Notice of Appeal.

(Filed 6/21/27)

IN CHANCERY OF NEW JERSEY

Between ANNA FOOTE, Complainant, and GEORGE FOOTE, Defendant.	On Bill, Etc. On Order to Show Cause. Notice of Appeal.

Frank J. Bartletta hereby appeals from an order made in the above entitled cause on the 20th day of June, 1927, by the Chancellor, on the advice of Vice Chancellor John Bentley and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

ANTHONY P. LA PORTA,
Solicitor for and of Counsel
with Frank J. Bartletta.

Dated, June 21st, 1927.

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

ANTHONY P. LA PORTA,
Solicitor for and of Counsel
with Frank J. Bartletta.

Service of a copy of the above notice upon me is hereby acknowledged.

Dated, June 21st, 1927.

CHARLES W. STOVER,
Solicitor for Complainant.

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Petition of Appeal.

(Filed 6/21/27)

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA FOOTE, Respondent, and GEORGE FOOTE, Defendant,	On Appeal from the Court of Chancery.
FRANK J. BARTLETTA, Appellant.	Petition of Appeal of Frank J. Bartletta.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS, IN THE LAST RESORT IN ALL CAUSES:

The petition of Frank J. Bartletta, the appellant in the above entitled cause respectfully shows that:

1. Your petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey on the advice of Vice Chancellor John Bentley, bearing date the 20th day of June, 1927, in a certain cause wherein Anna Foote was complainant and George Foote was defendant, in this respect: under and by virtue of said order it was, "Ordered, Adjudged and Decreed that the bond entere into by Frank J. Bartletta (the appellant) and the defendant, George Foote, herein to John J. Coppinger, Sheriff of the County of Hudson bearing date the 18th day of January, 1927, be and the same is hereby forfeited and,

"It is further ordered that the said Frank J. Bartletta pay to the Clerk of this Court the sum of $500.00 (being the penal sum mentioned in said bond) within 10 days from the service upon him or his solicitor herein of a certified copy of this order which can be certified by the solicitor, Charles W. Stover; said fund to be applied to the credit of the above entitled cause as this court may hereinafter order and direct.

"It is further ordered that said Frank J. Bartletta pay to Charles W. Stover the sum of $25.00 counsel fee on said motion for forfeiture together with the taxed costs of this proceeding."

2. Your petitioner humbly appeals from the whole and every part of said order of the Chancellor, which decreed as aforesaid upon the ground that the same is erroneous in that:

(1) The Chancellor had no jurisdiction to make such order.

(2) The facts alleged in the petition to forfeit the ne exeat bond are insufficient in law or equity to show a breach of the condition of the bond.

(3) The court erred in holding that the defendant, George Foote, was not amenable to the orders of the court under the facts alleged on the petition to forfeit the ne exeat bond.

(4) The court erred in refusing to dismiss the petition and order to show cause why the ne exeat bond should not be forfeited, as alleging facts insufficient in law or equity to show a breach of the condition in the ne exeat bond.

(5) The court erred in holding that the nonpayment of $23.12 which were the costs taxed on

the application for alimony pendente lite constituted a breach of condition of the ne exeat bond.

(6) The court erred in holding that the ne exeat bond is still in full force and effect although there is a final decree for maintenance which required the defendant, George Foote, to furnish another bond in the sum of $1,000.00.

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

ANTHONY P. LA PORTA,
Solicitor for and of Counsel with Appellant.

A true copy of the foregoing petition of appeal is hereby acknowledged to have been served upon me.

Dated, June 21st, 1927.

CHARLES W. STOVER,
Solicitor for and of Counsel with Respondent.

Answer to Petition of Appeal.

(Filed 6/21/27)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ANNA FOOTE, Complainant-Respondent, and GEORGE FOOTE, Defendant, FRANK J. BARTLETTA, Appellant.	On Appeal from Order in Chancery. Answer to Petition of Appeal.

The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless says and admits that an order was made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent 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 adjudged to this respondent.

CHARLES W. STOVER,
Solicitor for and of Counsel with Respondent.

Service of a copy of the above answer to petition of appeal is hereby acknowledged.

Dated, June 21st, 1927.

ANTHONY P. LA PORTA,
Solicitor for and of Counsel with Appellant.

Order Forfeiting Ne Exeat Bond.

(Filed June 20, 1927)

IN CHANCERY OF NEW JERSEY.

Between

ANNA FOOTE,
Complainant,
and
GEORGE FOOTE,
Defendant.

On Bill, Etc.
Order Forfeiting Ne Exeat Bond, Etc.

This matter coming on to be heard in the presence of Charles W. Stover, Solicitor for Anna Foote, the complainant, and in the presence of Anthony P. La Porta, Solicitor for Frank J. Bartletta, Surety for George Foote, the defendant, upon a rule to show cause, petition and affidavits, which rule is dated April 6th, 1927, returnable April 11th, 1927, why a ne exeat bond by George Foote as principal and Frank J. Bartletta, as surety, given to John J. Coppinger, Sheriff of Hudson County and more particularly described in the petition for forfeiture of said bond and annexed to said rule, should not be forfeited; and the matters and things alleged in the petition for forfeiture and affidavits annexed to the rule to show cause aforesaid having been conceded and admitted and all parties interested in said forfeiture having been properly served with said petition and order to show cause, etc., and arguments of counsel having been heard and the matter having been submitted upon briefs and the court having considered the same,

It is thereupon on this 20th day of June, 1927, ordered, adjudged and decreed that the bond entered into by the said Frank J. Bartletta, and the

defendant, George Foote, herein to John J. Coppinger, Sheriff of the County of Hudson bearing date the 18th day of January, 1927, be and the same is hereby forfeited and,

It is further ordered that the said Frank J. Bartletta pay to the Clerk of this court the sum of $500.00 (being the penal sum mentioned in said bond) within 10 days from the service upon him or his solicitor herein of a certified copy of this order which can be certified by the solicitor, Charles W. Stover; said fund to be applied to the credit of the above entitled cause as this court may hereinafter order and direct.

It is further ordered that said Frank J. Bartletta pay to Charles W. Stover the sum of $25.00 counsel fee on said motion for forfeiture together with the taxed costs of this proceeding.

