

FULL FAITH AND CREDIT AND THE RECOGNITION OF FOREIGN ALIMONY DECREES IN VERMONT, *Berger v. Berger*, 138 Vt. 367, 417 A.2d 921 (1980).

### STATEMENT OF THE CASE

In 1962 plaintiff obtained by default an interlocutory divorce decree from defendant in California. Plaintiff has remained a California resident; defendant has resided in Italy since 1966. In 1977 plaintiff obtained from a California trial court a writ of execution for arrearages in alimony and support payments. The California court found a delinquency of \$60,650.

Defendant's mother died in Vermont in 1977, and defendant inherited a quarter share of her estate. Plaintiff sued in Vermont to attach her former husband's interest in his mother's estate. Defendant received personal service of process in Italy for the Vermont attachment action. He moved for the trial court to dismiss the complaint on two grounds:<sup>1</sup> 1) plaintiff's action lacked sufficient Vermont contacts to merit personal jurisdiction under *Shaffer v. Heitner*,<sup>2</sup> and 2) even if the Vermont action met standards for jurisdiction, the California judgment that plaintiff sought to enforce was not entitled to full faith and credit under the United States Constitution.<sup>3</sup> The Vermont trial court dismissed the complaint but did not specify its grounds for doing so.

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1. *Berger v. Berger*, 138 Vt. 367, 368, 417 A.2d 921, 921 (1980).

2. 433 U.S. 186 (1977).

3. U.S. Const. art IV § 1 provides: "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." The implementing statute reads:

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738 (1976). The full faith and credit clause makes interstate res judicata a national, constitutional requirement. The adjudication on the merits of a controversy by the courts of one state must be treated as conclusive in the courts of sister states. Comment, *Full Faith and Credit Reanalyzed: the Finality Doctrine Denounced - Judicial Proceedings Redefined*, 54 Nw. L. Rev. 211, 217-18 (1959).

The Supreme Court of Vermont held that Vermont jurisdiction was not precluded by the "minimum contacts" rule of *Shaffer* and that plaintiff's action was a suit upon a valid judgment.<sup>4</sup>

### I. THE DECISION

Since the trial court in *Berger v. Berger* did not state its reason for dismissing the case,<sup>5</sup> the Vermont Supreme Court analyzed both challenges raised by defendant in his motion to dismiss. On the challenge to jurisdiction, the supreme court disagreed with the trial court's finding that plaintiff's suit had to meet a minimum contacts test to confer jurisdiction on a Vermont court. While recognizing that the suit against defendant's share of his mother's estate was a *quasi in rem* action, the court reasoned that plaintiff's action was an exception to the rule in *Shaffer* that assertions of state-court power against out-of-state defendants should meet *in personam* standards of jurisdiction. Relying on the *Shaffer* court's dictum that valid judgments could receive full faith and credit through *in rem* proceedings in other states,<sup>6</sup> the Vermont court stated that the trial court should have accepted jurisdiction over the plaintiff's cause of action.<sup>7</sup>

The *Berger* court saw defendant's challenge to the validity of the California judgment as the more difficult issue before it. Part of the difficulty was attributable to defendant's pleading, which left unclear whether he was attacking the validity of the 1962 divorce judgment or the validity of the 1977 writ of execution. The court inferred that defendant meant to attack the writ of execution which issued without service of process to him.<sup>8</sup> As the court

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4. 138 Vt. at 371, 417 A.2d at 923.

5. *Id.* at 368, 417 A.2d at 921.

6. See text at note 19 *infra*.

7. 138 Vt. at 370, 417 A.2d at 922.

8. In pleading his case, defendant said only that he had received insufficient service of process. 138 Vt. at 369, 417 A.2d at 921. There was no indication whether he meant that he had not received service of process in the Vermont suit to enforce the California divorce judgment, in the 1977 California proceeding which issued the writ of execution, or in the 1962 divorce proceeding. The court charitably accepted the lower court's treatment of the plea as applying to the procedure which produced the execution order. *Id.* at 369-70, 417 A.2d at 922. The Vermont court noted, however, that defendant had not carried his proper burden on the plea. A judgment is presumptively valid, and a party attacking the judgment must demonstrate its invalidity. *Id.* (citing *Cook v. Cook*, 342 U.S. 126 (1951)). The plea was ultimately irrelevant to the court's decision, because the court characterized plaintiff's suit as a suit to enforce the original divorce decree. 138 Vt. at 370-71, 417 A.2d at 922-23.

