In the field of legal instrument drafting the overlap is particularly troublesome. One of the few, perhaps the only, valid, workable methods of defining the boundary which separates the authorized from the unauthorized has been the "substantial interest doctrine". A fixture insofar as individuals are concerned, the doctrine is currently defunct in Kentucky as applied to corporations. Whereas it is conceded that in a limited application the prohibition against corporate preparation of legal instruments is sound, the renunciation of the substantial interest exception creates more and greater problems than it cures.

Maxwell P. Barret, Jr.

## ENFORCEMENT OF SUPPORT OBLIGATIONS:

### A SOLUTION AND CONTINUING PROBLEMS

Obtaining a judgment or settlement through litigation or negotiation in any legal matter is usually considered a satisfactory conclusion to the attorney's efforts; but, if the client is a wife and mother seeking a decree for child support from her husband, obtaining a judgment often marks the beginning rather than the end of difficulties. The wife is faced with the continuing problem of enforcing a child support decree against a father who has left the state and who refuses to support his minor children. In spite of legislation designed to remedy the situation, a husband can still, "by the simple method of crossing state lines . . . effectively prevent his dependents from enforcing family support obligations."<sup>1</sup> In *Hamilton v. Hamilton*,<sup>2</sup> the Kentucky Court of Appeals employs an unusual but effective means of collecting support payments from an affluent husband and father, living outside the state, who refuses to continue making these payments in the amount decreed by the Jefferson County Circuit Court. The opinion of the Court serves both as one solution to the problem and as a means of underscoring many additional difficulties one may

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<sup>1</sup> Murphy, *Uniform Support Legislation*, 43 Ky. L.J. 98, 111 (1954).

<sup>2</sup> 476 S.W.2d 197 (Ky. 1972).

generally expect to face in seeking to obtain or to enforce a child support decree.<sup>3</sup>

The facts of the *Hamilton* case are not complicated, although the litigation extends over a period of some twelve years in which the appellant tried with little success to collect support payments from her absentee husband on behalf of their daughter. Jack and Eugenia Hamilton agreed upon a divorce settlement in 1960; Eugenia retained custody of their four year old daughter and waived her claim to alimony in exchange for Jack's agreement to pay \$200 per month for child support. In 1964, Jack Hamilton filed a motion to reduce the amount of support payments, but his request was denied. By this time, however, Jack had left Kentucky and was living in Florida. Outside the jurisdiction of the court, he summarily reduced his payments from \$200 to \$75 per month. Eugenia sought to have her Kentucky judgment enforced in Florida under the Uniform Support of Dependents Act<sup>4</sup> only to find that Florida, as the responding state, would neither extradite Jack nor force him to pay more than the \$75 per month that he had been paying for some time. By 1970, Jack Hamilton had moved to New Jersey and was working for the St. Regis Paper Company in New York City at an annual salary of over \$20,000. Relying upon the fact that the St. Regis Paper Company also does business in Kentucky, Eugenia Hamilton obtained a garnishment<sup>5</sup> of Jack's wages from his employer as garnishee at its Kentucky office. Reversing the lower court's reduction of monthly payments in the proceedings involving the garnishment of Jack's wages and expanding upon a determination of the amount in arrearage and the amount permitted to be garnished, the Court made clear its policy that an absentee father's wages could be attached to satisfy a support judgment if he works for a corporation over which the courts of this state have personal jurisdiction.

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<sup>3</sup> The problem is so acute that at least one writer has suggested that federal legislation in the area may be required to cope with it. Note, *Domestic Relations: Interstate Enforcement of Support Orders: Necessity and Feasibility of Federal Legislation*, 48 CORNELL L. REV. 541 (1963).

<sup>4</sup> The applicable statutes of both Florida and Kentucky are based upon the UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, 9C UNIF. LAWS ANN. 1 (1968) [hereinafter cited as URESA]. The act was drafted in its basic form in 1950 and subsequently amended in 1952, 1958, 1962, and 1968. The statutes in Kentucky and Florida are based on the 1952 amendment, as are the statutes in most other states. The statutes applicable to the *Hamilton* case are KY. REV. STAT. ch. 407 (1971) [hereinafter cited as KRS] and FLA. STAT. ANN. ch. 88 (1964). The title UNIFORM SUPPORT OF DEPENDENTS ACT in Kentucky is a holdover from earlier legislation formerly in effect in this state; all but the name has been supplanted by URESA.