Respectfully advised,

E. R. WALKER,
C.

JOHN BENTLEY,
V. C.

Subpoena ad Resp.

(Served Jan. 28/27)

New Jersey, to wit, The State of New Jersey, to George Foote, c/o Mr. La Porta, 613 Park Avenue, Hoboken, N. J.

(Court Seal)

GREETING: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by Anna Foote, to be relieved touching the matters therein contained.

Therefore, we command you, if you intend to make a defense, that you file an answer to said

bill in the office of the Clerk of our said court at Trenton on or before the expiration of twenty days from and after the twenty-fourth day of January, 1927, and in default thereof such order of decree will be made against you as the court shall think equitable and just.

WITNESS, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the Fourteenth day of January, in the year of Our Lord one thousand nine hundred and twenty-seven.

THOMAS BARBER,
Clerk.

CHARLES W. STOVER,
Solicitor.

Bill for Maintenance.

(Filed Jan. 14, 1927)

IN CHANCERY OF NEW JERSEY.

Between

ANNA FOOTE,
Complainant,
and
GEORGE FOOTE,
Defendant.

} Bill for Maintenance.

TO HIS HONOR EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

The complainant, Anna Foote, of the City of Jersey City, County of Hudson and State of New Jersey, shows that:

1. On or about April 4, 1920, she was lawfully married to her present husband, George Foote, by Pastor Brueckner of the Lutheran Church, Hoboken, New Jersey.

2. After her marriage the complainant resided in the City of Hoboken, New Jersey, and has resided in said City of Hoboken, New Jersey, and also in the City of Jersey City, New Jersey at various times ever since her marriage and up to the commencement of this suit.

3. There was one child born of the marriage, namely, Helen Foote, five years of age, who is now in the custody of your complainant.

4. From the beginning of our marriage up to November 23, 1926, the defendant at numerous intervals would come home in an intoxicated condition and on these occasions and other occasions would assault and batter me. During this period of time it was not unusual for the defendant to come home intoxicated and stay out late at night almost every week, without giving an account of his whereabouts to your complainant. The defendant on many occasions would stay out to three or four o'clock in the morning and sometimes not come home at all. More particularly does complainant remember the following occasions when the defendant ill-treated her. On March 17, 1921, the defendant kicked your complainant in her ankle. This assault took place on 5th Street, between Bloomfield and Garden Streets, Hoboken, New Jersey. That very evening the defendant went out to a party with some friends and did not come home until 7 o'clock the following morning. The defendant stated on this occasion and on subsequent occasions to your complainant that he was

at a club playing poker. From this time up to the time when your complainant was forced to leave him, the defendant in his drunken condition would frequently call your complainant vile names such as whore, son-of-a-bitch and street walker. In October, 1921, on one occasion when the defendant came home intoxicated at 4 o'clock in the morning to your complainant, he took out a knife and threatened your complainant with it, saying, "I will cut your belly open." Your complainant remembers particularly October 25, 1922, because it was the wedding anniversary of your complainant's brother, and while your complainant and defendant were at your complainant's brother's home, the defendant assaulted and battered your complainant by slapping her in the face and pushed her out of the door of the house saying that he would not let her in the house that night. Your complainant's mother, Matilda Henning, was also present at this time and when your complainant's brother came to your complainant's aid and assistance the defendant took out a blackjack from his pocket and tried to strike your complainant's brother with it. On September 26, 1925, on a Saturday evening, the defendant left the house and did not return until the following Monday afternoon at 12 P. M. On this occasion when he returned home to your complainant, he was so intoxicated that he could hardly stand. At this time also the defendant again called your complainant vile names, which he was accustomed to, such as whore, son-of-a-bitch and street walker. At this time the defendant took up a kitchen knife and threatened to put it into your complainant, saying, "I will kill you." At this time your complainant ran out of the house and told an officer what had happened. On July 4, 1926, the defendant came home again in an intoxicated condition

and told your complainant's mother, Matilda Henning, that your complainant was a bum and a street walker. In the month of Novemebr, 1926, the defendant would continually stay out late at night and would not come home to your complainant until 3 o'clock in the morning. Your complainant remembers that it was either November 16th or 17th, 1926, that the defendant came home so intoxicated that he fell down a flight of stairs. On November 19, 20 and 21st, 1926, the defendant went out at night and stayed out all night until 3 or 4 o'clock the following mornings.

5. Your complainant charges that ever since November 23, 1926, she was compelled to leave the defendant because she feared for her personal safety and the defendant has refused and still does refuse and neglect to properly provide and maintain for her and the child of the marriage.

6. Your complainant says that she is now dependent for the support of herself and her child upon her brothers and sisters.

7. Your complainant states that the defendant is earning the sum of $25 to $35 weekly working for the North German Lloyd in Hoboken, New Jersey, all depending upon the amount of overtime the defendant puts in. Your complainant believes that the defendant is abundantly able to maintain and support your complainant and that his means are ample and sufficient to pay such sums as may be necessary for the support of herself and her child, Helen Foote, of the marriage.

8. The complainant prays that the defendant, George Foote, answer this bill, but without oath, and that he may be ordered and decreed to pro-

vide such suitable support and maintenance, to be paid and provided by him, and for such fees as the nature of the case and circumstance of the facts render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time, under the compulsory orders of this Honorable Court, as provided by the statutes; and that the defendant may be required to pay to your complainant a proper amount for counsel fees, and that she may have such further equity as to your Honor shall seem meet.

That a writ of subpoena shall issue out of this Honorable Court to be directed to the said George Foote, commanding him, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court then and there to answer all and singular the said premises, and to abide by and to perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your complainant will ever pray, etc.

CHARLES W. STOVER,
Solicitor and of Counsel for Complainant.

Decree Pro Confesso and Order of Reference.

(Filed Feb. 15, 1927)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Complainant, and GEORGE FOOTE, Defendant.	Decree Pro Confesso and Order of Reference.

Upon opening this matter to the court by Charles W. Stover, of counsel with the complainant, and it appearing that process of subpoena for the defendant to appear and answer the bill of complaint has been duly issued and returned served upon the said defendant; and that the defendant has not answered the same within the time required by law, but has wholly failed and neglected so to do:

It is thereupon on this 15th day of February, nineteen hundred and twenty-seven, ordered, adjudged and decreed, that the said bill be taken as confessed, to the end that the Chancellor may make such further order or decree as shall be equitable and just.