Ironically, even if the Vermont court had based plaintiff's case on the 1977 writ of execution, defendant's claim of insufficient process might have failed. The United States Su-

framed the case, however, plaintiff's suit was on the original 1962 divorce judgment. If defendant were to defuse plaintiff's suit, he would have to show that the original judgment granting the divorce was not a final judgment. Despite defendant's silence on the matter, the Vermont court investigated the finality of the California decree, found it to be "totally final" under California law, and therefore held it worthy of enforcement in Vermont under the full faith and credit clause of the United States Constitution.<sup>9</sup> Plaintiff's cause was remanded for further proceedings on the merits of her action.

## II. JURISDICTION AND FULL FAITH AND CREDIT

The Vermont court wasted little energy in disposing of defendant's argument that Vermont had insufficient contacts with plaintiff's claim to assert jurisdiction. The court reasoned that recent modifications in standards for personal jurisdiction did not alter state courts' power or obligation to enforce valid judgments of sister states under the full faith and credit clause.<sup>10</sup>

The Supreme Court of the United States redefined its standards for state-court jurisdiction in *Shaffer v. Heitner*.<sup>11</sup> In that 1977 case the Supreme Court held that all state-court assertions of jurisdiction must meet standards of "traditional notions of fair play and substantial justice."<sup>12</sup> The target of *Shaffer* was *quasi in rem* jurisdiction, by which a plaintiff could satisfy a claim against a nonresident defendant by attaching the property of the defendant

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preme Court has decided that "due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). The Court thus gives states some latitude to determine for themselves the fairness of their own procedures. California has balanced the competing interests regarding due process in cases of nonpayment of alimony and support. *In re Marriage of Wyshak*, 70 Cal. App. 3d 384, 138 Cal. Rptr. 811 (1977). In *Wyshak* the California court ruled that a judgment creditor may obtain a writ of execution on the basis of the creditor's affidavit of nonpayment. *Id.* at 390-91. 138 Cal. Rptr. at 814-15 (citing CAL. CIV. PROC. CODE § 681 (West 1955) and CAL. CIV. CODE § 4380 (West 1980)).

The *Wyshak* court held that this procedure did not violate due process. *Id.* at 393-94, 138 Cal. Rptr. at 817. According to the *Wyshak* ruling, then, defendant Berger had little to complain of regarding the service of process in the 1977 writ of execution proceeding.

9. 138 Vt. at 371, 417 A.2d at 923.

10. See note 3 *supra*.

11. 433 U.S. 186 (1977).

12. *Id.* at 212. The *Shaffer* court adopted the quoted language from *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

through an action in state court.<sup>13</sup> After *Shaffer*, attachment of defendant's property which happens to be within a state court's territory<sup>14</sup> is not enough for that court to obtain jurisdiction over the controversy.<sup>15</sup> The state court must evaluate the relation between plaintiff's underlying cause of action and the property being subjected to the court's jurisdiction.<sup>16</sup> A court can obtain jurisdiction when a defendant has availed himself of the rights and privileges offered by the state asserting its jurisdictional power.<sup>17</sup>

The *Shaffer* decision did not, however, offer a defendant like Berger a means for escaping the responsibilities of his debts. The decision cut back the opportunities for a plaintiff to bring unlitigated claims against the property of a defendant. The Court reasoned, however, that its ruling did not disturb the jurisdiction of state courts to enforce valid foreign judgments under the full faith and credit clause.<sup>18</sup> In a footnote (quoted in the *Berger* decision) the Court said:

Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to real-ize on that debt in a State where defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.<sup>19</sup>

Nothing in the *Shaffer* opinion was meant to dilute the policy of the full faith and credit clause that an individual found liable by one state court could not avoid liability by holding his property in another state beyond the reach of his creditors.<sup>20</sup>

Defendant Berger's reliance on the *Shaffer* decision was misplaced. The defense arguments should have derived from the full faith and credit clause, not from jurisdictional issues. Under that clause, each state court must enforce judgments of other states to

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13. 433 U.S. at 208-09. The doctrine of *quasi in rem* jurisdiction was first enunciated in *Harris v. Balk*, 198 U.S. 215 (1905).

14. The concept of tying jurisdiction to each state's territory was developed by the United States Supreme Court in a line of cases beginning with *Pennoyer v. Neff*, 95 U.S. 714 (1878).

