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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

1951

RESEARCH REPORT NO. 10

BY

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AND

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PHYSICS DEPARTMENT

UNIVERSITY OF CHICAGO

CHICAGO, ILLINOIS

1951

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Notice of Appeal.

(Filed *Feb 8, 1929.*)

To

10

SAMUEL A. BESSON,
Solicitor for Marie Vahjen,
Defendant.

SIR:

TAKE NOTICE that John Handwerk, surety on the bond dated October 30th, 1912, and given to the Sheriff of the County of Hudson, hereby appeals unto the Court of Errors and Appeals in the last resort in all causes from the order filed herein on the 28th day of January, 1929.

20

INSLEY, VREELAND & DECKER,
Solicitors of John Handwerk.

I conceive there is good cause for appeal in the above stated cause.

WILLIAM E. DECKER,
Of Counsel with John Handwerk.

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Petition of Appeal.

(Filed *March 23, 1929.*)

To the Honorable the Court of Errors and Appeals
in the last resort in all causes:

The petition of John Handwerk, the appellant in the above entitled cause, respectfully shows that:

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1. Petitioner finds himself aggrieved by an order filed in the above named cause on the 28th

Petition of Appeal.

10 day of January, 1929, made in the Court of
Chancery by his Honor Edwin Robert Walker,
Chancellor of the State of New Jersey, in a certain
cause in said court, wherein John C. Vahjen was
petitioner, and Marie Vahjen was defendant, in
this respect: to wit: that the said order directs
that a *ne exeat* bond entered into by John C. Vah-
jen as principal, and John Handwerk, as surety,
to Nicholas P. Wedin, Sheriff of Hudson County,
New Jersey, bearing date the 30th day of October,
1912, be and the same hereby is declared and or-
dered forfeited, and the said John Handwerk,
surety, is thereby ordered to pay the penal sum of
said bond, to wit: two thousand dollars (\$2,000)
20 to the Clerk in Chancery within thirty days after
service upon him of a copy of said order and fur-
ther ordering that the said John Handwerk pay to
the said Marie Vahjen the costs of the forfeiture
to be taxed, including a counsel fee of fifty
dollars (\$50).

30 And the petitioner appeals from the said order
of the Chancellor which decrees as aforesaid, upon
the ground that the same is erroneous in that it
declares said bond is forfeited and directs that
the penalty thereof be paid to the Clerk, and is
erroneous in that it directs that the said petitioner
pay the costs of the forfeiture proceedings includ-
ing a counsel fee.

Petitioner therefore prays that the said order of
the Chancellor may be reversed, set aside and for
nothing holden, and that the petitioner may have
such other relief in the premises as to this court
shall seem proper.

40 INSLEY, VREELAND & DECKER,
Solicitors for and of counsel with
John Handwerk, petitioner.

Answer to Petition of Appeal.

(Filed *March 26, 1929.*)

The answer of Marie Vahjen, the appellee, to the petition of appeal of John Handwerk, the appellant.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto admits that an order was, on the 29th day of January, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order begs leave to refer thereto when the same shall be produced. This appellee is advised and believes that the said order is agreeable to equity; and she prays that the same may be affirmed with costs to be taxed in favor of this appellee.

SAMUEL A. BESSON,
Solicitor for and of
Counsel with Appellee.

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Abstract of Proceedings.

(Filed .)

IN CHANCERY OF NEW JERSEY.

10	Between JOHN C. VAHJEN, <i>Complainant,</i> and MARIE VAHJEN, <i>Defendant.</i>	} 34—455. } Abstract of } Proceedings.
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CLARENCE F. WALKER, Solr.

20 January 29, 1912. Petition of John C. Vahjen filed, setting out that he was married to the defendant June 18, 1902, in the City of New York; that defendant on January 20th and 21st, 1912, admitted adultery with Edward Clifford; that petitioner was a bona fide resident of this State when this cause of action arose.

Petition prays that said marriage may be dissolved for the cause aforesaid, and is duly verified.

30 CITATION issued. January 29, 1912, rtble. March 1, 1912, served on defendant January 30, 1912, by Sheriff of Hudson County, together with certified copy of petition.

March 2, 1912. Order for alimony *pendente lite*.

Feb. 10, 1912. Appearance, Answer and Cross-bill of defendant. The cross-bill prays for alimony and maintenance.

40 Feb. 10, 1912. Affidavits to obtain order for *ne exeat*.

Abstract of Proceedings.

- Feb. 10, 1912. Order for *ne exeat* against John C. Vahjen, the petitioner.
- Feb. 13, 1912. Petition and notice of motion for alimony.
- Feb. 13, 1912. Affidavits.
- Feb. 10, 1912. Writ of *ne exeat* issued and returned into court (Feb. 21, 1912). Sheriff's return recites that defendant gave bail in the sum of \$2,000. 10
- Feb. 28, 1912. Affidavits.
- March 2, 1912. Order of reference to Frank P. McDermott, Master in Chancery, by consent.
- March 6, 1912. Order denying motion to discharge *ne exeat* writ.
- April 18, 1912. Answer to cross-bill, and Replication. 20
- July 12, 1912. Designation.
- July 12, 1912. Memorandum of Frank P. McDermott, Advisory Master.
- Oct. 21, 1912. Petition of petitioner, for leave to file new bond in place of one already on file, with new Bondsman, and Notice of Application.
- November 6, 1912. Order substituting bond with John Handwerk as surety, in place of one on file, with William J. Eypper as surety, and directing Sheriff to cancel and surrender old bond. 30
- Feb. 3, 1914. Order of continuance.
- Feb. 13, 1914. Stipulation that Jacob J. Singer be substituted as solicitor for petitioner.
- March 8, 1913. Petition to have petitioner adjudged in contempt for failure to pay alimony.
- March 11, 1913. Order to show cause. 40
- March 18, 1913. Order of continuance.

Abstract of Proceedings.

March 24, 1913. Proof of service.

April 1, 1914. Order to show cause why defendant should not be adjudged guilty of contempt.

April 6, 1914. Petition for reduction of alimony.

10 April 16, 1913. FINAL DECREE.

Adjudges that petitioner's petition be dismissed.

Further adjudges that petitioner pay to defendant or her solicitor the sum of \$260 annually, in monthly installments, that copy of decree be served on petitioner, and that within ten days thereafter petitioner give bond to defendant for \$300, to secure said payments; that petitioner also pay to defendant or her solicitor the sum of \$600 counsel fees, to be paid in monthly installments of \$25.

20

May 12, 1914. Stipulation.

May 12, 1914. Notice and petition to have petitioner adjudged in contempt.

May 19, 1914. Order adjudging defendant guilty of contempt, and directing him to make payments, &c.

30 May 19, 1914. Order amending final decree by directing defendant to make payments weekly.

July 24, 1914. Affidavits.

July 24, 1914. Proof of service of order to show cause.

July 24, 1914. Notice.

July 24, 1914. Continuance.

August 21, 1914. Order for commitment of petitioner, and that warrant issue.

40 August 21, 1914. Warrant issued and returned into court Oct. 2, 1914, unexecuted.

Abstract of Proceedings.

- Sept. 8, 1914. Notice of application to forfeit bond
in *ne exeat*.
- Sept. 21, 1914. Order to return warrant into court,
and directing that no further warrant issue
as long as defendant continues to pay \$15
per week, and that no further proceedings 10
be taken on the *ne exeat* bond until the fur-
ther order of the court.
- Nov. 6, 1914. Order continuance.
- Nov. 9, 1914. Petition to have warrant issue.
- Nov. 28, 1914. Order continuance.
- Dec. 7, 1914. Order continuance.
- Dec. 16, 1914. Order continuance.
- Jan. 7, 1915. Order continuance.
- Feb. 1, 1915. Order continuance.
- Feb. 8, 1915. Order continuance. 20
- Feb. 15, 1915. Order continuance.
- March 16, 1915. Order continuance.
- March 24, 1915. Order continuance.
- March 29, 1915. Petition for warrant for arrest of
petitioner.
- March 29, 1915. Affidavits in opposition to peti-
tion for warrant.
- March 30, 1915. Order continuance.
- April 19, 1915. Affidavit.
- May 27, 1915. Order continuance. 30
- June 10, 1915. Order continuance.
- June 21, 1915. Order continuance.
- Oct. 25, 1915. Order continuance.
- Nov. 4, 1915. Order continuance.
- Nov. 10, 1915. Petition for warrant of contempt.
- Nov. 17, 1915. Order continuance.
- Nov. 29, 1915. Order continuance.

Bond.(Filed *Nov. 9, 1912.*)

10 Know all men by these presents, that we, John C. Vahjen and John Handwerk, both of the Town of Guttenberg, in the County of Hudson and State of New Jersey, are held and firmly bound into Nicholas P. Wedin, Sheriff of the County of Hudson, in the sum of two thousand dollars to be paid to the said Nicholas P. Wedin, Sheriff as aforesaid or his assigns, for which payment well and truly to be made we bind ourselves our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

20 Sealed with our seals and dated the twenty-ninth day of October, in the year one thousand nine hundred and twelve.

WHEREAS the above bounden John C. Vahjen was arrested on a writ of *ne exeat* issuing out of and under the seal of the Court of Chancery of the State of New Jersey in a certain cause therein depending wherein John C. Vahjen is complainant and Marie Vahjen is defendant;

30 WHEREAS, on February 15, 1912, the said John C. Vahjen gave to the said Nicholas P. Wedin, Sheriff of the County of Hudson, with William J. Rypper as his surety, a bond in the sum of two thousand dollars in order to obtain his release from the Sheriff's custody and the Court of Chancery on October 21, 1912, by order directed that a new bond be given by the said John C. Vahjen with John Handwerk as his surety to the said Nicholas P. Wedin, Sheriff of the County of Hudson, in the sum of two thousand dollars, said bond being given to take the place of the one now of record.