And it is further ordered, that it be referred to Anthony P. La Porta, Esq., one of the special masters of this court, to ascertain and report as to the truth of the allegations of the said bill, and his opinion thereon; and what, if any, is a reasonable sum to be allowed to the complainant for her suitable support and maintenance, and what, if any, is a reasonable sum to be allowed her for the

suitable support and maintenance of the infant child of her marriage to the defendant, and whether the custody of said child should be committed to the complainant, and if so, upon what terms, if any, and what security the defendant should be required to give for the performance of any decree or order that may be made therein; and that the complainant proceed to take depositions and other evidence before said special master to establish the allegations of her said bill of complaint, and to bring on the hearing of the cause ex parte; and that the said master do return together with his report and as part thereof such depositions and other evidence as may be taken before him in pursuance of this order.

Respectfully advised,

E. R. WALKER,
C.

WM. J. BACKES,
A. M.

Notice of Application for Alimony and Counsel Fees.

(Filed Feb. 1, 1927)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Petitioner, and GEORGE FOOTE, Defendant.	Notice.

Please take notice that on the 24th day of January, 1927, at ten o'clock in the forenoon, or as soon

thereafter as the Chancellor can hear the same, at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, I shall apply to the Chancellor for an order requiring you to pay your wife, Anna Foote, a proper allowance for the support and maintenance of herself and her child, pending this suit, and also for the sum of One Hundred ($100.00) Dollars, for counsel fees together with taxed costs to enable her to prosecute the said suit.

Annexed hereto and served herewith upon you are copies of petition and affidavits upon which, together with the bill filed in this cause, said application will be made.

Dated, January 13, 1927.

CHARLES W. STOVER,
Solicitor of Petitioner.

Petition for Alimony and Counsel Fees.

(Feb. 1, 1927)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Petitioner, and GEORGE FOOTE, Defendant.	On Bill Etc. Petition for Alimony and Counsel Fees. Petition.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

The petition of Anna Foote, the above named petitioner, respectfully shows:

1. She has recently filed a bill for maintenance against her husband, George Foote, alleging therein that her husband, George Foote, without any justifiable cause has badly ill-treated and has refused and neglected and still does refuse and neglect to properly support her.

2. Process of subpoena is about to be served upon said defendant.

3. The charges named in her said bill are true as she is ready to maintain and prove as your Honor shall direct.

4. Your petitioner ever since November 23, 1926, was compelled to leave the defendant for she feared for her personal safety and the defendant has refused and still does refuse and neglect to properly maintain and provide for your petitioner and the child, Helen Foote, of the marriage, and she is without means to support herself and the said child of the marriage and to prosecute her cause in this court. From the beginning of our marriage down to the present date, petitioner's husband gave her very little support and oft times neglected to properly support her at all.

From the beginning of our marriage up to November 23, 1926, the defendant at numerous intervals would come home in an intoxicated condition and on these occasions and other occasions would assault and batter your petitioner. During this period of time it was not unusual for the defendant to come home intoxicated and stay out late at night almost every week, without giving an account of his whereabouts to your petitioner. The defendant on many occasions would stay out to three or four o'clock in the morning and sometimes not come home at all. More particularly does petitioner remember the following occasions when the defendant ill-treated her.

On March 17, 1921, the defendant kicked your petitioner in her ankle. This assault took place on 5th Street, between Bloomfield and Garden Streets, Hoboken, New Jersey. That very evening the defendant went out to a party with some friends and did not come home until 7 o'clock the following morning. The defendant stated on this occasion and on subsequent occasions to your petitioner that he was at a club playing poker. From this time up to the time when your petitioner was forced to leave him, the defendant in his drunken condition would frequently call your petitioner vile names such as whore, son-of-a-bitch and street walker.

In October, 1921, on one occasion when the defendant came home intoxicated at 4 o'clock in the morning to your petitioner, he took out a knife and threatened your petitioner with it, saying: "I will cut your belly open."

Your petitioner remembers particularly October 25, 1922, because it was the wedding anniversary of your petitioner's brother, and while your petitioner and defendant were at your petitioner's brother's home, the defendant assaulted and battered your petitioner by slapping her in the face and pushed her out of the door of the house, saying that he would not let her in the house that night. Your petitioner's mother, Matilda Henning, was also present at this time and when your petitioner's brother came to your petitioner's aid and assistance the defendant took out a blackjack from his pocket and tried to strike your petitioner's brother with it.

On September 26, 1925, on a Saturday evening, the defendant left the house and did not return until the following Monday afternoon at 12 P. M.

On this occasion when he returned home to your petitioner, he was so intoxicated that he could hardly stand. At this time also the defendant again called your petitioner vile names, which he was accustomed to, such as whore, son-of-a-bitch and street walker. At this time the defendant took up a kitchen knife and threatened to put it into your petitioner, saying, "I will kill you." At this time your petitioner ran out of the house and told an officer what had happened.

On July 4, 1926, the defendant came home again in an intoxicated condition and told your petitioner's mother, Matilda Henning, that your petitioner was a bum and a street walker.

In the month of November, 1926, the defendant would continually stay out late at nights and would not come home to your petitioner until 3 o'clock in the morning. Your petitioner remembers that it was either November 16th or 17th, 1926, that the defendant came home so intoxicated that he fell down a flight of stairs. On November 19, 20 and 21st, 1926, the defendant went out at night and stayed out all night until 3 or 4 o'clock the following mornings.

Your petitioner says that she is now dependent for the support of herself and her child, Helen Foote, upon her sisters and brothers.

5. There was one child born of the marriage, namely, Helen Foote, 5 years of age.

6. Your petitioner states that the defendant is earning the sum of $25 to $35 weekly working for the North German Lloyd in Hoboken, New Jersey, all depending upon the amount of overtime the defendant puts in. Your petitioner believes that the defendant is abundantly able to maintain and support your petitioner and that his means are ample

and sufficient to pay such sums as may be necessary for the support of herself and her child, Helen Foote, of the marriage.

7. Your petitioner prays that an order may be made requiring the defendant to pay her a proper allowance for her and her child's support and maintenance until the termination of this suit, and also to pay forthwith a reasonable sum for the fees of counsel in prosecuting this cause for her and for such other relief as circumstances of the case may render fit, reasonable and proper.