<sup>5</sup> The basic statutory provision in Kentucky governing garnishment is KY. REV. STAT. ANN. § 425.190 (1969) [hereinafter cited as KRSA].

The decision in the *Hamilton* case is on quite solid ground, although only one case is cited by the Court in its opinion.<sup>6</sup> The Court might have articulated more completely the basis for its decision since the principle is well established in a long line of cases, including the landmark decision of the United States Supreme Court in *Harris v. Balk*,<sup>7</sup> that a creditor may collect by garnishment any or all of his debt from any debtor of *his* debtor present in the state, provided his debtor could have sued the garnishee in the state as well.<sup>8</sup> A recent decision citing this principle as set forth in *Balk* is almost directly in point with the *Hamilton* case. In *Garrett v. Garrett*,<sup>9</sup> the Colorado Court of Appeals upheld a garnishment of wages from the employer of a husband who had failed to satisfy a judgment arising out of a divorce. In this case, as in *Hamilton*, the husband had left the state, but his wages were garnished at the Denver office of the Washington State corporation for which he worked. Citing the *Balk* decision,<sup>10</sup> the Colorado court held that the corporation, having brought itself within the jurisdiction of the court by doing business within the state, was liable in garnishment proceedings for the wages it owed a judgment debtor in the state.<sup>11</sup>

The holding of the *Balk* case referred specifically to a lump sum debt, but courts have applied that holding, as in *Garrett*, to cases in which garnishment of wages is involved. Once the *right* of the creditor is established, it is clear that uncollected wages are as susceptible to garnishment as any other debt.<sup>12</sup> There is certainly in personam

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<sup>6</sup> *Pittsburgh, C.C. & St. L. Ry. v. Bartels*, 56 S.W. 152 (Ky. 1900) *does* appear directly in point on the matter of garnishment in circumstances such as those in *Hamilton*. It has not been overruled, of course, and thus has a great deal of value as precedent in Kentucky in spite of its age.

<sup>7</sup> 198 U.S. 215 (1905). For an early case involving satisfaction of a divorce decree judgment through garnishment of a bank account see *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269 (1917).

<sup>8</sup> U.S. CONST. art. IV, § 2 provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Under the Privileges and Immunities Clause, *Balk* could have sued *Harris* in Maryland to collect a debt contracted in North Carolina. Consequently, *Balk's* creditor, one Epstein, upon discovering *Harris* in Maryland, was able to garnish *Harris' debt* to *Balk* in partial satisfaction of *Balk's debt* to Epstein. See Note, *The Continuing Impact of the Doctrine of Harris v. Balk*, 4 NEW ENG. L. REV. 207, 209 (1969).

<sup>9</sup> 490 P.2d 313 (Colo. 1971).

<sup>10</sup> The Colorado court relies upon the following language from the *Balk* case: If there be a law of the state providing for the attachment of the debt, then, if the garnishee be found in that state, and process be personally served upon him therein, we think the court thereby acquires jurisdiction over him, and can garnish the debt due from him to the debtor of the plaintiff and condemn it, provided the garnishee could himself be sued by his creditor in that state.

*Harris v. Balk*, 198 U.S. 215, 222 (1905), cited in *Garrett v. Garrett*, 490 P.2d 313, 314-15 (Colo. 1971).

<sup>11</sup> *Garrett v. Garrett*, 490 P.2d 313, 315 (Colo. 1971).

<sup>12</sup> Note, *Wage Garnishment in Kentucky*, 57 Ky. L.J. 92, 95 (1968).

jurisdiction over the corporation in *Hamilton* since the St. Regis Paper Company has an agent for service of process and carries on business activities in Kentucky. Indeed, combining the holdings of the Supreme Court in *Balk* and in *International Shoe Co. v. Washington*,<sup>13</sup> in which the Court announced the "minimum contacts" rationale for satisfying due process requirements where in personam jurisdiction is in question,<sup>14</sup> it is evident that even without an agent for process or a regular business establishment in Kentucky, the Court might well have permitted St. Regis to be served in a garnishment proceeding. It could have employed the *Balk* rationale that a debtor, even temporarily in the state, may be served in a garnishment proceeding subject only to the limitation that the third-party creditor may obtain a judgment only where *his* debtor could *also* have sued the garnishee on the debt in the state.<sup>15</sup> The Court did not have to go so far in *Hamilton*, but it is interesting to note that it could have; the Court was well within orthodox limits in *Hamilton*, as was the Colorado court in *Garrett*, decided some two months earlier.<sup>16</sup> An employee may sue his employer to collect his wages wherever the employer may be served with process, and consequently, the employee's creditors, including his wife and children in possession of a support order, may also sue the employer as garnishee in order to attach the employee's wages in satisfaction of the debt.<sup>17</sup>

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<sup>13</sup> 326 U.S. 310 (1945).