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Bond.

Now the condition of this obligation is such that if the said John C. Vahjen shall cause his appearance to be entered in the said suit and to continue such appearance by a solicitor of the Court of Chancery residing in the State of New Jersey and shall at all times render himself amenable to the orders and process of said Court pending such suit and to such process as shall be issued to compel the performance of the final decree therein and shall appear before said Court or any officer thereof when so required by the order of said Court then this obligation to be void otherwise to remain in full force and virtue.

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JOHN C. VAHJEN (SEAL)
JOHN HANDWERK (SEAL)

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Signed, sealed and delivered
in the presence of

WILLIAM E. DECKER.

State of New Jersey, }
County of Hudson, } ss.:

JOHN HANDWERK, of full age, being duly sworn according to law, on his oath deposes and says that he is the surety named in and who signed the foregoing bond; deponent further says that he is a freeholder of the County of Hudson and State of New Jersey and owns real estate in said County of the value of seven thousand dollars after the payment of all encumbrances thereon and all of his just debts.

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JOHN HANDWERK.

Sworn and subscribed before me this }
30th day of October, A. D. 1912. }

WILLIAM E. DECKER,
Master in Chancery of New Jersey.

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Recorded November 9th, 1912.

.....,
Clerk.

Petition to Forfeit *Ne Exeat* Bond.(Filed *Nov. 7, 1927.*)

To His Honor, EDWIN ROBERT WALKER, Chancellor
of the State of New Jersey:

10 The petition of Marie Vahjen respectfully shows:

1. That on the 29th day of January, 1912, John C. Vahjen, the husband of your petitioner, brought suit for divorce against her in this Court.

2. That on the 10th day of February, 1912, your petitioner filed her answer to her said husband's suit for divorce as aforesaid, and a cross-bill for maintenance against him.

20 3. That on the 10th day of February, 1912, there issued out of and under the seal of this Honorable Court a Writ of *Ne Exeat Republica*, under which the husband of your petitioner, the defendant to your petitioner's cross-bill, was required to give bond in the sum of two thousand (\$2,000) dollars. That thereafter on or about the 30th day of October, 1912, the said defendant, John C. Vahjen and one John Handwerk entered into bond to Nicholas P. Wedin, Sheriff of the County of Hudson, in the sum of two thousand (\$2,000) dollars, with the condition that the said defendant, John C. Vahjen, shall at all times render himself amenable to the orders and processes of this Court, pending such suit, to wit, the cross-suit of your petitioner for maintenance. Said bond was in due form of law executed and delivered.

30 4. That on the 15th day of April, 1913, this Honorable Court did, by its decree of that date, dismissed the petition for divorce of your petitioner's husband, John C. Vahjen and did render
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Petition to Forfeit Ne Exeat Bond.

a final decree in favor of this petitioner Marie Vahjen, on her cross-bill for maintenance, and did, by said decree, among other things, order that the said petitioner's husband, John C. Vahjen, the defendant in her cross-bill for maintenance, do pay to your petitioner, for her maintenance and support, the sum of five dollars per week until the further order of this Court, and it further ordered that said defendant, John C. Vahjen, do pay to the petitioner or her solicitors the sum of six hundred (\$600) dollars as a reasonable Counsel fee, and the costs of petitioner's cross-suit to be taxed. Said counsel fee as aforesaid, to be paid in monthly payments of twenty-five dollars on the first day of each month, beginning with the first day of May, 1913. Said final decree was duly served upon said John C. Vahjen, as will appear from the records of said suit in this Court.

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5. That the said John C. Vahjen defaulted in the payments of said decree, and your petitioner proceeded against him for contempt, and on the 12th day of May, 1914, an order was made in said cause, wherein and whereby the said John C. Vahjen was adjudged guilty of contempt of Court, but the Court allowed him to purge himself of said contempt if he would pay your petitioner five dollars a week for maintenance and ten dollars a week on account of the Counsel fee to commence at that time and keep up said payments.

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6. That on the 16th day of May, 1914, said John C. Vahjen made a payment of fifteen dollars on account of said maintenance and counsel fee.

7. Thereafter on the 19th day of May, 1914, on application of said John C. Vahjen, the decree mentioned in the preceding paragraph, was modi-

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Petition to Forfeit Ne Exeat Bond.

fied, and the five dollars ordered to be paid to your petitioner, Marie Vahjen by said decree, was reduced to three dollars per week.

10 8. That on the 1st day of June, 1914, said John C. Vahjen made a further payment of fifteen dollars to your petitioner for maintenance and support, after which time said John C. Vahjen again defaulted in his payments and your petitioner was obliged to again proceed against him to have him committed for contempt of Court under said order of May 12, 1914.

20 9. That thereafter, on the 20th day of August, 1914, another order was made in said cause by said Court wherein and whereby it was ordered and adjudged that the said John C. Vahjen should stand committed to the common jail of the County of Hudson, and there to remain charged upon said contempt until he should pay the costs of the proceedings to be taxed, and a fine of five dollars for the use of the State of New Jersey, and until he should have purged himself of the contempt by paying to the petitioner, Marie Vahjen the sum of one hundred and eight-five dollars, the maintenance due under said decree and modified decree, and the amount due as counsel fees and costs under said decree, up to that time, namely, three hundred and twenty dollars, amounting in all to the sum of five hundred and five dollars, unless the Court shall see fit sooner to discharge him.

30 10. That the said John C. Vahjen was outside of the jurisdiction of this Court, and thereafter your petitioner moved to forfeit the bond in *Ne Exeat*, filed in this cause, and the Court again allowed the defendant to purge himself of said contempt by paying the costs of the proceeding, the

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Petition to Forfeit Ne Exeat Bond.

sum of five dollars for the use of the State of New Jersey and the maintenance and counsel fees due the petitioner, Marie Vahjen, up to the 8th day of September, 1914, in all amounting to the sum of three hundred and thirty-one dollars and four (\$331.04) cents. That said John C. Vahjen, in pursuance of said order paid to your petitioner the sum of three hundred and thirty-one dollars and four (\$331.04) cents on the 15th day of September, 1914, which paid up said maintenance and counsel fees up to the 8th day of September, 1914.

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11. That on the 3rd day of November, 1914, the said John C. Vahjen again being in default as to the payments of maintenance due under said decree, your petitioner, Marie Vahjen again applied to this Court for an order to show cause why a warrant should not issue for the arrest of said John C. Vahjen under the order adjudging him in contempt, made the 12th day of May, 1914. Said John C. Vahjen then again commenced making payments to your petitioner and continued to do so until the first day of March, 1917, since which time said John C. Vahjen has failed to make any payments whatever and said John C. Vahjen is now in arrears in payment of maintenance due petitioner, to the extent of one thousand, four hundred and thirty-four (\$1,434) dollars.

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12. That on the 14th day of December, 1919, the said John C. Vahjen did commit the crime of Bigamy at the Borough of Manhattan, in the City of New York, County and State of New York, and was convicted thereof at a trial term in part Eighteen of the Supreme Court of the State of New York in the First Judicial District of said State, for the trial of Criminal actions, at the County

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Petition to Forfeit Ne Exeat Bond.

10 Court House in the said County, on Monday, the 24th day of April, in the year 1922, and was sentenced to imprisonment in the State Prison in New York at hard labor, for the term of not less than two years and not more than four years, as appears by an exemplified copy of said record of conviction and sentence, which will be produced at the hearing of this petition; and was thereafter imprisoned and thereby, he did, by his own acts, make it impossible for him to appear before this Court or any officer thereof when so required by the order of this Court.

20 13. By reason of the failure of the said John C. Vahjen to obey the orders and decrees of this Court as aforesaid, and by reason of his failure to render himself amenable to the orders and processes of this Court, the condition contained in said *Ne Exeat* bond has been broken.

30 Your petitioner therefore prays, that this Honorable Court may make an order directing the said John Handwerk, the surety in said *Ne Exeat* bond, to show cause why the said *Ne Exeat* bond should not be declared forfeited, and why he should not be ordered to pay the penal sum thereof into this Court, to be disposed of in accordance with the orders of this Court, and that your petitioner may have such other and further relief as may be equitable and just, and your petitioner will ever pray, &c.

MARIE VAHJEN.

Petition to Forfeit Ne Exeat Bond.

State of New Jersey, }
 County of Hudson, } ss.:

MARIE VAHJEN, the above-named petitioner, being duly sworn according to law, upon her oath deposes and says:

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1. I have read the foregoing petition and know the contents thereof and the same is true to the best of my knowledge, information and belief.

2. Particularly is it true that my husband, the said John C. Vahjen, has violated the decree of this Court, dated May 15th, 1923, as modified by another decree of this Court, dated May 19th, 1914, by failing to pay me three dollars (\$3.00) a week for my support and maintenance as ordered, and that said John C. Vahjen has been guilty of contempt by reason whereof there has been a breach of the conditions of the said *ne exeat* bond hereinabove set forth. All of which will more fully appear by the records of this Court.

20

MARIE VAHJEN.

Sworn and subscribed to before me }
 this 2nd day of November, Nineteen }
 hundred and twenty-seven. }

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HELEN M. SCHMIDT,
 Notary Public of N. J.