CHARLES W. STOVER,
Solicitor and of Counsel for Petitioner.

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

Anna Foote, the above named petitioner, being duly sworn according to law on her oath deposes and says, I have read the foregoing petition and know the contents thereof, and the same is true; and particularly is it true that I have in truth and good faith and without collusion brought the above entitled suit against my husband for maintenance for the cause of constructive desertion and non-support as I state in my petition.

ANNA FOOTE.

Sworn to and subscribed before me
this 12th day of January, 1927.

JOHN D. PIERSON,
Master in Chancery
of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

ANNA FOOTE,
Petitioner,

and

GEORGE FOOTE,
Defendant.

On Bill, etc.,
Affidavit.

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

Anna Foote, of full age, being duly sworn according to law on her oath deposes and says:

I am the petitioner and the wife of George Foote, the defendant in the above cause. I was married to my present husband, George Foote, in the month of April, nineteen hundred and twenty, by Pastor Brueckner, of the Lutheran Church, in Hoboken, New Jersey, and am at present living in Jersey City, New Jersey.

Ever since November 23, 1926, I was compelled to leave the defendant, my husband, for I feared for my personal safety, he has refused and still does refuse and neglect to properly maintain and provide for me and the child, Helen Foote, of our marriage, and I am without means to support myself and my said child of our marriage and to prosecute my cause in this court. From the beginning of my marriage down to the present date, my husband gave me very little support and oftimes neglected to properly support me at all.

From the beginning of our marriage up to November 23, 1926, the defendant at numerous intervals would come home in an intoxicating condition

and on these occasions and other occasions would assault and batter me. During this period of time it was not unusual for my husband to come home intoxicated and stay out late at nights almost every week, without giving an account of his whereabouts. The defendant on many occasions would stay out to three or four o'clock in the morning and some times not come home at all. More particularly do I remember the following occasions when my husband ill-treated me.

On March 17, 1921, the defendant kicked me in the ankle. This assault took place on 5th Street between Bloomfield and Garden Streets, Hoboken, N. J. That very evening the defendant went out to a party with some friends and did not come home until 7 o'clock the following morning. He stated on this occasion and subsequent occasions that he was at a club playing poker. From this time up to the time when I left him the defendant in his drunken condition would frequently call me vile names such as whore, son-of-a-bitch and street walker.

In October, 1921, on one occasion when the defendant came home intoxicated at 4 o'clock in the morning, the defendant took out a knife and threatening me with it said, "I will cut your belly open."

I remember October 25, 1922, particularly because it was the wedding anniversary of my brother, and while we were at my brother's home, the defendant assaulted and battered me by slapping me in the face and pushing me out of the door of the house saying that he would not let me in the house that night. My Mother, Matilda Henning, was also present at this time, and when my brother came to my aid and assistance the defendant took out a blackjack from his pocket and tried to strike my brother with it.

On September 26, 1925, on a Saturday evening the defendant left the house and did not return until the following Monday afternoon at 12 P. M. On this occasion when he returned home he was so intoxicated that he could hardly stand. At this time also the defendant again called me vile names, which he was accustomed to, such as whore, son-of-a-bitch and street walker. At this time he took up a kitchen knife and threatening to put it into me saying "I will kill you." At this time I ran out of the house and told an officer what had happened.

On July 4, 1926, the defendant came home again in an intoxicated condition and told my mother, Matilda Henning, that I was a bum and a street walker.

In the month of November, 1926, the defendant would continually stay out late at nights and would not come home until 3 o'clock in the morning. I remember it was either November 16th or 17th, 1926, that my husband came home so intoxicated that he fell down a flight of stairs.

On November 19th, 20th and 21st, 1926, the defendant went out at night and stayed out all night until 3 or 4 o'clock the following morning.

I state that I now depend for the support of myself and child upon my sisters and brothers and I am not working or earning any income.

There was one child born of our marriage namely, Helen Foote, 5 years of age.

I state that my husband is earning the sum of from $25 to $35 per week working for the North German Lloyd in Hoboken, New Jersey, all depending upon the amount of overtime the defendant puts in. I believe that my husband is abundantly able to support me and the child of our marriage and that his means are ample and sufficient to pay such sums as may be necessary for our support.

ANNA FOOTE.

Sworn to and subscribed before me this
12th day of January, 1927.

JOHN D. PIERSON,
Master in Chancery
of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
ANNA FOOTE,
Petitioner,
and
GEORGE FOOTE,
Defendant.

Affidavit.

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

Matilda Henning, of full age, being duly sworn according to law on her oath deposes and says:

I am the mother of the above petitioner, Anna Foote, and I wish to state that I know the above defendant very well since he and my daughter, the above petitioner, lived together at my home No. 606 Park Avenue, Hoboken, New Jersey, since April 4, 1920, up to November 23, 1926. The above defendant and my daughter stayed and lived with me during this period of time because at that time they

determined that it would be cheaper for them to live with me, and I know that it was at the request of both of them that they live with me. I know that my daughter was a good and dutiful girl and performed her duties about the household as any good wife would for her husband. The above defendant, however, was very nasty and quarrelsome towards my daughter and it was not unusual for him to come home in an intoxicated condition at the end of each and every week when he received his pay. It was not unusual either for the defendant to come home at all hours of the morning and when my daughter asked him to give an account of himself he would state on many occasions that he was at a night club playing poker. The defendant often struck my daughter, Anna Foote, while he was in an intoxicated condition, and it was not unusual for him to call my daughter vile names. More particularly the following occasions I recall.

I remember that on March 17, 1921, the defendant did not come home until 7 o'clock the following morning. He came home at this early hour in the morning in an intoxicated condition.

I remember in October, 1921, when the defendant came home in an intoxicating condition at 4 o'clock in the morning. An argument then ensued between the above defendant and his wife. During this quarrel my daughter screamed and I was awakened from my sleep. On this occasion I tried to stop the defendant from quarreling with my daughter, and he told me that I had nothing to do with this quarrel and he told me that it was his wife and that I had nothing to say.