<sup>14</sup> *Id.* at 316. The language has been often quoted but is worthy of repetition: [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'

<sup>15</sup> *Harris v. Balk*, 198 U.S. 215, 222 (1905). In a case that predates even *Balk*, *Chicago, R.I. & P. Ry. v. Sturm*, 174 U.S. 710 (1899), the Supreme Court held that a debt not specially limited is owed everywhere and could be sued on wherever the debtor is to be found. In *Pittsburgh, C.C. & St. L. Ry. v. Bartels*, 56 S.W. 152 (Ky. 1900), the case cited by the Kentucky Court of Appeals in its opinion in *Hamilton*, the Court held that a corporation submits itself to the jurisdiction of the court for garnishment purposes to the same extent as a domestic corporation when it becomes licensed to do business in the state. In *Baltimore & O. R.R. v. Allen*, 52 S.E. 465 (W. Va. 1905), the Supreme Court of Appeals of West Virginia held that a foreign corporation doing business in the state may be subject to garnishment just as any natural person residing in the state. The case law in this area is generally quite old, for the holdings in many of the cases have become settled principles of law in the jurisdictions to which they apply.

<sup>16</sup> One might cite any number of cases involving corporate garnishees in which *Harris v. Balk* is treated as "academic." See, e.g., *Goldberg v. Southern Builders, Inc.*, 184 F.2d 345 (D.C. Cir. 1950) and *Dorr-Oliver, Inc. v. Willett Associates*, 219 A.2d 718 (Conn. 1966).

<sup>17</sup> In *Chicago, R.I. & P. Ry. v. Sturm*, 174 U.S. 710 (1899), an employee of a railroad sued for his wages in Kansas only to find that they had already been attached to satisfy a debt in Iowa and that the Kansas court was obliged to give full faith and credit to the Iowa judgment.

In addition to delineating the Court's interesting method of enforcing a support judgment against Jack Hamilton, the *Hamilton* case serves to bring into focus many other problems in enforcing obligations of support against recalcitrant husbands and fathers. How effective, for example, is garnishment in enforcing support judgments against absentee fathers? What other methods are available for obtaining support payments?

The answer to the first question is that, generally, garnishment is an ineffective remedy for enforcing a support judgment against a reluctant father.<sup>18</sup> The "runaway pappy"<sup>19</sup> is seldom likely to offer his wife and children the opportunity to attach his wages so readily. If he works at all, he probably does not work for a corporation subject to in personam jurisdiction in Kentucky. It is largely because Jack Hamilton enjoyed an executive position and a five figure income and thus could not afford to "drift" to another job that Eugenia Hamilton was finally able to obtain a satisfactory remedy through garnishment. The facts in *Hamilton* are close to extraordinary for cases of this sort. Had Jack been a typical drifting absentee father, he would probably have "moved on" once the garnishment had been effected, and his wife would have had either to settle for the wages from a single pay period<sup>20</sup> or to begin the difficult process of garnishing wages from a new employer, *if* Jack's new residence could be ascertained and *if* the new employer were subject to garnishment in Kentucky.

It might be asked, of course, why the judgment creditor does not simply take her Kentucky support judgment to the court of the state where the judgment debtor may be found for enforcement by the court. Under the Uniform Reciprocal Enforcement of Support Act, in effect in most states, she may do this—often with dubious results. One might reasonably ask why such an act is necessary; what of the constitutional mandate that judgments from one state be given full

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<sup>18</sup> Unless the defendant is coerced by the embarrassment of garnishment into voluntarily complying with the provisions of the judgment against him, the necessity of filing successive garnishment orders to collect the support payments as both wages and payments come due may make the remedy less attractive than it seems at first. See Note, 57 Ky. L.J. 92, *supra* note 12, at 101. Of course, the disadvantages of having to get successive orders is outweighed by the advantage in *Hamilton* of being able at last to collect *something*.