15. 433 U.S. at 211-12.

16. *Id.* at 212.

17. *Id.* at 216.

18. *Id.* at 210.

19. 433 U.S. at 210 n.36.

20. See generally Nadelmann, *Full Faith and Credit to Judgments and Public Acts*, 56 MICH. L. REV. 33 (1957).

the full extent that the court issuing the judgment would enforce it.<sup>21</sup> The specific manner of enforcing the judgment is subject to the rules and practices of the court being asked to enforce the judgment.<sup>22</sup> Since Vermont law allows attachment of property to secure a debt,<sup>23</sup> a Vermont trial court could legitimately assert *in rem* jurisdiction over defendant Berger's Vermont property to enforce the divorce judgment against him.

### III. FULL FAITH AND CREDIT AND ALIMONY DECREES

Although the Vermont Supreme Court easily resolved the jurisdictional argument in *Berger v. Berger*, the court was less clear in resolving the arguments regarding full faith and credit. The court concluded that plaintiff's suit was upon her original 1962 divorce decree.<sup>24</sup> After investigating that decree, the court determined that it was "totally final" and entitled to full faith and credit in Vermont.<sup>25</sup> The court ignored the broader problem of the finality of a decree to pay alimony.<sup>26</sup> Alimony decrees can receive full faith and credit,<sup>27</sup> but the Vermont court cited no authority for its disposition of the case. By neglecting to show its reasoning or its authority for the *Berger* holding, the Vermont Supreme Court of-

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21. *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 273 (1935).

22. *Lynde v. Lynde*, 181 U.S. 183, 187 (1901).

23. Vt. R. Civ. P. 4.1(a)(Supp. 1980).

24. 138 Vt. at 371, 417 A.2d at 922-23.

Having characterized plaintiff's case as one on the original divorce decree, the Vermont court distinguished it from the case of *Griffin v. Griffin*, 327 U.S. 220 (1946). The Vermont court did not apply *Griffin* because it "dealt with the validity of a second judgment lacking in notice required by due process." 138 Vt. at 371, 417 A.2d at 923.

The reason for distinguishing between *Griffin* and *Berger* is unclear. *Griffin* was a suit in the district court of Washington, D.C. for unpaid alimony stemming from a New York divorce. The case encompassed the original divorce in 1924, a modification of that decree in 1926, a contested suit for reduction to debt of unpaid alimony installments in 1936, and an uncontested judgment in 1938. 327 U.S. at 223-24. The Supreme Court ruled that the 1938 judgment could not receive full faith and credit because defendant had not received the notice required by due process. In remanding the case for further proceedings, the Supreme Court specifically did not decide the question, but left to the district court whether plaintiff could amend her complaint to base it on the 1926 modification of the support decree. *Id.* at 235. *Griffin* does not contradict the Vermont court's ruling in *Berger*, and *Griffin* is frequently cited to support the liberal acceptance by the courts of one state of the divorce decrees of another state. See cases cited at note 52 *infra*.

25. 138 Vt. at 371, 417 A.2d at 923.

26. Alimony decrees, as equity rulings, are part of the broader question of whether the full faith and credit clause was meant to protect equity rulings. For an argument that equity decrees do come under the clause, see Comment, *supra* note 3, at 212-13.

27. The specific question of whether alimony decrees are entitled to full faith and credit was answered affirmatively in *Barber v. Barber*, 62 U.S. (21 How.) 582 (1858).

ferred little guidance to the bench or the bar in how to proceed in similar cases.

The Supreme Court of the United States has held that the full faith and credit clause entitles a valid decree for alimony to enforcement in any state in the union<sup>28</sup> and that state courts should give a foreign alimony decree the same scope that the courts of the state issuing the decree would give it.<sup>29</sup> Since alimony is a continuing obligation to pay a series of installments, however, a decree for alimony remains open indefinitely. It cannot be termed "final" at any one time. Moreover, most states have statutes that empower their courts to modify alimony decrees.<sup>30</sup> With courts able to modify their decrees the question has arisen whether an alimony decree that is modifiable (and perhaps already modified in the original forum) can be enforced upon its original terms in a foreign jurisdiction. In struggling to establish a clear set of criteria for the enforcement of foreign alimony decrees, the Supreme Court has worked the ground between the poles of mandatory enforcement through principles of full faith and credit and optional enforcement through principles of comity.<sup>31</sup> The issues in *Berger* are clarified by reference to the Supreme Court's groundwork.