I remember on October 25, 1922, because it was the wedding anniversary of my son, Max Henning. On this evening the defendant slapped my daughter in the face and pushed her out of the house saying

that he would not let her in the house that night. My son, Max Henning, interfered on this occasion and the defendant took out a blackjack from his pocket and tried to strike my son, Max Henning, with it. He again repeated the vile words which he was accustomed to use towards his wife such as whore, son-of-a-bitch and street walker.

On September 26, 1925, I remember that on a Saturday evening the defendant left the house and did not return until the following Monday afternoon at 12 o'clock, and when he did come home he was so intoxicated that he could hardly stand. On this occasion he also called my daughter, the above petitioner, the vile names which I just mentioned. On this occasion also the defendant took up a kitchen knife and threatened to put it into my daughter, saying to my daughter, "I will kill you." My daughter ran out of the house also on this occasion.

On July 4, 1926, the above defendant was intoxicated again and told me that my daughter was a bum and a street walker.

During the month of November, 1926, the defendant would continually stay out late at nights and would not come home until 3 or 4 o'clock in the morning. In the middle of November, 1926, the defendant came home so intoxicated that he fell down a flight of stairs. Just a few days before my daughter was compelled to leave the defendant, the defendant stayed out at nights until 3 or 4 o'clock the following mornings. I believe that this was on November 19, 20, and 21, 1926.

I know that my daughter is not working and has no income of any kind at the present time. The above defendant earns between $25 and $35 per week working for the North German Lloyd in Hoboken, New Jersey, when he works overtime he earns between $32 and $42 a week, but his average

wage is $30 per week. I believe he is abundantly able to maintain and support my daughter and her child, Helen Foote.

MATILDA HENNING.

Sworn to and subscribed before me this 13th day of January, 1927.

RUDOLPH SCHROEDER,
Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

ANNA FOOTE,
Petitioner,
and
GEORGE FOOTE,
Defendant.

} Affidavit.

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

Max Henning, of full age, being duly sworn according to law on his oath deposes and says:

I am the brother of the above petitioner and know the above defendant very well as he is my sister's husband. I know that my sister has oft-times been ill-treated by the above defendant, and that it was not unusual for the defendant to come home to my sister in an intoxicated condition. I know that during the time when I visited my sister, the above defendant would continually quarrel with my sister, Anna Foote, and on those occasions would call her a son-of-a-bitch. I visited my sister and mother about once every two weeks.

I remember on one occasion when it was my wedding anniversary on October 25, 1922, when my sister, the above petitioner, complained to me that her husband had struck her in the face. On that occasion I asked the above defendant why he had struck my sister and he not giving any satisfactory excuse I came to the aid and assistance of my sister, the above petitioner. The defendant in his defense attempted to strike me with a blackjack, and used very vile language towards me and my sister.

MAX HENNING.

Sworn to and subscribed before me this 12th day of January, 1927.

ANTHONY P. LA PORTA,
Master in Chancery
of New Jersey.

Order for Alimony, Counsel Fees and Costs.

(Filed Feb. 1, 1927)

IN CHANCERY OF NEW JERSEY.

Between

ANNA FOOTE,
Petitioner,
and
GEORGE FOOTE,
Defendant.

} On Bill, Etc. Order for Alimony and Counsel Fees and Costs.

This matter coming on to be heard before me at the Chancery Chambers in Jersey City, New

Jersey, for an order requiring the above defendant to pay to his wife, the above petitioner, a proper amount for her support and that of the child and for counsel fees, etc., and the court having heard the arguments of counsel for the petitioner and of counsel for the defendant,

It is on this twenty-fourth day of January, 1927, ORDERED, ADJUDGED and DECREED that the above defendant do pay to his wife the sum of Eight ($8.00) Dollars per week beginning January 17, 1927, and each and every week thereafter for the support of herself and child,

It is further ORDERED, ADJUDGED and DECREED that the above defendant do pay to Charles W. Stover, solicitor for the above petitioner, the sum of Fifty ($50.00) Dollars counsel fees together with the taxed costs of this proceeding.

Respectfully advised,

E. R. WALKER,
C.

JOHN BENTLEY.

We consent to the making and entry of the above order.

CHARLES W. STOVER,
Solicitor for Petitioner.

GEORGE M. FOOTE.

Master's Report.

(Filed Feb. 21, 1927)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Complainant, and GEORGE FOOTE, Defendant.	On Bill for Maintenance. Master's Report.

In pursuance of an order of this court made in the above entitled cause, bearing date 15th day of February, 1927, whereby it was referred to me, the subscriber, one of the Special Masters, to ascertain and report as to the truth of the allegations of the bill; and that I ascertain and report what, if any, is a reasonable sum to be allowed to the complainant for her suitable support and maintenance and what, if any, is a reasonable sum to be allowed her for the suitable support and maintenance of the infant child of her marriage to the defendant, and whether the custody of said child should be committed to the complainant and if so, upon what terms, if any; and what security the defendant should be required to give for the performance of any decree or order that may be made herein; and that I do return together with my report as part thereof, such depositions and other evidence as may be taken before me in pursuance of said order.

I do respectfully report that I have been attended by Charles W. Stover, Esq., solicitor for the complainant and have taken the depositions of

witnesses produced before me and have examined into the matters referred to me.

And I find and report that said complainant, whose maiden name was Anna Henning, and the defendant George Foote, were lawfully married on the 4th day of April, 1920, as in the bill alleged.

And I find and report that it is proved to my satisfaction that the complainant and defendant lived together as husband and wife from the time of their marriage until the 23rd day of November, 1926, since which time defendant without justifiable cause, abandoned complainant and separated himself from her; and refused and neglected to maintain and provide for her and the child of the marriage.

And I find and report that ever since the 23rd day of November, 1926, when the complainant was compelled to leave the defendant because she feared for her personal safety, that the defendant has refused and still does refuse and neglects to properly provide and maintain for her and the child of the marriage as alleged in said bill.

And I find and report that the facts and circumstances under which the said abandonment took place are: that the defendant who appears to be a longshoreman by occupation and a drunkard, wife beater and neglector, commencing with the first year of his marriage to complainant down to the time of the date of the alleged abandonment, assaulted, ill-treated, used vile and indecent language towards complainant and gave her meagre support, if any, which conduct on the part of the defendant finally culminated with the abandonment complained of. By reason of said acts of misconduct, which I find to be acts of extreme cruelty, complainant was forced to separate herself from defendant on the 23rd day of November, 1926, ever since which time defendant has not cohabited or

lived with her and has never repented, nor has he offered to affect a reconciliation or to support her until compelled by order of this Honorable Court.