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**Order to Show Cause Why Bond Should Not
Be Forfeited.**

(Filed *Nov. 7, 1927.*)

10 Upon opening this matter to the Court by Samuel A. Besson, of Counsel with Marie Vahjen, the petitioner, and upon reading and filing the petition and affidavit of said Marie Vahjen, said petitioner, setting forth that there has been a breach of the conditions of the *Ne Exeat* bond heretofore given in this cause by John C. Vahjen, as principal and John Handwerk, surety;

20 It Is, on this 7th day of November, nineteen hundred and twenty-seven, ORDERED that the said John Handwerk show cause before the Chancellor at the Chancery Chambers, No. 1 Exchange Place, in the City of Jersey City, in the County of Hudson and State of New Jersey, on the 5th day of December, nineteen hundred and twenty-seven, at the hour of ten o'clock in the forenoon or as soon thereafter as Counsel can be heard, why the *Ne Exeat* bond entered into by him, the said John Handwerk, and the defendant, John C. Vahjen, to Nicholas P. Wedin, Sheriff of Hudson County, New Jersey, bearing date the 30th day of October, 1912, should
30 not be declared and ordered forfeited, and why he, the said John Handwerk, surety, should not be ordered to pay the penal amount thereof, to wit, the sum of two thousand (\$2,000) dollars into this Court, to be disposed of in accordance with the orders of this Court, and why the said petitioner, Marie Vahjen, should not have such other and further relief in the premises as may be equitable and just.

40 AND IT IS FURTHER ORDERED that a copy of this

Affidavit of Marie Vahjen.

order to Show Cause, together with a copy of the petition and affidavit thereto annexed, on which this Order to Show Cause is founded, certified to be true copies by the Solicitor of the said petitioner, Marie Vahjen, be served on the said John Handwerk, surety, at least 20 days before the return day of this Order to Show Cause. 10

Respectfully Advised,

E. R. WALKER,
C.

VIVIAN M. LEWIS,
V. C.

Affidavit of Marie Vahjen.

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(Filed .)

State of New Jersey, }
County of Hudson, } ss.:

MARIE VAHJEN, being duly sworn according to law, upon her oath deposes and says:

1. I am the petitioner in the above entitled cause. On the 29th day of January, 1912, my husband, John C. Vahjen, brought suit for divorce against me in this Court. 30

2. That on the 10th day of February, 1912, I filed my answer to his suit for divorce as aforesaid, and a cross-bill for maintenance against him.

3. That on the 10th day of February, 1912, there issued out of and under the seal of this Honorable Court a Writ of *Ne Exeat Republica*, under which my husband, the defendant to my cross-bill was required to give bond in the sum of two thousand 40

Affidavit of Marie Vahjen.

(§2,000) dollars. That thereafter on or about the 30th day of October, 1912, the said defendant, John C. Vahjen and one John Handwerk entered into bond to Nicholas P. Wedin, sheriff of the County of Hudson, in the sum of two thousand (\$2,000) dollars, with the condition that the said defendant, John C. Vahjen, shall at all times render himself amenable to the orders and processes of this Court, pending such suit, to wit, the cross-suit of deponent for maintenance. Said bond was in due form of law executed and delivered.

4. That on the 15th day of April, 1913, this Honorable Court did, by its decree of that date, dismiss the petition for divorce of my husband, John C. Vahjen, and did render a final decree in favor of me, on my cross-bill for maintenance, and did by said decree, among other things order that my husband, John C. Vahjen, the defendant in my cross-bill for maintenance, do pay me for my maintenance and support the sum of five dollars per week until the further order of this Court, and it further ordered that said defendant, John C. Vahjen, do pay to me or my solicitors the sum of six hundred (\$600) dollars as a reasonable Counsel fee, and the costs of my cross-suit to be taxed. Said Counsel fee as aforesaid, to be paid in monthly payments of twenty-five dollars on the first day of each month, beginning with the first day of May, 1913. Said final decree was duly served upon said John C. Vahjen, as will appear from the records of said suit in this Court.

5. That the said John C. Vahjen defaulted in the payments of said decree, and I proceeded against him for contempt, and on the 12th day of May, 1914, an order was made in said cause,

Affidavit of Marie Vahjen.

wherein and whereby the said John C. Vahjen was adjudged guilty of contempt of Court, but the Court allowed him to purge himself of said contempt if he would pay me five dollars a week for maintenance and ten dollars a week on account of the Counsel fee, to commence at that time and keep up said payments. 10

6. That on the 16th day of May, 1914, said John C. Vahjen made a payment of fifteen dollars on account of said maintenance and counsel fee.

7. Thereafter on the 19th day of May, 1914, on application of said John C. Vahjen, the decree mentioned in the preceding paragraph, was modified, and the five dollars ordered to be paid to me by said decree, was reduced to three dollars per week. 20

8. That on the 1st day of June, 1914, said John C. Vahjen made a further payment of fifteen dollars to me for maintenance and support, after which time said John C. Vahjen again defaulted in his payments and I was obliged to again proceed against him to have him committed for contempt of Court under said order of May 12, 1914.

9. That thereafter, on the 20th day of August, 1914, another order was made in said cause by said Court wherein and whereby it was ordered and adjudged that the said John C. Vahjen should stand committed to the common jail of the County of Hudson, and there to remain charged upon said contempt until he should pay the costs of the proceedings to be taxed, and a fine of five dollars for the use of the State of New Jersey, and until he should have purged himself of the contempt by paying to me the sum of one hundred and eighty- 30 40

Affidavit of Marie Vahjen.

five dollars, the maintenance due under said decree and modified decree, and the amount due as counsel fees and costs under said decree, up to that time, namely, three hundred and twenty dollars, amounting in all to the sum of five hundred and
10 five dollars, unless the Court shall see fit sooner to discharge him.

10. That the said John C. Vahjen was outside of the jurisdiction of this Court, and thereafter I moved to forfeit the bond in *Ne Exeat*, filed in this cause, and the Court again allowed the defendant to purge himself of said contempt by paying the costs of the proceeding, the sum of five dollars for the use of the State of New Jersey and the maintenance and counsel fee due me up to the 8th day of
20 September, 1914, in all amounting to the sum of three hundred and thirty-one dollars and four (\$331.04) cents. That said John C. Vahjen, in pursuance of said order paid to me the sum of three hundred and thirty-one dollars and four (\$331.04) cents on the 15th day of September, 1914, which paid up said maintenance and counsel fees up to the 8th day of September, 1914.

11. That on the 3rd day of November, 1914, the
30 said John C. Vahjen again being in default as to the payments of maintenance due under said decree, I again applied to this Court for an order to show cause why a warrant should not issue for the arrest of said John C. Vahjen under the order adjudging him in contempt, made the 12th day of May, 1914. Said John C. Vahjen, through his cousin, then again commenced making payments to me and continued to do so until the first day of
40 March, 1917, since which time said John C. Vahjen has failed to make any payments whatever and

Affidavit of Marie Vahjen.

said John C. Vahjen is now in arrears in payment of maintenance due me, to the extent of one thousand four hundred and seventy-six (\$1,476) dollars.

12. That on the 14th day of December, 1919, the said John C. Vahjen did commit the crime of Bigamy at the Borough of Manhattan, in the City of New York, County and State of New York, and was convicted thereof at a trial term in part Eighteen of the Supreme Court of the State of New York in the First Judicial District of said State, for the trial of Criminal actions, at the County Court House in the said County, on Monday the 24th day of April, in the year 1922, and was sentenced to imprisonment in the State Prison in New York at hard labor, for the term of not less than two years and not more than four years, as appears by an exemplified copy of said record of conviction and sentence, which will be produced at the hearing of this petition; and was thereafter imprisoned and thereby, he did, by his own acts, make it impossible for him to appear before this Court or any officer thereof when so required by the order of this Court.

13. By reason of the failure of the said John C. Vahjen to obey the orders and decrees of this Court as aforesaid, and by reason of his failure to render himself amenable to the orders and processes of this Court, the condition contained in said *Ne Exeat* bond has been broken.

14. I have already stated that my husband has not paid me any maintenance since March 1, 1917. Previous to that date the maintenance which my husband was ordered to pay to me was paid through his cousin, one Arthur A. Ludemann,

Affidavit of Marie Vahjen.

whose place of business was 1920 Houston Street,
New York City. Mr. Ludemann would send me
weekly checks for the maintenance. About this
time Mr. Ludemann telephoned me that he would
not send me any more checks for maintenance as
10 my husband was not giving him any money for
that purpose. He suggested that I come to his
place of business to see him. I did this about
March 1, 1917, and found my husband there. I re-
fused to see my husband. Mr. Ludemann spoke to
my husband, who was in an adjoining room, and
then came out and told me that my husband said
that he would not pay me any more maintenance.
He has kept his word and I have not received any
maintenance since the last mentioned date. After
20 my husband ceased making payments I made re-
peated efforts to find out his whereabouts, but
without success. In or about the month of July,
1920, I received a telephone call from a friend of
mine, Miss Schaller of Guttenberg, who told me
that she understood that my husband was married
to a lady by the name of Mary Treepack, the young
lady with whom he had been going around for
some time, and who was the cause of my diffi-
culties with my husband. A short time after Miss
30 Schaller spoke to me on the telephone I visited her
at her home in Guttenberg. She again told me that
she had heard from numerous people about my
husband being married and living with this
woman in New York. Shortly after that I met an-
other woman in the street by the name of Mrs.
Bittner, who at that time lived on Twenty-seventh
Street, Guttenberg. She also said that my husband
told her that he was married again and I asked her
then if she knew where he lived. She said she
40 didn't know the address but that he lived in New

Affidavit of Marie Vahjen.

York and Miss Treepack was going to her mother's house in Guttenberg every week.

15. I knew Miss Treepack and she also knew me. As I was crossing the ferry one day I met her on the boat and I decided to follow her. When we got off the ferry boat in New York City, she walked over to her home at 133rd Street near Broadway and I saw her go into a house on that street, but do not remember the number. After she entered the house I went to the janitor and asked her if she knew who the woman was who lived on the ground floor in the rear, and she told me she was Mrs. Vahjen. I then went to the City Hall in New York City and found out that my husband was married to Miss Treepack. I then made a criminal complaint against him for bigamy and a warrant for his arrest was issued. In the meantime my husband had moved from the 133rd Street address to 47th Street and at the 47th Street address the warrant was served and my husband was arrested.