<sup>19</sup> W. BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT (1960). The phrase is borrowed from the subtitle of Brockelbank's book. The book is a comprehensive treatment of URESA and includes a discussion of the problems of collecting support from fathers who desert their families as well as those who seek to avoid support decrees.

<sup>20</sup> Note, 57 Ky. L.J. 92, *supra* note 12, at 101. It is one of the severe limitations of garnishment that it is effective only for the pay period for which the order of garnishment is entered. To satisfy a judgment for a greater sum, successive orders of garnishment are required.

faith and credit in the courts of every other state?<sup>21</sup> The problem is a judicially-imposed interpretation of the Constitution, extending full faith and credit only to *final* judgments of state courts.<sup>22</sup> The Supreme Court holding, which has controlled for decades the application of any constitutional requirement that full faith and credit be given to judgments arising out of alimony and support cases, is *Sistare v. Sistare*.<sup>23</sup> The problem, recognized by the Supreme Court in *Sistare*, is that a court giving full faith and credit to the judgment of a sister court in another state should not have its implementation of that judgment subject to modification by the court in the original jurisdiction. A decree for support must be given full faith and credit as installments come due *if* the judgment is finalized, but, where statute or the decree itself make its terms modifiable, full faith and credit does not obtain.<sup>24</sup>

A number of courts have recognized, however, that the *Sistare* holding does not *prevent* states from enforcing the modifiable support and alimony decrees of other courts; it merely states that courts are not *required* to enforce such judgments. Under the doctrine of comity,<sup>25</sup> courts have provided judgment creditors with equitable relief, at least to the extent of accrued payments, although there has been a general reluctance to deal with future installments of a modifiable support decree.<sup>26</sup> Some state courts have in recent years gone considerably beyond such limited enforcement of alimony and support decrees, extending full faith and credit and enforcing decrees as to future support payments.<sup>27</sup> The Supreme Court of Illinois

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<sup>21</sup> U.S. CONST. art. IV, § 1 provides in pertinent part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The enabling legislation is found in 28 U.S.C. § 1738 (1970).

<sup>22</sup> For a full discussion of the problems inherent in the requirement of finality of judgment for application of the Full Faith and Credit Clause and a consideration of increasingly liberal application of the requirement, see Note, *The Full Faith and Credit Clause Reanalyzed: The Finality Doctrine Denounced—Judicial Proceedings Redefined*, 54 Nw. U.L. Rev. 211 (1959).

<sup>23</sup> 218 U.S. 1 (1910).

<sup>24</sup> *Id.* at 17.

<sup>25</sup> For a general discussion of the doctrine of comity, see 16 AM. JUR.2d *Conflict of Laws* §§ 4-7 (1964). Generally speaking, comity is the courteous extension of recognition by one state's courts to the judgment of courts in another state when such recognition is not required. It is a reciprocal courteous recognition and may not be demanded as a "right." See also, Annot., 18 A.L.R.2d 856 (1951).

<sup>26</sup> *Glanton v. Renner*, 149 S.W.2d 748 (Ky. 1941). In this decision, the Court enforced an Illinois judgment for *accrued* support payments but refused to enforce *future* payments provided for under the decree on the grounds that they were subject to modification by the Illinois court.

<sup>27</sup> *Light v. Light*, 147 N.E.2d 34 (Ill. 1958). See also *People ex rel. Franks v. Franks*, 261 N.E.2d 502 (Ill. 1970); *Hatch v. Hatch*, 431 P.2d 832 (Ore. 1967); *Hudson v. Hudson*, 178 A.2d 202 (N.J. 1961).

indicated in its opinion in *Light v. Light* that the strong policy considerations for not permitting a judgment debtor to elude his responsibilities in a support case demand that support decrees be given full faith and credit in spite of the *Sistare* decision.