The approach of the Supreme Court is summarized by *Lynde v. Lynde*<sup>32</sup> and *Sistare v. Sistare*,<sup>33</sup> two cases which bracket the issues presented by alimony and full faith and credit. In *Lynde* the court held that a person seeking enforcement of an alimony decree must have the obligation to pay reduced to a fixed sum in a new proceeding by the court issuing the alimony decree.<sup>34</sup> It is this second judgment that a court in another state will enforce. Plaintiff in *Lynde* had sued defendant in New York for \$8840 alimony ad-

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28. *Aldrich v. Aldrich*, 378 U.S. 540 (1964); *Griffin v. Griffin*, 327 U.S. 220 (1946); *Barber v. Barber*, 323 U.S. 77 (1944); *Sistare v. Sistare*, 218 U.S. 1 (1910); *Lynde v. Lynde*, 181 U.S. 183 (1901); *Barber v. Barber*, 62 U.S. (21 How.) 582 (1858).

29. *Aldrich v. Aldrich*, 378 U.S. 540, 543 (1964).

30. *E.g.*, CAL. CIV. CODE § 139 (West 1954); CONN. GEN. STAT. ANN. §§ 46-54 (West 1978); ILL. ANN. STAT. ch. 40, § 510(a) (Smith-Hurd 1980); ME. REV. STAT. ANN. tit. 19, § 721 (1981); MASS. ANN. LAWS ch. 208 § 37 (Michie/Law Co-op 1981); N.H. REV. STAT. ANN. § 458.19 (1968); N.J. STAT. ANN. § 2A: 34-23 (West 1952); N.Y. DOM. REL. LAW § 236 (McKinney Supp. 1980); N.C. GEN. STAT. § 50-16.9 (1976); R.I. GEN. LAWS § 15-5-16 (Supp. 1980); VT. STAT. ANN. tit. 15, § 758 (1974); WIS. STAT. ANN. § 247.32 (West 1957).

31. For a discussion of the Court's development of these principles, see Jacobs, *The Enforcement of Foreign Alimony Decrees*, 6 LAW & CONTEMP. PROB. 250 (1939).

32. 181 U.S. 183 (1901).

33. 218 U.S. 1 (1910).

34. 181 U.S. at 187.

judged due by a New Jersey court. She also sued for an additional \$4400, the amount of alimony accrued since the issuance of the New Jersey judgment of debt.

The Supreme Court ruled that the New York judgment "for a fixed sum already due . . . was properly restricted to [\$8840, the amount of the New Jersey judgment]."<sup>35</sup> The Court's rationale for disallowing the additional \$4400 was that alimony was "subject to the discretion of the Court of Chancery of New Jersey, which might at any time alter it, and was not a final judgment for a fixed sum."<sup>36</sup> *Lynde* required of plaintiffs a two-step procedure to enforce alimony decrees. They must first obtain confirmation by the court issuing the original decree that alimony was accrued and unpaid, and they must then have that second judgment enforced in the courts of a state that had jurisdiction over the person or property of plaintiff's former spouse.

In *Sistare v. Sistare*<sup>37</sup> the Supreme Court clarified *Lynde* to give recipients of alimony greater protection by the full faith and credit clause. *Sistare* came to the Supreme Court on appeal from the Connecticut Supreme Court of Errors which had denied an award for back alimony that was based on a New York divorce decree.<sup>38</sup> Relying on *Lynde* the Connecticut court had denied the alimony because New York courts retained the power to modify alimony payments.<sup>39</sup> In reversing the Connecticut decision, the United States Supreme Court, held that generally, once a decree for alimony is rendered the right to each installment "becomes absolute and vested" as each installment becomes due.<sup>40</sup> This rule will not have effect, however, when it can be clearly shown that the right to receive alimony is "discretionary with the courts which rendered the decree."<sup>41</sup> By "discretionary" the court meant that the rendering court could modify the alimony decree retrospectively as well as prospectively.<sup>42</sup> The *Lynde* holding was thus re-

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35. *Id.*

36. *Id.*

37. 218 U.S. 1 (1910).

38. *Id.* at 9.

39. *Sistare v. Sistare*, 80 Conn. 1, 5-6, 66 A. 772, 775 (1907).

40. *Sistare v. Sistare*, 218 U.S. at 16-17.

41. *Id.* at 17.