16. My husband's trial was a long time coming on. My husband, however, never went to trial, but pleaded guilty to the charge and was sentenced to State's prison, as already appears by this affidavit. I understand that my husband has completed his sentence, but is no longer in the State of New York. His cousin, Arthur A. Ludemann, told me a short time ago that my husband lives in Florida with Miss Treepack, who is the lady with whom he contracted the bigamous marriage.

MARIE VAHJEN.

Sworn and subscribed to before me }
this 5th day of December, 1927. }

HELEN M. SCHMIDT,
Notary Public
of New Jersey.

*Record of Conviction.*THE PEOPLE OF THE STATE OF
NEW YORK

BY THE GRACE OF GOD FREE AND INDEPENDENT

10 To all to whom these presents shall come or
may concern, GREETING:

KNOW YE, That we having examined the records and files in the office of the Clerk of the County of New York and Clerk of the Supreme Court of said State for said County, do find a certain Record there remaining, in the words and figures following, to wit:

20 At a Trial Term, Part Eighteen, of the Supreme Court of the State of New York, holden in and for the County of New York, in the First Judicial District of said State, for the trial of criminal actions, at the County Court House in said County, on Monday, the 24th day of April, in the year of our Lord one thousand nine hundred and twenty-two.

30 Present—The Honorable IRVING R. DEVENDORF,
Justice of the Supreme Court of the State of New York.

THE PEOPLE OF THE STATE OF
NEW YORK

against

JOHN C. VAHJEN.

On Conviction by
Confession of
Bigamy.

40

Whereupon it is ORDERED and ADJUDGED by the

Record of Conviction.

Court that the said John C. Vahjen (he not having been heretofore convicted of a felony), for the felony aforesaid, whereof he is convicted, be imprisoned in the State Prison, at hard labor, for the term, the minimum of which shall not be less than two years, and the maximum of which shall not be more than four years. 10

A True Extract from the Minutes.

(Seal) WILLIAM T. COLLINS,
Clerk.

This copy correct.

ROBT. E. NICHOLLS,
Assistant Special Deputy Clerk
of the Supreme Court. 20

At a Criminal Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the Criminal Courts Building in the Borough of Manhattan of The City of New York, on the 6th day of April, 1922. 30

Present—Honorable EDWARD R. FINCH, Justice.

THE PEOPLE OF THE STATE OF
NEW YORK

against

JOHN C. VAHJEN.

Cal. No. 31370.

Ind. No. 132238.

40

It appearing in the opinion of this Court that

Record of Conviction.

it is proper that the indictment hereinafter named be tried herein,

Now, on motion of Joab H. Banton, District Attorney of the County of New York, it is

10 ORDERED, that the indictment found in the Court of General Sessions of the Peace in and for the County of New York on the 6th day of January, 1921, against the above-named defendant for the crime of Bigamy be and the same is hereby removed into the Supreme Court of the State of New York in and for the County of New York.

E. R. F.,
Justice of the Supreme Court.

20 A Copy.

WILLIAM T. COLLINS,
(Seal) Clerk.

COURT OF GENERAL SESSIONS OF THE PEACE
IN AND FOR THE COUNTY OF NEW YORK.

30 THE PEOPLE OF THE STATE OF
 NEW YORK
 against
 JOHN C. VAHJEN,
 Defendant.

The Grand Jury of the County of New York, by this indictment, accuse the said defendant of the Crime of Bigamy, committed as follows:

40 The said defendant, in the County of New York

Record of Conviction.

aforesaid, on the eighteenth day of June, in the year of our Lord one thousand nine hundred and two, at the Borough of Manhattan, of the City of New York, in the County of New York aforesaid, did marry one Marie Meyer, and her, the said Marie Meyer, did then and there have for his wife, and the said defendant afterward, to wit, on the fourteenth day of December, in the year of our Lord one thousand nine hundred and nineteen, at the Borough of Manhattan, of The City of New York, in the County of New York aforesaid, did feloniously marry and take as his wife one Marie A. Trepac, and to the said Marie A. Trepac was then and there married, the said Marie Meyer being then living and in full life, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

EDWARD SWANN,
District Attorney.

A Copy.

WILLIAM T. COLLINS,
(Seal) Clerk.

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

WITNESS, Hon. F. B. Delehanty, a Justice of the Supreme Court for the County of New York, the 3rd day of December in the year of our Lord one thousand nine hundred and twenty-six, of our independence the one hundred and fifty-one.

WILLIAM T. COLLINS,
(Seal) Clerk. 40

Record of Conviction.

I, F. B. DELEHANTY, a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of New York, do hereby certify that William T. Collins, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, Dec. 3rd, 1926.

F. B. DELEHANTY,
Justice of the Supreme Court of the
State of New York.

State of New York, }
County of New York, } ss.:

I, WILLIAM T. COLLINS, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. F. B. Delehanty, whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 3rd day of Dec., 1926.

(Seal) WILLIAM T. COLLINS,
Clerk.

Opinion.

LEWIS, V. C.:

This is an application by the petitioner to have the *ne exeat* bond forfeited and to require the surety to pay the penal amount of said bond into court so that it can be disbursed in accordance with the orders of this court. I think that her petition should be granted. This Court will retain proceedings to enforce liability under its orders.

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Warren *v.* Warren, 92 N. J. Eq., 334;
Elliott *v.* Elliott, 36 Atl. Rep., 951.

The bond was given on November 14, 1912, by John C. Vahjen and John Handwerk and was made to Nicholas P. Wedin, Sheriff of Hudson County, in the sum of Two Thousand Dollars (\$2,000.00). It is the usual *ne exeat* bond. The condition of the bond is as follows:

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“Now the condition of this obligation is such that if the said John C. Vahjen shall cause his appearance to be entered in the said suit and to continue such appearing by a solicitor of the Court of Chancery residing in the State of New Jersey and shall at all times render himself amenable to the orders and process of said court pending such suit and to such process as shall be issued to compel the performance of the final decree therein and shall appear before said Court or any officer thereof when so required by the order of said Court, then this obligation to be void, otherwise to remain in full force and virtue.”

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Opinion.

The petition for divorce was filed January 29, 1912. The final decree was made in the cause on the fifteenth day of April, 1913, dismissing the petition of the petitioner and ordering the defendant to pay petitioner Five Dollars (\$5.00) a week as
10 alimony under the decree and a counsel fee of Six Hundred Dollars (\$600.00), besides the costs of suit, which counsel fee and costs were to be paid at the rate of Twenty-five Dollars (\$25.00) a month, and said decree was duly served upon the defendant.

The defendant defaulted in the payments under the decree, and petitioner proceeded against him for contempt. On the twelfth day of May, 1914, an order was made in the cause adjudging the defendant guilty of contempt of court, but the court
20 allowed him to purge himself of contempt if he would pay petitioner Five Dollars (\$5.00) a week as alimony and Ten Dollars (\$10.00) a week on account of the counsel fee to commence at that time and to keep up said payments.

The defendant made one payment of Fifteen Dollars (\$15.00) on account of said alimony and counsel fee on the Sixteenth day of May, 1914; another payment of Fifteen Dollars (\$15.00) on
30 the first day of June, 1914, and a third payment of Fifteen Dollars (\$15.00) on the fifteenth day of June, 1914, when he again defaulted in his payments and petitioner was obliged to again proceed against him to have him committed for contempt of court under the order of May 12, 1914.

On the twentieth day of August, 1914, another order was made in the cause wherein it was ordered and adjudged that the defendant should stand committed to the county jail of Hudson
40 until he should pay the costs of the proceedings to be taxed, a fine of Five Dollars (\$5.00) for the

Opinion.

use of the State of New Jersey, and until he should have purged himself of said contempt by paying to petitioner the sum of One Hundred Eighty Five Dollars (\$185.00), the alimony due under the decree of April 15, 1913, and the amount due as counsel fee and costs up to that time, viz: Three Hundred Twenty Dollars (\$320.00), amounting in all to the sum of Five Hundred Five Dollars (\$505.00), unless the court should see fit sooner to discharge him. 10

The defendant being outside of the jurisdiction of this court, the petitioner moved to forfeit the bond in *ne exeat* and the court again allowed the defendant to purge himself of said contempt by paying the costs of the proceeding, Five Dollars (\$5.00) for the use of the State of New Jersey, and the alimony and counsel fee due under the order of May 12, 1914, up to the eighth day of September, 1914, in all amounting to the sum of Three Hundred Thirty One Dollars Four Cents (\$331.04); The defendant, in pursuance of the order, paid to petitioner the sum of Three Hundred Thirty One Dollars Four Cents (\$331.04) on the fifteenth day of September, 1914, which paid up said alimony and counsel fee under the order of May 12, 1914, to the eighth day of September, 1914. 20 30

On the third day of November, 1914, Vahjen again being in default in the payments of maintenance due, the petitioner again applied to this Court for an order to show cause why a warrant should not issue for the arrest of Vahjen under the order adjudging him in contempt made the twelfth day of May, 1914. Vahjen then again commenced making payments through his cousin, Arthur A. Ludemann, and continued to do so until the first day of March, 1917, since which time he has failed to 40

Opinion.

make any payments whatever and is now in arrears in payment of maintenance to the extent of One Thousand Four Hundred and Seventy Dollars (\$1,470.00).