And I find and report that the reasons which caused or provoked the abandonment are: defendant's want of affection for complainant and a desire upon his part to be freed from the bonds of matrimony.

And I find and report respecting the residence of the parties, that it is proved to my satisfaction that the complainant was a bona fide resident of the State of New Jersey when this cause of action arose, and she has ever since continued to be a bona fide resident of this State down to the commencement of this action, residing in Hoboken and Jersey City, in the County of Hudson.

And I find and report that one child was born of the marriage aforesaid, to wit: Helen Foote, five years of age and who is now in the custody of the complainant.

And I find and report that no previous proceedings of any kind, nature or description have ever been instituted by either against the other except this instant case.

All of which will more fully appear by the testimony of the witnesses produced before me and the exhibit offered in evidence and marked by me, and which is annexed to this, my report, and returned herewith.

And I do further report that I am of the opinion that all the material facts charged in the bill are true and that a decree for maintenance should be made for the cause of abandonment pursuant to the prayer of the bill.

And I find and report that Eight dollars as a weekly allowance is a reasonable sum to be allowed to the complainant for the suitable support and maintenance of the infant child of her mar-

riage to the defendant, and that the complainant should have the exclusive care and custody of said child, Helen Foote, with the defendant's right of visitation at reasonable times until the further order of the court, and that the defendant should be required to give a bond to complainant in the sum of $1,000 with surety or sureties as security for the performance of any decree or order that may be made herein.

Respectfully submitted this 17th day of February, A. D. 1927.

ANTHONY P. LA PORTA,
Special Master.

(Depositions attached to Master's Report omitted by consent.)

Final Decree.

(Filed March 9, 1927)

IN CHANCERY OF NEW JERSEY.

Between
ANNA FOOTE,
Complainant,
and
GEORGE FOOTE,
Defendant.

On Bill, Etc.
Final Decree.

This cause coming on to be heard in the presence of Charles W. Stover, solicitor for and of counsel with the complainant, no one appearing

for the defendant, Whereupon, and upon reading the bill of complaint, proofs and the report of Anthony P. La Porta, one of the special Masters of the court to whom by a previous order made in this cause it was referred to take depositions and other evidence, and to report, together with his opinion, thereon; from all of which it now appears, to the satisfaction of the Chancellor, that the complainant Anna Foote, and the defendant George Foote, were lawfully married on or about the 4th day of April, 1920, and that the defendant, without any justifiable cause, abandons the complainant, and separates himself from her, and refuses and neglects to maintain and provide for her; and that the parties have their domicile in this State, and the defendant was personally served with process in this State;

It is thereupon on this 9th day of March, A. D. nineteen hundred and twenty-seven, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the defendant George Foote, do pay to the complainant Anna Foote, or to her solicitor, the annual sum of Four Hundred and Sixteen ($416.00) Dollars, payable in equal weekly installments; that is to say, that within five (5) days after service of a copy of this decree upon him, or his solicitor, the sum of Eight ($8.00) Dollars each and every week from the date of this Final Decree, and until the further order of the court to the contrary; being considered and deemed a suitable allowance for the support and maintenance of the complainant's child, Helen Foote, of the marriage aforesaid.

And it is further ordered, adjudged and decreed, that a copy of this decree be served forthwith upon the defendant, or his solicitor, and that within ten

(10) days after said service, the defendant do give bond to the said complainant in the sum of One thousand ($1,000.00) Dollars, with sufficient surety or securities, to be approved as to form and security by Anthony P. La Porta, one of the Special Masters of this court, for the punctual payments of the maintenance by this decree awarded to be paid, at the time and in the manner in this decree directed; and upon neglect or refusal of said defendant to give said bond, within the time so specified, or upon his default or that of his surety or sureties to pay the said sum or sums when the same shall fall due according to this decree, that the complainant be at liberty to apply to this court to award and issue process of sequestration, or for such other process or order, as this court may, under the circumstances, deem equitable and just, and as may be consistent with the power and authority of this court.

And it is further ordered, adjudged and decreed, that the said defendant do further pay to the complainant, or her solicitor, the costs of this entire suit to be taxed, and also the sum of One hundred Dollars, which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee according to the practice of this court.

And it is further ordered, adjudged and decreed, that this decree from the date hereof, shall be a lien upon the real and personal estate of the defendant within this State.

And it is further ordered, adjudged and decreed, that the said complainant have the exclusive care, custody, education and control of the said Helen Foote, child of the marriage aforesaid, and that

the defendant have the right to visit said infant child at any reasonable time upon reasonable notice, until the further order of this court.

And it is further ordered, adjudged and decreed, that either party be at liberty to apply, upon a future change of circumstances of the parties, for a variance or modification of this decree, touching said maintenance and custody, as shall be just and equitable.

Respectfully advised,

E. R. WALKER,
C.

FRANCIS CHILD,
A. M.

A true copy.

Affidavit for Writ of Ne Exeat.

(Filed Jan. 15, 1927)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Petitioner, and GEORGE FOOTE, Defendant.	On Bill for Maintenance, etc. Affidavit for Writ Ne Exeat.

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

Anna Foote, of full age, being duly sworn according to law on her oath deposes and says:

1. I am the petitioner in the above entitled cause, and have commenced a suit in the Court of Chancery for maintenance and support for myself and child against my husband on January 13, 1927. I am about to commence an action against my husband for support and maintenance for the reason that I was forced to leave him on November 23, 1926, because of his extreme cruelty and because I feared for my personal safety. Ever since November 23, 1926, my husband has not supported me or the child of our marriage. I have filed a bill for maintenance so that the defendant may be ordered and decreed to provide such suitable support and maintenance for myself and child and for such relief as the nature of my case and the circumstances of myself and my husband render suitable and proper; and that my husband, who is the defendant in this suit, may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the compulsory orders of this Honorable Court and as provided by statute, and that my husband, who is the defendant in this suit, may be required to pay to me, as complainant, a proper amount of counsel fees, and that I may have such further equity as to this Honorable Court shall seem meet.