Policy considerations argue strongly that such decrees are entitled to full faith and credit. Unless they receive interstate recognition, the insulated judicial systems of the several states may become sanctuaries within which obligations that have been fully and fairly adjudicated in another jurisdiction may be escaped.<sup>28</sup>

If all—or even many—state courts were willing to go as far as the *Light* decision in Illinois, divorced wives and dependent children would have far fewer problems in obtaining support payments. But until there is unanimous adoption of the position of the Illinois court or adequate uniform legislation, the judgment creditor in such cases is left at the mercy of the judgment debtor's decision to travel to a state where the courts have decided to apply *Sistare* broadly and at best to enforce modifiable decrees in piecemeal fashion under the comity rationale.<sup>29</sup> One solution to the problem might well be a reinterpretation by the Supreme Court of its position on such cases; another solution could be a modification by Congress of legislation implementing the full faith and credit clause, changing the "finality" doctrine to a "conclusive" doctrine.<sup>30</sup>

In recognition of the seriousness of the problem at hand, an attempt has been made to reach a solution through uniform state legislation.<sup>31</sup> As the experience of Eugenia Hamilton indicates, however, an attempt to enforce a judgment under URESA can be most unsatisfactory.<sup>32</sup> Under URESA, the judgment creditor applies to the state in which the judgment debtor under the support decree is residing for enforcement of the judgment. The responding state is to grant a hearing and, if it finds the father liable for support of his dependents, the responding state will determine the amount to be collected, use its own means to collect that amount, and then send the money to the initiating

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<sup>28</sup> *Light v. Light*, 147 N.E.2d 34, 39 (Ill. 1958).

<sup>29</sup> It has been noted that "without constitutional or statutory compulsion, however, this modern approach is left to the discretion of state courts too often steeped in tradition to employ it, and remains at best but a possible future remedy for a real and present problem." Note, 48 CORNELL L. REV. 541, *supra* note 3, at 546.

<sup>30</sup> *Id.* See also Note, *Interstate Enforcement of Modifiable Alimony and Child Support Decrees*, 54 IOWA L. REV. 597 (1969), in which the writer discusses the problems inherent in haphazard application of the overly broad interpretation of the *Sistare* holding and suggests that the Court might be persuaded to change its position in regard to this limited and specialized category of cases.

<sup>31</sup> URESA, *supra* note 4. The Kentucky statute is based on the 1952 amendment.

<sup>32</sup> *Hamilton v. Hamilton*, 476 S.W.2d 197, 199 (Ky. 1972).

court to be given to the judgment creditor.<sup>33</sup> In *Hamilton*, this procedure netted only \$75 per month on a \$200 per month support decree—the amount Jack Hamilton had been paying for some time—because Florida was willing only to enforce that much of the decree. Such problems are myriad under URESA. In most cases the wife or child is represented in the responding state by the county prosecutor's office, and her claim often takes a low priority among other (*local*) matters to be handled by the prosecutor.<sup>34</sup>

Greeted with a great deal of enthusiasm<sup>35</sup> as well as numerous questions concerning its constitutionality<sup>36</sup> when first introduced, URESA has proven to be no threat to the due process rights of non-supporting fathers and far less than a complete answer to the problem of enforcing support decrees. The wife and minor children must have their claim evaluated in a distant forum and, unless they can bear the expense of traveling there, the hearing takes place without their having an opportunity to testify in their own behalf. They must have the claim handled in an office attuned to local politics by someone who is usually less than totally committed to the cause of a "client" whom he has met only by way of the file forwarded by the initiating court. It is small wonder that when Jack Hamilton informed the Florida court that he had for two years been paying \$75 per month child support, the court agreed to enforce only *that* portion of the \$200 per month judgment. He was able to appear personally before the Florida court to plead his cause, while his wife and daughter were forced to wait in Louisville for the outcome of a hearing to determine whether they would receive the support payments to which they were entitled. Under both the full faith and credit clause as limited by *Sistare* and URESA, the wife and minor children are faced with uncertainty, delay, and legal expense in obtaining support. It seems that any such remedy which depends upon cooperation between the courts of two jurisdictions necessarily involves expensive and lengthy proceedings without certainty of success. Clearly a more certain remedy is needed.

Such a remedy may very well lie in the application of the "minimum

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<sup>33</sup> Note, 48 CORNELL L. REV. 541, *supra* note 3, at 546.

<sup>34</sup> Nelson, *Family Support From Fugitive Fathers: A Proposed Amendment to Michigan's Long Arm Statute*, 3 PROSPECTUS 399, 405 (1970). The author notes that in Michigan, for example, some forty percent of URESA cases filed with county prosecutors' offices by non-resident plaintiffs are never pursued (based on the results of a questionnaire sent to county prosecutors in the state).