10 On the fourteenth day of December, 1919, Vahjen committed the crime of bigamy at the Borough of Manhattan, in the City of New York, County and State of New York, and was convicted thereof at a Trial Term in Part Eighteen of the Supreme Court of the State of New York in the First Judicial District on Monday, the twenty-fourth day of April, in the year 1922, and was sentenced to imprisonment in the State Prison in New York at hard labor for the term of not less than two years and not more than four years, as
20 appears by an exemplified copy of said record of conviction and sentence produced and offered in evidence at the hearing on this petition.

Since Vahjen's liberation from prison, neither the petitioner nor the bondsman have been able to ascertain his whereabouts, and therefore it is impossible to serve him with process to enforce the final decree entered in this cause. It appears that he has absconded and the wife is not barred
30 in endeavoring to enforce her lien.

An order may accordingly be entered.

Order Forfeiting Bond.

(Filed .)

This matter coming on to be heard on the petition of Marie Vahjen heretofore filed herein and on the rule to show cause made thereon on the 7th day of November, 1927, requiring John Handwerk to show cause before this Court why the *ne exeat* bond entered into by John C. Vahjen as principal and he, John Handwerk, as surety, to the sheriff of the County of Hudson, New Jersey, bearing date the 30th day of October, 1912, should not be declared and ordered forfeited, and why he, the said John Handwerk, surety, should not be ordered to pay the penal sum of said bond, to wit, the sum of Two Thousand (\$2,000.00) Dollars, into this court to be disposed of in accordance with the orders of this court, and why the said petitioner, Marie Vahjen, should not have such other and further relief in the premises as may be equitable and just;

And the court having duly considered the proofs offered by Marie Vahjen in support of her petition, and having duly considered the arguments of O. J. Pellet, Esquire, with Samuel A. Besson, solicitor of the petitioner, and William E. Decker, of Messrs. Insley, Vreeland & Decker, solicitors of John Handwerk, surety on said *ne exeat* bond, and it appearing to the satisfaction of the court that the said John C. Vahjen has broken the condition of said bond in that he has not continued his appearance in this suit by a solicitor of the Court of Chancery of New Jersey, residing in the State of New Jersey; and in that he has not at all times rendered himself amenable to the orders and process of this Court to compel performance of

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Order Forfeiting Bond.

the final decree herein, and has rendered himself incapable of appearing before this court or any officer thereof when required by this court by committing the crime of bigamy in the State of New York, of which he was duly convicted and sentenced to be imprisoned in the State prison of the State of New York for not less than two years and not more than four years, which satisfactorily appears from an exemplified record of his conviction duly offered in evidence before this court, and that by reason of said conviction and sentence as aforesaid John C. Vahjen could not appear before this court when required during the time of his imprisonment.

And the court being of the opinion that the prayer of the petition of the said Marie Vahjen that said bond be declared and ordered forfeited and that the surety, John Handwerk, be required to pay the penal sum of said bond into this court should be granted;

It is on this 28th day of January, 1929, ORDERED that the *ne exeat* bond entered into by John C. Vahjen as principal and John Handwerk as surety to Nicholas P. Wedin, Sheriff of Hudson County, New Jersey, bearing date the 30th day of October, 1912, be and the same is hereby declared and ordered forfeited, and the said John Handwerk, surety, is hereby Ordered to pay the penal amount of said bond, to wit, the sum of Two Thousand (\$2,000.00) Dollars, to the Clerk of this Court within thirty days after service upon him of a true but uncertified copy of this order. Said penal amount of said bond, to wit, the sum of Two Thousand (\$2,000.00) Dollars, when paid to the Clerk of this Court in accordance with this order to be disbursed as this Court shall order.

Order Forfeiting Bond.

It is further Ordered that the said John Handwerk pay to said Marie Vahjen the costs of this forfeiture proceeding to be taxed, including a counsel fee of fifty (\$50) Dollars to Samuel A. Besson, solicitor of said petitioner, Marie Vahjen; and that in default of the payment of the said taxed costs within ninety days after service upon him of true but uncertified copies of this order and of said taxed costs, execution issue against the goods and chattels, rents, tenements, hereditaments and real estate of said John Handwerk to make said costs, including counsel fee, according to the practice of this Court. 10

And it is further Ordered that the said petitioner, Marie Vahjen shall be at liberty to apply for such further relief in the premises as occasion shall require. 20

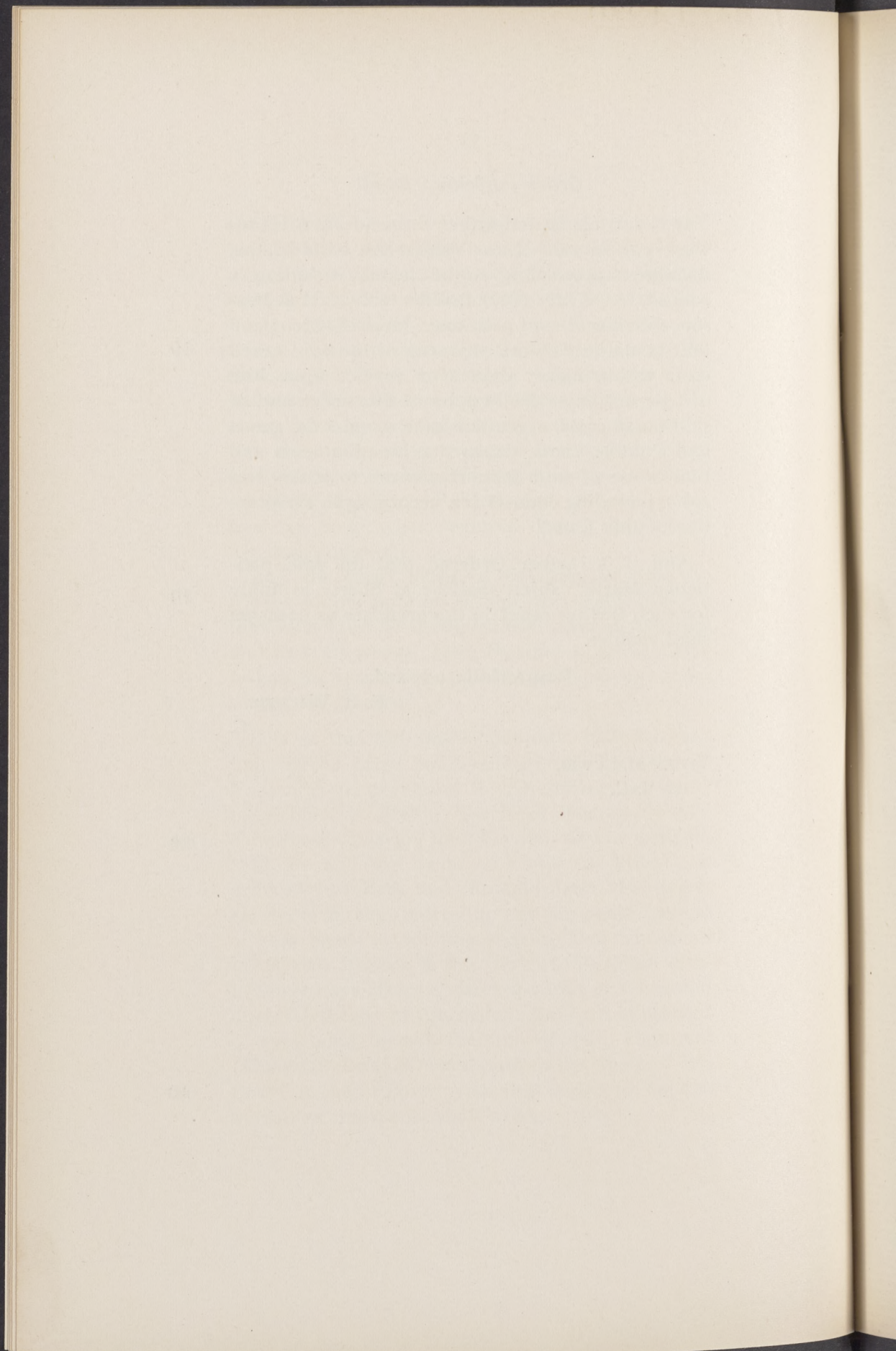
Respectfully advised,

E. R. WALKER,
C.

VIVIAN M. LEWIS,
V. C.

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New Jersey Court of Errors and Appeals

JOHN C. VAHJEN, Appellant (Petitioner), vs. MARIE VAHJEN, Respondent (Defendant).	}	On Appeal From the Court of Chancery.
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BRIEF FOR APPELLANT.

On January 29th, 1912, John C. Vahjen filed a petition for divorce against his wife Marie Vahjen. On February 10th, 1912, Marie Vahjen appeared and filed an answer and cross-petition for support and maintenance against the petitioner. On February 10th, 1912, Marie Vahjen obtained an order for a writ of *ne exeat* against the petitioner. The writ was issued the same day. He was taken into custody. He gave bail in the sum of Two Thousand Dollars (\$2000), with William J. Eypper, as surety. On November 6th, 1912, by an order of the Court of Chancery, John Handwerk was substituted as surety in the place of Eypper, and the Sheriff directed to cancel the bail with Eypper as surety. The divorce suit then went on until April 16th, 1930, when a final decree was entered dismissing the petition of John C. Vahjen and granting support and maintenance.

From this time on there were various proceedings to have John C. Vahjen adjudged guilty of contempt down to September 21st, 1914, when a warrant for his arrest was ordered returned into Court, and the order provided that no further warrant

issued as long as he continued to pay fifteen dollars (\$15) per week :

“and that no further proceedings be taken on
“the *ne exeat* bond until the further order of
“the Court.”

There the matter rested until November 9th, 1914, when Marie Vahjen filed a petition to have a warrant issued for his arrest, and by order this was continued to March 29th, 1915, when a new petition was filed for the same purpose, and this was continued by various orders to November 10th, 1915, when another petition for a warrant for contempt was filed, which was continued to November 29th, 1915, when the record ends. See State of Case, pages 4, 5, 6, 7.