2. The said defendant, George Foote, has lately threatened me that he would abandon me and leave me without making any provision for my support or the support of my child, and that he would leave the State and take the first train and leave town. He has reiterated this threat a number of times to me during the month of November, 1926, when I was forced to leave him because I feared for my personal safety. I have feared right along that my

husband would run away from me because of these threats, and I have been so much in fear of this that I was afraid to commence an action against him for support. My husband told me on the occasions which I just mentioned that if I ever started a suit against him or started any trouble that he would take the first train out of town, and that I would never see him again.

3. I verily believe that my husband intends to quickly depart out of this State and the jurisdiction of this Honorable Court, and that if he is suffered to do so my just claim for support and maintenance for myself and child will be defeated. My husband is at present working as a stevedore for the North German Lloyd in Hoboken, New Jersey, and earning between $25 and $35 per week, all depending upon the overtime he puts in. Sometimes he earns up to $40 and $45 weekly if he puts in a lot of overtime. My husband has several stocks in the Moose Club, the amount of which I do not know. It would be a very easy thing for him to go to New York or any other State and obtain work over there, and I believe it is his intention to do so and, and that he will do so when he finds out that I have filed my suit in Trenton.

4. I, therefore, ask that a writ of ne exeat republica be issued out of this Honorable Court, to restrain my husband, who is the defendant in this suit, from departing out of the jurisdiction of this court.

ANNA FOOTE.

Sworn to and subscribed before me,
this 14th day of January, 1927.

JOS. S. PARRY,
Master in Chancery
of New Jersey.

Order for Ne Exeat.

(Filed Jan. 16, 1927)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Complainant, and GEORGE FOOTE, Defendant.	On Petition, &c. Order for ne exeat.

The complainant having filed her bill against the defendant to be relieved touching the matters therein contained, and now, upon reading the affidavit of Anna Foote whereby it satisfactorily appears that the said defendant designs quickly to depart from this State:

It is on this 15th day of January, 1927, on motion of the Solicitor of the Complainant, ORDERED, that a writ of *ne exeat republica* be awarded against the said defendant until he shall fully answer the Complainant's Bill, and this court shall make other order to the contrary; and the said writ shall be endorsed in the sum of $500.00.

Respectfully advised,

E. R. WALKER,
C

JOHN BENTLEY,
V. C.

Writ of Ne Exeat.

(Issued 1/15/27)

NEW JERSEY, to wit:

The State of New Jersey to the Sheriff of the County of Hudson, GREETING:

[Court Seal]

Whereas, it is represented to us, in our Court of Chancery, before our Chancellor, on the part of Anna Foote, complainant, against George Foote, defendant, that the said George Foote abandons Anna Foote, his wife, and refuses and neglects to support and maintain her (and the children of his marriage to her) and that he designs quickly to go into parts without the State of New Jersey, as by oath, on that behalf made, appears, which tends to the great prejudice and damage of the said complainant: Therefore, in order to prevent this injustice, we hereby command you that you do, without delay, cause the said defendant personally to come before you, and give sufficient bail or security in the sum of $500.00, lawful money of the United States, that he will not go, or attempt to go, into parts without the said State, without leave of our said court; and in case the said defendant shall refuse to give such bail or security, then you are to commit him to the common jail of your county, there to be kept in safe custody until he shall do it of his own accord; and when you have taken such security, you are forthwith to make and return a certificate thereof to our Chancellor, in our Court of Chancery, at Trenton, distinctly and plainly under your hand, together with this writ.

Witness, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the 15th day of Jan., 1927.

THOMAS BARBER,
Clerk.

CHARLES W. STOVER,
Solicitor.

Bond on Ne Exeat.

(Signed and delivered 1/18/27)

KNOW ALL MEN BY THESE PRESENTS, that we, George Foote, 511 Garden Street, of the City of Hoboken in the County of Hudson and State of New Jersey, as principal, and Frank Bartletta, 913 Hudson Street, of the City of Hoboken in the County and State aforesaid, as sureties, are held and firmly bound unto John J. Coppinger, Sheriff of the County of Hudson, New Jersey, in the sum of Five hundred Dollars to be paid to the said John J. Coppinger, 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.

Sealed with our seals and dated the 18th day of January, A. D., Nineteen Hundred and Twenty-seven.

WHEREAS, the above bounden George Foote has been arrested upon 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 Anna Foote is complainant and George Foote is defendant, and is now in custody of the said Sheriff by virtue thereof;

Now, the condition of this obligation is such, that if the said George Foote shall cause his appearance to be entered in the said suit, and continue such appearance by a Solicitor of said 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.

GEORGE M. FOOTE (L. S.)
FRANK BARTLETTA (L. S.)

Signed, Sealed and Delivered
in the Presence of

THOMAS ENRIGHT.

Order to Show Cause on Surety Frank J. Bartletta, why Ne Exeat Bond should not be forfeited.

(Filed April 9, 1927.)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Petitioner, and GEORGE FOOTE, Defendant.	Order to Show Cause on Surety Frank J. Bartletta.

This matter coming on to be heard, and the court having considered the petition and affidavits

annexed hereto for forfeiture of the ne exeat bond filed in the above cause.

It is on this 6th day of April, 1927, ORDERED that Frank Bartletta show cause on the 11th day of April, 1927, at 10 A. M. at Chancery Chambers, No. 1 Exchange Place, Jersey City, New Jersey, why the ne exeat bond which the said Frank Bartletta furnished in the above cause be not forfeited, and why he should not be ordered to pay the sum of Five hundred ($500.00) Dollars, the amount of said bond into this court, or any lesser sum decreed to be due by the Court of Chancery and why the said Frank Bartletta should not furnish an additional bond of One thousand ($1,000.00) Dollars required by the Final Decree awarded in said cause, and why such other and further relief should not be granted as may be just in the premises.

It is further ordered that a certified copy of the annexed petition and affidavits, and of this order be served upon the defendant, George Foote, and on Frank Bartletta on the date of this order, which copies can be certified by Charles W. Stover, Solicitor of the above petitioner.

Respectfully advised,

E. R. WALKER,
C.

JOHN BENTLEY,
V. C.

Petition for Forfeiture on Ne Exeat Bond.

(Filed April 9, 1927)

IN CHANCERY OF NEW JERSEY.