42. The *Sistare* Court looked on such discretionary power in a state court as exceptional. The Supreme Court has repeatedly emphasized that it views with suspicion attempts by state courts to exercise such discretionary power over accrued payments. "'[E]very reasonable implication must be resorted to against the existence of' a power to modify or re-

stricted to the *Sistare* exception, and alimony recipients would need to have their alimony reduced to a fixed sum only when the court issuing the decree had the power to modify payments that had already accrued.<sup>43</sup>

Following the principles of *Sistare*, the parties in *Berger* would have their roles well defined for proceeding with the case on remand. The plaintiff would have to plead her case on the original divorce decree, as suggested by the Vermont Supreme Court. Her right to those accrued payments vested in her as they became due.<sup>44</sup> To avoid enforcement of these payments, defendant would have to prove that the right to the payments remains discretionary with the California courts. Defendant would, apparently, have difficulty carrying his burden of proof. California courts do have power to modify support payments, but their power is restricted to prospective modification.<sup>45</sup> Plaintiff Berger would therefore be entitled to have the alimony decree enforced to the amount of the accrued payments up to the date of her bringing suit in Vermont, subject only to defendant's defenses.<sup>46</sup>

Although the *Sistare* opinion supports the Vermont court's conclusions in *Berger v. Berger*, the court's failure to support its decision with any authority leaves its holding weak and obscure. Its weakness may be shown through a comparison with *Holt v. Holt*,<sup>47</sup> a recent North Carolina Court of Appeals case which denied the enforcement of an alimony decree until it had been reduced to a fixed sum by the original forum. Plaintiff Holt sued defendant in North Carolina for accrued alimony and child support stemming from a Missouri divorce judgment. Defendant was a resident of Alabama but owned real estate in North Carolina which

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voke installments already accrued 'in the absence of clear language manifesting an intention [by the legislature] to confer it.' " *Barber v. Barber*, 323 U.S. 77, 82 (1944) (quoting *Sistare v. Sistare*, 218 U.S. at 22).

For an example of clear language manifesting an intent to confer discretion on a court, see N.Y. DOM. REL. LAW § 236(A) (McKinney Supp. 1980): "[T]he authority [to annul or modify alimony awards] shall extend to unpaid sums or installments accrued prior to the application as well as sums or installments to become due thereafter."

43. *Sistare v. Sistare*, 218 U.S. at 16-17.

44. See *id.* at 26.

45. CAL. CIV. CODE § 139 (West 1954).

46. "It runs counter to no requirement of Due Process to make a judgment debtor defend a suit on that judgment [in a sister state] by claiming discharge of its liability, whether through payment or otherwise." *Griffin v. Griffin*, 327 U.S. 220, 249 (1946) (Frankfurter, J., dissenting).

47. 41 N.C. App. 344, 255 S.E.2d 407 (1979).

could satisfy the owed alimony and support payments. Using the same footnote from *Shaffer v. Heitner* cited by the Vermont court in *Berger*, the North Carolina court acknowledged its responsibilities under the full faith and credit clause.<sup>48</sup> The court stated its belief (and no stronger authority)<sup>49</sup> that full faith and credit did not reach the alimony decree before it. According to the North Carolina court, plaintiff needed first to obtain a judgment in Missouri stating that defendant had in fact lapsed in his payments. "From that subsequent judgment, North Carolina courts could then take proper notice that defendant is a 'debtor' of plaintiff and the action would lie . . . . The present posture of the case, however, discloses that the defendant is at most only an *obligor* of plaintiff."<sup>50</sup> The courts of Vermont and North Carolina have reached opposite conclusions on similar facts; without the ballast of *Sistare* or at least a sustained rationale by either court, choosing between the two opinions requires more an affirmation of faith than a principled choice.

Even if the *Berger* result of extending full faith and credit is the better outcome, the Vermont Supreme Court could have clarified the issues for future cases by laying a better foundation in either reason or authority. The *Berger* case presented the issue of whether a Vermont court should enforce, under the full faith and credit clause, alimony payments that are both accrued and final. A case in the future may present the issue of whether a Vermont court should enforce alimony payments which are modifiable retroactively by the state issuing the original decree. Further, a case may present the issue of whether a Vermont court should, when faced with a prospectively modifiable alimony decree, modify the terms of that decree on the motion of either plaintiff or defendant. The disposition of the *Berger* case does little to state the terms upon which the Vermont Supreme Court thinks these questions should be argued.