The *ne exeat* bond is dated October 9th, 1929, and is in the form provided for in the rules of the Court of Chancery.

In 1927 Marie Vahjen filed a petition with the Chancellor to have the *ne exeat* bond forfeited (p. 10); an order to show cause was made November 7th, 1927, on this petition (p. 16). On January 28th, 1929, the bond was forfeited, and the amount of the penalty of the bond directed be paid to the Clerk of this Court (p. 33).

It is from this order that John Handwerk, surety on the bond, appeals.

I.

On September 21, 1914 (more than a year after the final decree was entered), and after several proceedings for contempt against Vahjen, the Court of Chancery ordered :

“And it is Further Ordered that no further
“proceedings be taken on the *ne exeat* bond,
“nor against the *ne exeat* bondsman until the
“further order of the Court” (Case, p. 7).

This order remained and was in force and undisturbed when after a lapse of thirteen (13) years the petition for forfeiture was filed.

We submit that a surety on a *ne exeat* bond has the right to rely on the orders of the Court of Chancery, and that no forfeiture proceedings should have been allowed to be commenced in this case without first a hearing on the order of 1914 and setting aside that order.

The order of 1914 was made by Vice-Chancellor Stevenson. It was made at a hearing when the petitioner and Vahjen and his surety were before the Court. It was still in force and undisturbed when the petition for forfeiture of the bond was filed. This question was raised before Vice-Chancellor Lewis and in his opinion he makes no reference to it.

II.

After final decree the surety is liable only in the event the principal in the bond renders it impossible to comply with the final decree.

Foote v. Footé, 101 N. J. Eq. 122, Id. 140
At. Rep. 312—Reversed.

The purpose of the bond is to secure the appearance of the principal, and only if he fails to appear is the bond forfeited.

Footé v. Footé, 140 At. Rep. 312.

In this case we have the order of 1914 providing that no further proceedings be taken against the surety then the next step the order to show cause of 1927 (Case, p. 16).

We submit that there is nothing in the record which gave the court the right to declare the bond forfeited.

III.

The right to forfeit this bond should be denied to Marie Vahjen because of her laches.

Bonds conditioned to obey writs of *ne exeat* are in the nature of equitable bail, and the obligations of sureties are substantially the same as bail at common law.

Penny v. Penny, 88 N. J. Eq. 160, at page 161;

Foote v. Foote, 140 At. 312 (not yet officially reported).

Laches is a good defense to the extent that plaintiff should not neglect or delay performance of any material act or compliance with any statutory requirements essential to fix or to preserve the rights in regard to the obligation of bail, especially where the surety is prejudiced to his loss, or his risk is increased thereby.

6 Corpus Juris, page 923, and cases there cited.

Ordinarily in England the courts would not enforce arrears of alimony for more than a year (*Lynde vs. Lynde*, 64 N. J. Eq. at p. 753), though under certain circumstances that practice was varied.

In New Jersey a person who allows an equity cause to lie dormant for more than a year is subject to dismissal.

In this case Marie Vahjen stated in her affidavit that her alimony had been paid until 1917. She stood aside for a period of ten years before attempting to forfeit the bond. During that interval of ten years she, with the presumed knowledge that the obligation of the surety was merely to produce Vahjen in court, set in motion the machinery of the New

York courts that resulted in the incarceration of Vahjen in the penitentiary.

According to her affidavit, she ascertained that Vahjen had contracted a bigamous marriage in New York. She then began proceedings for his punishment.

“I then made a criminal complaint against him for bigamy, and a warrant for his arrest was issued (Case, p. 23, l. 20).”

The record shows that Vahjen was convicted of the crime of bigamy and the Supreme Court of New York sentenced him to prison for a minimum term of two years. Where he is now, or what happened to him, the respondent has been unable to ascertain.

It was the duty of Marie Vahjen to proceed within a reasonable time to enforce the bond.

We refer the court to the case of the *People vs. Sochet*, reported in 212 *Pacific Reporter*, page 832, decided by the Colorado Supreme Court, February 5th, 1923.

Anna Sochet brought suit for divorce against her husband, and in the suit asked for a divorce, alimony and support for two minor children. February 13th, 1918, while the suit was pending, an order was made directing the Sheriff to take the defendant husband into custody, and hold him until a *ne exeat* bond was given in the sum of one thousand dollars. At the time the order was made, the defendant was in court, and he was taken in custody, without any writ, and immediately gave a bond with Goldstein as surety. The condition of the bond is as follows:

“not go, or attempt to go, beyond the limits of the State of Colorado, or beyond the jurisdiction of said court without leave of said court, and shall render himself amenable to the order

'and processes of said court in the premises,
 "and to such processes as shall be issued to
 "compel the performance of the final decree
 "therein and will appear before this court when
 "so required by an order of this court."

October 17th, 1918, more than six months after the case was decided, final decree was entered giving to the wife a divorce and giving her custody of the minor children, and awarding her costs. There is no provision in this decree for alimony or support of the children.

In November or December, 1919, the defendant husband left the state of Colorado, and never returned.

December 17th, 1920, an amended complaint was filed in the suit, which was commenced on the *ne exeat* bond. Certain payments of money were due to the complainant wife. A demurrer was filed to the amended complaint and the demurrer was sustained. On appeal the court (196 *Pacific Reporter* 192) held that an illegal arrest was no defense to an action on a bond, and the case was then remanded and tried on the merits. The defense on the merits alleged that the defendant had fully complied with the order for the writ and the bond, and judgment was entered for the defendant Goldstein on the merits. The opinion of the court affirmed that judgment is as follows:

"Assuming without deciding, the legality of
 "the arrest and the validity of the bond, we
 "must uphold the judgment in this case. The
 "conditions of the bond are to be tested by the
 "order therefor. If it contains unauthorized
 "provisions, they must be treated as surplus-
 "age. *People v. Sochet*, supra. The condition
 "that Sochet would not go beyond the limits
 "of the state or the jurisdiction of the court
 "could not hold forever. It must be construed
 "as extending only to the pendency of the ac-

“tion, and such time after final judgment as
 “was reasonably necessary for the enforcement
 “thereof. Such is the correct interpretation of
 “the opinion in *Marselis v. People*, 18 Colo.
 “App. 258, 260, 71 Pac. 429. The provision
 “that he would render himself amenable to the
 “orders and processes of the court must be con-
 “strued as applying only to orders and pro-
 “cesses entered and issued prior to final judg-
 “ment. The provision that he would render
 “himself amenable ‘to such processes as shall
 “be issued to compel the performances of the
 “final Decree’ must be construed as extending
 “only to such time after the entry thereof as
 “would enable plaintiff, proceeding with rea-
 “sonable diligence, to procure its enforcement.

“All these things the defendant did. He re-
 “mained within the jurisdiction until final
 “judgment. He made payments exceeding those
 “required prior to final judgment. He re-
 “mained within the jurisdiction of the court
 “more than one year thereafter, giving plaintiff
 “ample opportunity to enforce, by execution or
 “proceedings in contempt every order in her
 “favor which the court had jurisdiction to en-
 “ter. The record before us discloses but one
 “short effort, evidenced by an order dated De-
 “cember 27, 1918, commanding the payment of
 “money by defendant Sochet, and directing his
 “commitment for contempt in case of default.”

After setting in motion the machinery of the law which placed it beyond the surety's power to produce Vahjen during a lapse of ten years from the time her alimony had been paid we submit constitutes such laches as would impel the court to deny the forfeiture of the bond.

IV.

The bond was given to the Sheriff of the County of Hudson. Marie Vahjen was not a party to it. The proceedings are commenced by her without

the Sheriff joining in the proceedings. Under these circumstances the Court of Chancery was without jurisdiction to forfeit the bond because the party to whom the bond was given had not invoked the forfeiture.

IN CONCLUSION.

Upon the entry of the final decree in 1913 the surety on the bond became responsible for the appearance of John C. Vahjen. In 1914 an order was made that no further proceedings be taken on the bond until the further order of the court. There the matter rested until 1927 when the present proceedings were started. In the meantime Marie Vahjen set in motion criminal proceedings which rendered the production of Vahjen in New Jersey impossible by the surety of any other person. During this time, for a period of thirteen (13) years, she did not call to the attention of the surety on the bond the fact that the presence of Vahjen was required in the State of New Jersey. With no outstanding order requiring him to appear in the State of New Jersey this proceeding was started. The primary purpose of a *ne exeat* bond is not to make the surety pay, but is to make the surety produce the man who is liable to pay.

**Under all the foregoing circumstances,
we submit the Court of Chancery shall
refuse to forfeit the bond.**

WILLIAM E. DECKER,
Of Counsel with John Handwerk,
Appellant.

New Jersey Court of Errors
and Appeals.

BETWEEN	}	10
JOHN C. VAHJEN, Petitioner,		} On Appeal from the Court of Chancery.
AND MARIE VAHJEN, Respondent,		
JOHN HANDWERK, Surety, Appellant.		20

BRIEF FOR RESPONDENT.

Prefatory Statement.

A writ of *ne exeat* was issued out of the Court of Chancery in a suit for maintenance brought in that court by the respondent, Marie Vahjen. A 30
bond was given on the writ by the defendant, John C. Vahjen, as principal, and John Handwerk as surety. The defendant having breached the bond, the respondent applied to the Court of Chancery for an order forfeiting the bond and requiring the surety to pay the penal amount thereof into the Court of Chancery. The bond was declared forfeited and the surety ordered to pay the penal sum of said bond into court to be disbursed as that 40
court shall order. From that order the surety, John Handwerk, appeals to this court.

Facts.

