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Domestic Relations—Full Faith and Credit—Foreign Judgment Based on Alienation of Affections

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Moreover, there is protection under Civil Practice Act, section 552[24] which allows a new trial for a party who discovers new evidence. However, because of the time limitation of this statute, protection is not afforded in all circumstances. Thus we come again to a choice between public policies. That choice has been made for the first time by the high court of the state in deciding that res judicata is relevant to actions of separation as well as to other areas of law.

Full Faith And Credit—Foreign Judgment Based On Alienation Of Affections

A judgment of a court of record having jurisdiction of the parties and the cause of action is conclusive in the courts of every state and of the United States.[25] The Constitution of the United States requires that full faith and credit be given to the judgmens of a sister state even though repugnant to the state policy of the forum, and even though the judgment is based on a cause of action arising in the state in which it is sought to be enforced.[26]

In *Parker v. Hoefer*[27] a Vermont judgment was presented in New York for enforcement. The defendant alleges that the judgment cannot be enforced because many of the acts which gave rise to the cause of action occurred in New York and New York by statute has abolished the right of action in such cases (alienation of affections and criminal conversation[28]) within or without the state when the acts occur within New York.[29]

The Court held that the record did not indicate that the Vermont judgment was based solely on transactions occurring in New York. By abolishing the cause of action New York did not abolish actions and judgments rendered in a sister state. The Court was careful to construe the statute to apply only to actions and not to judgments; thereby avoiding a serious constitutional question under the full faith and credit clause of the United States Constitution. This left but a judgment of a sister state presented for enforcement which is based on a cause of action abolished by New York. Such judgments, if the sister state had jurisdiction over the person and the subject matter, are entitled to full faith and credit.[30]

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24. N.Y. CIV. PRAC. ACT §552.
25. Rocher v. McDonald, 275 U. S. 449 (1927); Kenny v. Supreme Lodge of the World, 252 U. S. 411 (1920); Fauntleroy v. Lum, 210 U. S. 230 (1908).
26. Stoll v. Gottlieb, 305 U. S. 165 (1938); Converse v. Hamilton, 224 U.S. 243 (1911); Rocher v. McDonald, 275 U. S. 449 (1927).
27. 2 N.Y.2d 612, 162 N.Y.S.2d 13 (1957).
28. N.Y. CIV. PRAC. ACT §61(b).
29. N.Y. CIV. PRAC. ACT §61(d) states:
> . . . no act hereafter done within this state shall give rise, either within or without this state to any of the rights of action abolished by this article.
30. See notes 25 and 26 *supra;* Full faith and credit is not always an unqualified command, as pointed out by the dissent; for special circumstances not applicable here, see *Pink v. A.A.A. Highway Express,* 314 U. S. 201 (1941); *Alaska Packers Ass'n v. Industrial Accident Commission,* 294 U. S. 532 (1935).

It is universally agreed that full faith and credit need not be accorded if the judgment is penal[31] or if the jurisdiction of the sister state is faulty.[32] But the jurisdictional issue cannot be raised if the defendant, as in the instant case, participated in the original cause of action and there had full opportunity to contest the jurisdiction of the court.[33]

If the Court's decision were otherwise it would encourage judgment defendants to forum shop and take up residence in states where the cause of action which their judgment is based upon has been abolished.

EVIDENCE

Attorney-Client Privilege

The Court in *Lanza v. New York State Joint Legislative Committee on Government Operations*[1] held (4-3) that the defendant committee could not be restrained from making public a tape recording and transcript of a consultation between the plaintiff and his attorney, even though it was procured by wiring a room in the county jail where the plaintiff and his attorney believed they could speak freely.

It is well settled that one accused of a crime has a right to counsel and a right to consult privately with such counsel.[2] Also, unless the client waives the right, his attorney may not be forced to testify as to communications between them.[3] If a communication between an attorney and his client is recorded, there has been an unreasonable interference with the client's right to confer privately with such counsel.[4] And if such a recording was used against a person in a trial, which resulted in his conviction, the conviction would be reversed due to the lack of a fair trial.[5]

Since the tape recording and transcript were not to be used in a prosecution

31. Huntington v. Attrill, 146 U. S. 657 (1892).
32. N.Y. ex rel Halvey v. Halvey, 330 U.S. 610 (1947); Millikin v. Meyer, 311 U. S. 457 (1940).
33. Sherrer v. Sherrer, 334 U. S. 343 (1947); State of Wisconsin v. Pelican Insurance Co., 127 U. S. 265 (1888); Thomas v. Virdin, 160 Fed. 418 (2d Cir. 1908).

1. 3 N.Y.2d 92, 164 N.Y.S.2d 9 (1957).
2. People v. Cooper, 307 N.Y. 253, 120 N.E.2d 813 (1954).
3. N.Y. CIV. PRAC. ACT §§353, 354; See also New York City Council v. Goldwater, 284 N.Y. 296, 31 N.E.2d 31 (1940).
4. United States ex. rel Cooper v. Denno, 221 F.2d 626 (2nd Cir. 1955), *cert. denied* 349 U.S. 968 (1955); People v. Cooper, note 2 *supra.*
5. Fusco v. Moses, 304 N.Y. 424, 107 N.E.2d 581 (1952).
6. Nelson v. United States, 208 F.2d 505 (D.C. Cir. 1953), *cert. denied* 346 U.S. 827 (1953).