The United States Supreme Court has extended the principles of *Sistare* to allow discretionary enforcement of modifiable decrees

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48. 41 N.C. App. at 346-47, 255 S.E.2d at 409.

49. *Id.*

50. *Id.* (emphasis in original). The court does not explain its distinction between a "debtor" and an *obligor*. The apparent difference is that an alimony decree, without more, creates a continuing moral *obligation* to pay, but an action reducing back alimony to a judgment creates a legal "debt" in the ex-spouse to pay the accrued alimony.

by courts other than those of the original forum.<sup>51</sup> State courts have exercised this discretion by adopting as their own foreign decrees for support.<sup>52</sup> The policy behind making such an adoption is to ensure that former spouses receive the necessary support to sustain themselves.<sup>53</sup> Adoption solves the problems both of accrued payments and of future support payments, thereby relieving states of the stigma of being a haven for dilatory ex-spouses<sup>54</sup> and relieving recipients of alimony of the burden of returning to the forum which originally granted the divorce to reaffirm or modify the original decree.<sup>55</sup>

Perhaps these policy concerns prompted the Vermont court's decision to ensure that plaintiff Berger had a forum to litigate her claim against her former husband. The opinion that issued from the court did not, however, define its analytical approach or its purpose in recognizing jurisdiction over the case. Since the *Berger* case spoke of neither *Sistare* nor its progeny, the court missed an opportunity to shape Vermont law on foreign alimony decrees. Although the *Berger* case did not require the Vermont court to decide the issue of adoption of foreign decrees, a clearer statement by the court would have provided greater assistance to the Vermont bar when more complex cases are litigated.

### CONCLUSION

*Berger v. Berger* offers Vermont practitioners only inferential guidance for cases involving foreign alimony decrees. *Shaffer v. Heitner* offers no shelter to judgment debtors: full faith and credit will sustain *quasi in rem* jurisdiction through the mere presence of

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51. *Griffin v. Griffin*, 327 U.S. at 233-35.

52. See, e.g., *Worthley v. Worthley*, 44 Cal. 2d 465, 474, 283 P.2d 19, 25 (1955); *Walzer v. Walzer*, 173 Conn. 62, 70, 376 A.2d 414, 418 (1977); *Light v. Light*, 12 Ill. 2d 502, 511, 147 N.E.2d 34, 39 (1958); *McCabe v. McCabe*, 210 Md. 308, 318, 123 A.2d 447, 452 (1956); *In re Estate of Joseph*, 27 N.Y.2d 299, 303, 265 N.E.2d 756, 758 (1970); *Cousineau v. Cousineau*, 155 Ore. 184, 202, 63 P.2d 897, 904 (1936); *Alig v. Alig*, 220 Va. 80, 84-85, 255 S.E.2d 494, 497 (1979). Cf. *Picker v. Vollenhover*, 206 Ore. 45, 72-73, 290 P.2d 789, 798 (1955) (The Oregon court refused to enforce modifiable foreign alimony decrees, reasoning that states may go beyond what is required by full faith and credit but are not required to do so). Whether a state court should adopt a foreign alimony decree may be characterized as a question of comity, not full faith and credit. *Jacobs, supra* note 31, at 272-73.

53. *Jacobs, supra* note 31, at 265.

54. See *Cousineau v. Cousineau*, 155 Ore. 184, 63 P.2d 897, 904 (1936).

55. See *Walzer v. Walzer*, 173 Conn. 62, 70-71, 376 A.2d 414, 418 (1977); Comment, *supra* note 3, at 223.

property in Vermont.<sup>56</sup> A lawyer representing an ex-spouse seeking satisfaction of accrued alimony payments should plead the case based on the original divorce decree.<sup>57</sup> Moreover, plaintiff's counsel can ask for payment of all unpaid past alimony installments from foreign divorce settlements, accrued at the time of filing the action.<sup>58</sup>

The policy implicit in the *Berger* decision is that Vermont courts should be hospitable to claims for past-due alimony payments based on foreign divorce decrees. Although defendants will have an opportunity to raise defenses to such a claim and are entitled to notice of the claims brought against them, Vermont will not deprive out-of-state plaintiffs of a forum simply because the contacts with this state extend only to the presence of property within the state's borders.

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56. *Berger v. Berger*, 138 Vt. at 370, 417 A.2d at 922.

57. *Id.* at 371, 417 A.2d at 922-23.

58. *Id.*