<sup>35</sup> Murphy, *supra* note 1.

<sup>36</sup> *Harmon v. Harmon*, 184 Cal. App.2d 245, 7 Cal. Rptr. 279 (1960), *cert. denied*, 368 U.S. 270 (1960); *Smith v. Smith*, 125 Cal. App.2d 440, 270 P.2d 613 (1954); *Duncan v. Smith*, 262 S.W.2d 373 (Ky. 1953).

contacts" doctrine to support cases<sup>37</sup> and the use of state "long arm" statutes<sup>38</sup> both to obtain and to enforce support judgments.<sup>39</sup> This method would be most effective in *obtaining* a judgment (not merely enforcing a judgment as in the *Hamilton* case) when in personam jurisdiction over the absentee father is lacking, but long arm jurisdiction might also be employed to obtain a judgment in lump sum for arrearage—a judgment enforceable in another jurisdiction without the additional hearing that creates so much difficulty under URESA.

Perhaps the earliest decision employing the "minimum contacts" doctrine in a divorce action<sup>40</sup> is *Soule v. Soule*.<sup>41</sup> The California District Court of Appeals for the Third Circuit held in that case, even without a specific provision in the California long arm statute, that jurisdiction to render a personal judgment for support against the husband was acquired where the cause of action of a divorce proceeding *arose* while the husband was domiciled in the state, even though he had left the state and was served with process in Montana. The court makes reference to the California long arm statute without ever indicating how the statute is specifically applicable. The court reasons that the divorce cause of action is analogous to a case in which an individual's commission of a single tortious action brings him within the intent of the statute.<sup>42</sup> The rationale is that having lived in the marital relationship within the state provides sufficient contact to justify extending personal jurisdiction without offending "traditional notions of fair play and substantial justice."<sup>43</sup>

In *Mizner v. Mizner*,<sup>44</sup> the Supreme Court of Nevada upheld a California judgment for divorce and support against a defendant who had been married and living in California and who moved to Nevada where he was served with process. The defendant appealed to the Nevada courts, but they upheld the California application of a

<sup>37</sup> Comment, 20 HASTINGS L.J. 361 (1968).

<sup>38</sup> Annot., 78 A.L.R.2d 397 (1961). A long arm statute extends the in personam jurisdiction of a state to a nonresident person or corporation on the basis of some contact with the state at the time a cause of action arose, for example, being involved in an automobile accident in the state or committing a tortious act in the state. For the Kentucky statute see, KRSA § 454.210 (1969).

<sup>39</sup> Anderson, *Using Long-Arm Jurisdiction to Enforce Marital Obligations*, 42 MISS. L.J. 183 (1971); Friedman, *Extension of the Illinois Long Arm Statute: Divorce and Separate Maintenance*, 16 DE PAUL L. REV. 45 (1966); Comment, 10 WASHBURN L.J. 487 (1971). These articles are among the more recent discussions of the subject; there is a wealth of commentary available, indicating the current interest in this use of long arm legislation.

<sup>40</sup> 10 WASHBURN L.J. 487, *supra* note 39, at 490.

<sup>41</sup> 193 Cal. App.2d 443, 14 Cal. Rptr. 417 (1961).

<sup>42</sup> *Id.* at —, 14 Cal. Rptr. at 418-19.

<sup>43</sup> *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

<sup>44</sup> 439 P.2d 679 (Nev. 1968), *cert. denied*, 393 U.S. 847 (1968).

"minimum contacts" rationale for extending jurisdiction and granted full faith and credit to the judgment.<sup>45</sup>

California led the way in applying a conventional long arm statute to marital litigation, but a number of other states have now gone even further. They have enabled their courts to extend in personam jurisdiction more easily in such cases by enacting specific provisions in their long arm statutes to the effect that one who lives in a state in the marital relationship submits himself to the jurisdiction of that state for causes of action arising out of the marital relationship even if he subsequently leaves the state.<sup>46</sup> If the husband leaves his family without benefit of legal separation, he may be served with process by registered mail at his last known address with an endorsement from the office of the Secretary of State that process has been served,<sup>47</sup> and a default judgment is obtained if the defendant fails to answer. In a test of the earliest such provision in Kansas, the statute was upheld by the Kansas Supreme Court as not violative of the defendant's right to "due process."<sup>48</sup> But the absence of a United States Supreme Court determination and the potential for variation in such provisions make this an area of likely litigation for some time to come.