On January 29th, 1912, John C. Vahjen, the husband of respondent, brought suit for divorce against her in the Court of Chancery. The respondent filed an answer to that suit and a cross bill for maintenance against her husband, and upon her application a writ of *ne exeat* was issued out of the Court of Chancery on February 10th, 10 1912, in pursuance of which the said John C. Vahjen as principal, and one William J. Eypper as surety, gave the usual *ne exeat* bond to the Sheriff of Hudson County which was in the form prescribed by Chancery Rule 216. On October 21st, 1912 on application of William J. Eypper, the surety, the Court of Chancery permitted the present appellant, John Handwerk, to be substituted as surety in place of the said William J. Eypper. 20 On November 14th, 1912 the husband as principal, and John Handwerk, the present appellant, as surety, entered into bond with the Sheriff of Hudson County in the sum of Two Thousand (\$2000) Dollars. It is the usual *ne exeat* bond in the form prescribed by Chancery Rule 216, as follows:—

30 “Now the condition of this obligation is such that if the said John C. Vahjen shall cause his appearance to be entered in the said suit and to continue such appearing by a solicitor of the Court of Chancery residing in the State of New Jersey and shall at all times render himself amenable to the orders and process of said Court pending such suit and to such process as shall be issued to compel the performance of the final decree therein and shall appear before said Court or any officer thereof when so required by the order of said Court, then this obligation to be void, otherwise to remain in full force and virtue.”

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On April 15th, 1913 a final decree was made by the Court of Chancery dismissing the petition for divorce filed by the husband against his wife, Marie Vahjen, the respondent on this appeal, and sustaining the cross bill for maintenance filed by the wife, present respondent, against her husband, and ordering him to pay her maintenance in the sum of \$260 a year, payable in monthly installments. On May 19th, 1914 the decree was modified 10
by an order directing the said Vahjen to pay his wife the sum of \$3.00 per week.

The husband defaulted in the payments under the decree as modified, and the wife proceeded against him for contempt, and on the twelfth day of May, 1914, an order was made in said cause wherein and whereby the said John C. Vahjen was adjudged guilty of contempt of court, but allowed him to purge himself of the contempt if he would 20
pay his wife, Three (\$3.00) Dollars a week as maintenance and Ten (\$10.00) Dollars a week on account of the counsel fee, to commence at that time, and to continue said payments.

The husband, made one payment of Fifteen (\$15.00) Dollars on account of the maintenance and counsel fee on the 16th day of May, 1914; another payment of Fifteen (\$15.00) Dollars on the first day of June, 1914, and a third payment 30
of Fifteen (\$15.00) Dollars on the 15th day of June, 1914, when he again defaulted in his payments, and the wife was obliged to again proceed against him to have him committed for contempt under the order of May 12th, 1914, adjudging him in contempt.

Thereafter, on the 20th day of August, 1914, another order was made in said cause by said court wherein and whereby it was ordered and adjudged 40
that said John C. Vahjen should stand committed

to the common jail of the County of Hudson, there to remain charged upon said contempt until he should pay the costs of the proceedings to be taxed, a fine of Five (\$5.00) Dollars for the use of the State of New Jersey and until he should have purged himself of said contempt by paying to the said Marie Vahjen, his wife, the sum of One Hundred Eighty-five (\$185.00) Dollars, the maintenance due under said decree made on the 15th day of April, 1913, and the amount due as counsel fees and costs under said decree up to that time, namely Three Hundred Twenty (\$320.00) Dollars amounting in all to the sum of Five Hundred Five (\$505.00) Dollars unless the court should see fit sooner to discharge him. However, this order was never enforced and he was not committed as he was outside of the jurisdiction of the court. Thereafter, the wife, moved to forfeit the *ne exeat* bond given by the husband (See order p. 14 of this brief) and the court again allowed the husband to purge himself of said contempt by paying the costs of the proceeding, Five (\$5.00) Dollars for the use of the State of New Jersey, and the maintenance and counsel fee due under said order of May 12th, 1914, up to the 8th day of September, 1914, in all amounting to the sum of Three Hundred Thirty-one Dollars and Four Cents (\$331.04); the said John C. Vahjen in pursuance of said order paid to his wife, Marie Vahjen, the sum of Three Hundred Thirty-one Dollars and Four Cents (\$331.04), on the 15th day of September, 1914, which paid up said maintenance and counsel fee under the order of May 12th, 1914 to the 8th day of September, 1914 and proceedings against the bondsman were not pressed (See order p. 14 of this brief).

On the 3rd day of November, 1914 the husband again being in default as to the payments of maintenance due under said decree, the wife again applied to the court below for an order to show cause why a warrant should not issue for the arrest of said John C. Vahjen under the order adjudging him in contempt, made the 12th day of May, 1914. The husband then again commenced making payments through his cousin, 10 Arthur A. Ludemann, and continued to do so until the first day of March, 1917, since which time said John C. Vahjen has failed to make any payments whatever, and is now in arrears in the payments of maintenance due his wife, to the extent of One Thousand Four Hundred Seventy (\$1470) Dollars.

On the 14th day of December, 1919, the husband committed the crime of bigamy in the 20 Borough of Manhattan, in the City of New York, County and State of New York, and was convicted thereof at a trial term in part Eighteen of the Supreme Court of the State of New York in the First Judicial District of said State, for the trial of Criminal actions, at the County Court House in the said County, on Monday the 24th day of April, in the year 1922, and was sentenced to imprisonment in the State Prison 30 of the State of New York at hard labor, for the term of not less than two years and not more than four years, as appears by an exemplified copy of said record of conviction and sentence, produced and offered in evidence at the hearing in the court below; and was thereafter imprisoned and thereby, he did, by his own acts, make it impossible for himself to appear before the Court below or any officer thereof when so 40 required by the order of the Court below.

Since the husband's liberation from prison neither his wife, nor the bondsman, John Handwerk, have been able to ascertain his whereabouts, and, therefore, it has been impossible to serve him with process to enforce the final decree entered in this cause.

On November 7th, 1927 the said Marie Vahjen filed her petition with the court below reciting
10 the foregoing facts, and praying that the surety, John Handwerk, show cause before the court why the *ne exeat* bond entered into by him, as aforesaid, should not be ordered forfeited, and the penal sum thereof paid into court to be disbursed in accordance with the orders of the court. Upon said petition an order to show cause was made directing the surety to show
20 cause before the court on the 5th day of December, 1927, why said bond should not be declared forfeited, and the penal sum of the same paid into court as prayed for in the petition.

The proofs submitted by the said Marie Vahjen in support of her application will be found on pages 10 to 28 of the case book. No proofs were offered by the surety to show that the conditions of the bond had not been broken, and the surety contented himself by merely
30 interposing a number of technical legal objections to the forfeiture of the bond. Subsequently on January 28th, 1929 the court ordered that the bond be forfeited and the penal sum of the same be paid into court, and that the surety pay the costs of the proceeding to be taxed including a counsel fee of Fifty (\$50.00) Dollars to the solicitor of the wife.

RESPONDENT'S POINT I.

The points urged by the appellant are not stated as grounds of appeal in the petition of appeal and should not be considered by this Court.

Before proceeding to answer the points made by the appellant's brief we desire to urge that under the ground of appeal stated in the appellant's petition of appeal the appellant is not entitled to argue the points which he makes. 10

In *New Jersey Building and Loan and Investment Co. v. Lord*, 66 N. J. Eq. P. 344 at P. 350, this court held that "the object of the rule requiring the petition of appeal to briefly state the order ~~of~~ decree complained of ^{and} as grounds of appeal is twofold — first, to apprise the court, through the petition and the answer thereto, of the issue between the appellant and respondent, and secondly (as already determined in 10 C.E.Gr., at P. 536), "to require a notice to the opposite party of the points in the proceeding which are to be made the subject of the complaint in the appellate court." 20

The only ground of appeal filed by the appellant in this case is:

"And the petitioner appeals from the said order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it declares said bond is forfeited and directs that the penalty thereof be paid to the Clerk, and is erroneous in that it directs that the said petitioner pay the costs of the forfeiture proceedings including a counsel fee." 30

It is submitted that the foregoing ground of appeal does not apprise the respondent of the points which are to be made, and that under the 40

See also Dunphy v. Cohen (187 E. 2d 81 Eq. 500)

ground of appeal as stated in the petition of appeal the appellant is not entitled to argue the points which he makes by his brief.

ANSWER TO APPELLANT'S POINT I.

The record does not disclose that this point was raised by the appellant in the court below. He is not entitled to raise the point in the
10 appellate court for the first time. By answering this point we do not wish to be taken as having waived this objection.

The court can hardly be expected to take notice of a mere docket entry as to what the order referred to by counsel provides. If counsel for the appellant seeks any advantage from this order it manifestly was his duty to include a copy of the order in his case book.
20 This he has failed to do and for that reason we have included a copy of this order on page 14 of this brief.

The reason why this order was made sufficiently appears from the order itself on page 14 of this brief, and from the affidavit of the respondent (case book page 20 lines, 10 to 30 inclusive). After the respondent had commenced proceedings to forfeit the bond, the husband paid up the arrears of maintenance due, and the proceedings against the bondsman to forfeit the bond were not pressed. The order was not intended to permanently debar the wife from proceeding against the bondsman for future breaches of the bond, or in other words, to release the bondsman from the obligation imposed upon him by the bond in question.
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On the present proceeding for forfeiture of
40 the bond, the bondsman was properly brought into court by an order to show cause why the

bond should not be forfeited, which order to show cause, and the petition upon which it was based, were personally served upon him, and to which he responded through his present counsel, and was given a full opportunity to be heard on every phase of the matter. It, therefore, can not be said that the bondsman was condemned without a hearing as provided by law.

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ANSWER TO APPELLANT'S POINT II.

The husband has not rendered or kept himself amenable to such process as shall be issued to compel the performance of the final decree made against him, or to any order that might be made requiring his appearance before the court when required as provided by the condition of the bond.

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The record (case book pages 20 to 23 inclusive) shows that the husband, from at least the month of September, 1914 to the present time, has been out of the jurisdiction of this court and not amenable to its process, in violation of the condition of the bond, and that until about July, 1920 the wife could not ascertain his whereabouts, (case book pages 22 and 23 inclusive), and when, in the month of July, 1920, she did discover where he was she found that he had committed bigamy by marrying another woman. Upon this discovery she promptly made a criminal complaint against him, and he was indicted in the State of New York and pleaded guilty to the crime of bigamy and was sentenced to the State Prison of New York for a term of two to four years. See record of conviction (case book, pages 24 to 28 inclusive). Since his liberation from prison his whereabouts are unknown to the wife. See Case Book, p. 20, ll. 26 to 40.

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Certainly during all the time that he was outside of the jurisdiction of the Court of Chancery of New Jersey, and particularly during the time that he was in the State Prison of New York, he has not kept himself amenable to the process which might issue to compel performance of the final decree made against him. By committing the crime of bigamy he put it out of his
 10 power to render himself amenable to any process that might issue to enforce the final decree as provided by the bond.

ANSWER TO APPELLANT'S POINT III.

We do not think that the bondsman can claim any benefit from the indulgence shown him by the wife in not enforcing the bond sooner. His liability on the bond would not have been less
 20 if it had been ordered forfeited and the penal sum of the same paid into court in 1917. We fail to see how the bondsman can say that he was prejudiced by not having had his bond declared forfeited sooner. If the contention of the bondsman is that if proceedings had been started ten years ago he could have surrendered his principal and thus escaped liability on the bond, then our answer to the same is that a
 30 surety on the *ne exeat* bond does not stand in the position of bail upon a recognizance to the extent that he may surrender his principal in discharge of the bail. See *Schreiber v. Schreiber*, 85 N. J. Eq., page 303, on page 306, *Kingsley. Kingsley*

The bondsman makes a point of the fact that the wife by pressing the criminal charge against her husband, made it impossible for him to
 40 render himself amenable to the process of the Court of Chancery, and that for that reason she should have no relief on the bond. We think

89 N. J. Eq.
 P. 139

that this argument is too frivolous to require an answer. Certainly no court would penalize the wife for doing what she had a legal right to do and what it was plainly her duty to do under the circumstances. It was not the wife's fault that the husband committed bigamy and by his own acts rendered himself incapable of responding to the process that might issue to enforce the final decree. Since the husband's 10 liberation from prison neither the bondsman nor the wife know where he is. The bondsman admits this to be a fact. See Point II of his brief.

The contention of the bondsman that the wife should have enforced the bond against him within a reasonable time is absolutely without merit.

The case of *People vs. Sochet*, 72 Colo. P. 531; 20 212 Pac. Rep. P. 832 is clearly not in point. The decree in that case was capable of complete enforcement within a reasonable time after it was rendered. *The decree made no provision as to alimony. It merely gave the plaintiff custody of the minor children and awarded her costs.* The decree in the *Vahjen* case was not capable of complete performance within a reasonable time after it was made, because by its terms the 30 defendant was ordered to make installment payments for maintenance during an indefinite period, or until the further order of the court.

The bond must be construed in the light of the purpose sought to be accomplished by it. *Foote v. Foote*, 140 Atl. Rep. 312 (N. J. Ct. of Errors and Appeals). The maintenance decree imposed a continuing obligation upon the husband to make payments to his wife indefinitely or until the further order of the Court modifying that de- 40 cree. The decree by its very terms was incapable

of a complete performance within a reasonable time after it was made because of its installment features. The bond was given to keep the defendant amenable to process to enforce the decree as long as said decree remained in force, which might be during the whole life of Mrs. Vahjen. The bondsman must be presumed to have known the obligation that he was undertaking when he signed the bond. If during the period of years that the decree was effective a default was made by the defendant, and it was necessary to start contempt proceedings, the bond required the presence of the defendant, Vahjen, in this state so that process in such contempt proceeding could be served upon him. To give the bond the effect which the bondsman contends for would defeat the very purpose for which the bond was intended.

ANSWER TO APPELLANT'S POINT IV.

The appellant makes this point for the first time in this court. It was not urged in the court below and should not be considered here, *The Easton National Bank v. The American Brick and Tile Company, et al*, 70 Eq. P. 732 (N. J. Court of Errors and Appeals), and in answering this point we do not wish to be taken as having waived this objection.

The case of *Schreiber v. Schreiber*, 85 N. J. Eq. P., 303, Aff. 86 N. J. Eq. P., 437, holds that "a payment of the penalty of the default of the *ne exeat* bond may be enforced from the surety in a Court of Chancery by summary proceedings on an order to show cause." *The court said in this case, bottom of page 306, that "when a party as surety enters into this peculiar obligation on a ne exeat bond in the Court of Chan-*

cery, he makes himself a party to the suit for all purposes connected with the use to which the bond is put for the purposes of the suit."

There are no authorities which hold that the Sheriff is a proper or necessary party to a proceeding on the forfeiture of a writ of *ne exeat* bond.

See also *Elliott v. Elliott*, 36 Atl. Rep. P. 951, and cases therein cited, and *Warren v. Warren*, 10 92 N. J. Eq. P. 334.

Counsel for the appellant says the primary purpose of the *ne exeat* bond is not to make the surety pay, but to make the surety produce the man who is liable to pay. We admit that the purpose of the *ne exeat* bond is not to insure the payment of maintenance; that has been established by this court in *Foote v. Foote*, 140 Atl. Rep. P. 312. The purpose of the bond is 20 to keep the defendant amenable to the process of the court to enforce its decree. Such is the condition of the bond. That the defendant in this case has not kept himself amenable to the process of the Court of Chancery is indisputable. It is admitted by the bondsman that he does not know where the husband is, and he could not produce the husband if he were called upon to do so. 30

RESPONDENT'S POINT II.

The order of Court of Chancery directing the forfeiture of the bond, and ordering the payment of the penal sum thereof into court is in accordance with law and should be affirmed.

It clearly appears from the record before the court that there has been a breach of the condi- 40 tion of the *ne exeat* bond in that the defendant

has not kept himself amenable to the process of the Court of Chancery to enforce the final decree against him, or amenable to any order which might be made requiring his appearance before the court, as provided for by the condition of the bond. It is an admitted fact that the defendant, from about 1917, has been outside of the jurisdiction of the Court of Chancery and
 10 not amenable to its process, and that by his own act in committing the crime of bigamy, resulting in his imprisonment in the State Prison of New York from two to four years, he rendered himself incapable of being amenable to the process of the court as required by the bond.

It is, therefore, respectfully urged that the order of the Court of Chancery be affirmed with costs.

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SAMUEL A. BESSON,
Solicitor of Respondent.

O. J. PELLET,
 HARLAN BESSON,
Of Counsel.

[See order on next page.]

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(Filed September 21, 1914)

IN CHANCERY OF NEW JERSEY.

BETWEEN

JOHN C. VAHJEN,
Petitioner,

AND

MARIE VAHJEN,
Defendant.On Petition
for Divorce.
Order Di- 10
recting Re-
turn of
Warrant;
etc.

It appearing to the Court that proceedings to have the petitioner herein adjudged guilty of contempt of court and punished therefor for disobeying the final decree made in the above cause; were heretofore commenced herein and that after a hearing thereon the Court by an order made in said cause on the twelfth day of May, 1914, adjudged said petitioner guilty of contempt for the cause aforesaid, but gave him a chance to purge himself of said contempt by commencing on said twelfth day of May, 1914 and paying the sum of Fifteen Dollars (\$15) a week on account of the alimony and counsel fee under said decree; and the said petitioner having made default in such payments, and the Court thereafter on the twentieth day of August, 1914 on due proof of such default having made an order directing a warrant to issue in said cause for the arrest of said petitioner for such contempt; and said warrant having been issued and delivered to the Sheriff of the County of

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Hudson for service, and the said petitioner not having been found within the jurisdiction of the State of New Jersey; and a notice of motion having been given to forfeit the bond in *ne exeat* given by said petitioner to the Sheriff of the County of Hudson in said cause, and the petitioner having thereafter paid the amount due under the order so made on the twelfth day of
10 May, 1914 up to the eighth day of September, 1914, pursuant to the terms of another order made herein on the ninth day of September, 1914; and said petitioner having appeared in Court personally and by Abraham Cohen, Esq., an attorney and Counsellor At Law of the State of New York, and the defendant having appeared by John I. Weller, of counsel for Samuel A. Besson, Solicitor for said defendant, and stated
20 that the amount due under said orders, namely the sum of Three Hundred and Thirty-one Dollars and Four Cents (\$331.04) had been paid:

It is on this fourteenth day of September, 1914, on motion of said Samuel A. Besson, Solicitor for the defendant, Ordered that the warrant issued for the arrest of the petitioner, and now in the hands of said Sheriff of the County of Hudson, be returned into Court unexecuted, and that no further proceedings be taken
30 thereon;

And it is further Ordered that so long as the petitioner continues to pay said Fifteen Dollars (\$15) a week from said eighth day of September, 1914, that no other warrant issue for the arrest of said petitioner, but that said defendant have leave to apply for such warrant at any time default shall be made in the payments under said order of May 12th, 1914.

40 And it is further Ordered that no further

proceedings be taken on the *ne exeat* bond, nor against the *ne exeat* bondsman, until the further order of the Court.

Respectfully advised,

E. R. WALKER,
C.

EUGENE STEVENSON,
V. C.

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