A similar amendment to the Kentucky long arm statute<sup>49</sup> would be of little use to someone such as Eugenia Hamilton who already has a support judgment, although as indicated earlier it could prove potentially useful for enforcing a lump sum judgment for arrearage. But under the circumstances in many cases of non-support in which the husband simply disappears, the wife is left with no remedy in the way of getting even a judgment, much less actually enjoying enforcement of that judgment. A specific long arm provision would provide such a plaintiff with the judgment she needs as well as providing her with a means of taking a finalized lump sum arrearage judgment to another state for enforcement without an additional hearing in that state. But the remedy would still be ineffective to establish continuing pay-

<sup>45</sup> *Id.* at 682.

<sup>46</sup> The following is a complete list to date of such provisions, including those established through rules of procedure in Indiana and Ohio. The statutes vary considerably, from ones which place restrictions of continued residency on the part of a judgment creditor to a fairly unlimited extension of jurisdiction to anyone who has ever lived in the marital relationship in the state. IDAHO CODE ANN. § 5-514(e) (supp. 1969); ILL. ANN. STAT. ch. 110 § 17(1)(e) (Smith-Hurd, 1968); IND. R. OF PROC. TR 4.4(A)(7) (Supp. 1970); KAN. STAT. ANN. § 60-308(b)(8) (1964); NEV. REV. STAT. § 14.065 (1969); OHIO R. CIV. P. CR 4.3 (Baldwin's 1971); OKLA. STAT. ANN. tit. 12, § 1701.03 (1971); UTAH CODE ANN. § 78-27-24 (Supp. 1969); WIS. STAT. ANN. § 247.055(1m) and § 247.057 (1967).

<sup>47</sup> KRSA § 454.210(3) (1969) is representative of provisions by which process is actually served under a long arm statute.

<sup>48</sup> *Scott v. Hall*, 454 P.2d 449 (Kan. 1969).

<sup>49</sup> KRSA § 454.210 (1969).

ments as called for under the support judgment. There is no satisfactory solution currently available to solve *this* problem. The wife and children must find a way to obtain a judgment and find a way to enforce it—through equitable enforcement under comity, URESA, or through garnishment proceedings if the father happens to work for a corporation subject to suit in Kentucky. It is a collage of uncertainty that faces a plaintiff already burdened with emotional strain.

The *first* thing that should be assured is that a judgment at least can be obtained. Kentucky should adopt an amendment to its long arm statute extending jurisdiction in personam based upon a person's "living in the marital relationship in the state notwithstanding subsequent departure from the state, as to all obligations arising for alimony, child support, or property settlement."<sup>50</sup> If the husband cannot be located, substituted service should result in a default judgment as already provided in the statute. An awareness that certain judgment awaits their dropping from sight should discourage many fathers from deserting their families.

The answer for the judgment creditor, however judgment is obtained, is an adequate means of enforcement in foreign courts. Federal legislation under the full faith and credit clause seems a far better approach than URESA.<sup>51</sup> If the Congress could put support judgments in a special class of modifiable judgments that *must* be enforced in the interests of justice, the attitude of the *Light* decision in Illinois could be enforced nationwide. The burden of supporting many dependent children could then be shifted from the public welfare rolls to those individuals whose responsibility it is to bear that burden.

Adequate comprehensive legislation is ultimately the only satisfactory solution to the problem of enforcing support decrees. While awaiting such legislation, the broadest possible application of the *Balk* rationale should be implemented in cases such as *Hamilton* where the absentee father's employer can be reached as a garnishee in any way. An adequate answer is overdue, but the *Hamilton* decision is one step in the right direction in Kentucky.

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<sup>50</sup> The language is borrowed in part from the earliest such provision, KAN. STAT. ANN. § 60-308(b)(8) (1964), omitting the restriction that the plaintiff continue to reside in the state, a limitation that is open to the interpretation of the necessity of "continuous" residence. The broadest provision consistent with the Constitution should be adopted.

<sup>51</sup> Suggested in part by Note, 48 CORNELL L. REV. 541, *supra* note 3.