Between ANNA FOOTE, Petitioner, and GEORGE FOOTE, Defendant.	Petition for Forfeiture on Ne Exeat Bond, etc.

The petition of the above petitioner respectfully shows that:

1. The above defendant was sued for maintenance, on the grounds of constructive desertion and after due proceedings a writ of ne exeat was issued under which defendant was apprehended and arrested.

2. On or about January 18th, 1927, one Frank Bartletta gave a bond in which it was stated that he and the principal George Foote were held and firmly bound unto John J. Coppinger, Sheriff of the County of Hudson, in the sum of Five hundred ($500.00) Dollars. Said bond was dated January 18, 1927, and sealed on that day and had the following condition. "Now, the condition of this obligation is such that if the said George Foote should cause his appearance to be entered in the said suit, and continue such appearance by a solicitor of said 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.

3. After due proceedings, as will appear by the files of this court on or about January 24th, 1927, the Court of Chancery ordered that the defendant pay to Charles W. Stover, who was then solicitor for his wife, a counsel fee of Fifty ($50.00) Dollars and the taxed bill of petitioner's costs which amounted to $23.12, and also that he pay his wife Eight ($8.00) Dollars each week until further order of the court. On or about March 9th, 1927, the Court of Chancery made a final decree in said cause and according to said final decree it was ordered that the said defendant pay to Charles W. Stover the sum of One hundred ($100.00) Dollars counsel fee together with the taxed costs of the entire suit, and it was further ordered by said final decree that the defendant furnish a bond in the sum of One thousand ($1,000.00) Dollars with sufficient surety or sureties for the punctual payments of the maintenance by said final decree awarded to be paid.

4. On March 21, 1927, a certified copy of the order for the payment of alimony and counsel fees and a certified copy of the final decree and of the taxed bill of costs on the motion for alimony and a certified copy of the taxed bill of costs on the final decree were served personally upon George Foote. A written demand was also served upon the said George Foote on the same day for the sum of $215.16 which consisted of a balance of $15.00 due on the counsel fee on the order for alimony, the sum of $100.00 counsel fee awarded in the final decree and the sum of $100.16 total taxed costs of the entire suit. Since these papers were served upon the said George Foote the sum of $15.00 has only been paid by him leaving a total balance of $200.16 and defendant has neglected to pay the same or any part thereof. The defendant, George Foote, has also neglected to put up the required bond of One thousand ($1,000.00) Dollars required in said final decree as aforesaid.

5. On March 22, 1927, a certified copy of the order for the payment of alimony and counsel fees and a certified copy of the final decree and of the taxed bill of costs on the motion for alimony and a certified copy of the taxed bill of costs on the final decree were served personally upon Frank Bartletta. A written demand was also served upon the said Frank Bartletta on the same day for the sum of $210.16 which consisted of a balance of $10.00 due on the counsel fee on the order for alimony, the sum of $100.00 counsel fee awarded in the final decree and the sum of $100.16 total taxed costs on the entire suit. Since these papers were served upon the said Frank Bartletta, the sum of $10.00 has only been paid by the defendant, George Foote, leaving a total balance of $200.16, and the said Frank Bartletta has neglected to pay the same or any part thereof. The said Frank Bartletta has also failed to see that the proper bond of $1,000.00 be furnished according to said final decree and has also failed to furnish the same himself.

6. Your petitioner therefore prays that an order to show cause be granted why the bond of $500 of Frank Bartletta should not be forfeited and why he should not be ordered to pay said sum of $500

in court as called for by said bond and for an order to be granted by the Court of Chancery requiring the said Frank Bartletta to pay said sum of $500 in to court or any lesser sum which this Honorable Court decree is due, and for an order requiring the said Frank Bartletta to furnish an additional bond of $10,000.00 according to said final decree and that such further order or decree as the Chancellor shall think fit, reasonable and proper.

And your petitioner will ever pray, etc.

CHARLES W. STOVER,
Solicitor for Petitioner & pro se.

IN CHANCERY OF NEW JERSEY.

Between
ANNA FOOTE,
Petitioner,
and
GEORGE FOOTE,
Defendant.
} Affidavit.

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

Charles W. Stover, of full age, being duly sworn, according to law on his oath deposes and says:

I state that the above defendant was sued for maintenance on the grounds of constructive desertion and after due proceedings a writ of ne exeat was issued under which defendant was apprehended and arrested.

On or about January 18th, 1927, one Frank Bartletta gave a bond in which it was stated that he and the principal George Foote were held and firmly bound unto John J. Coppinger, Sheriff of the County of Hudson, in the sum of Five hundred ($500.00) Dollars. Said bond was dated January 18, 1927, and sealed on that day and had the following condition. "Now, the condition of this obligation is such that if the said George Foote should cause his appearance to be entered in the said suit, and continue such appearance by a solicitor of said 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.

After due proceedings, as will appear by the files of this court on or about January 24th, 1927, the Court of Chancery ordered that the defendant pay to Charles W. Stover, who was then solicitor for his wife, a counsel fee of Fifty ($50.00) Dollars and the taxed bill of petitioner's costs which amount to $23.12, and also that he pay his wife Eight ($8.00) Dollars each week until further order of the court. On or about March 9th, 1927, the Court of Chancery made a final decree in said cause and according to said final decree it was ordered that the said defendant pay to Charles W. Stover the sum of One hundred ($100.00) Dollars counsel fee together with the taxed costs of the entire suit, and it was further ordered by said final decree that the defendant furnish a bond in the sum of One thousand ($1,000.00) Dollars with

sufficient surety or sureties for the punctual payments of the maintenance by said final decree awarded to be paid.

I am informed and believe it to be true that on March 21, 1927, a certified copy of the order for the payment of alimony and counsel fees and a certified copy of the final decree and of the taxed bill of costs on the motion for alimony and a certified copy of the taxed bill of costs on the final decree were served personally upon George Foote. I am also informed that a written demand was also served upon the said George Foote on the same day for the sum of $215.16 which consisted of a balance of $15.00 due on the counsel fee on the order for alimony, the sum of $100.00 counsel fee awarded in the final decree and the sum of $100.16 total taxed costs of the entire suit. Since these papers were served upon the said George Foote the sum of $15.00 has only been paid by him leaving a total balance of $200.16 and defendant has neglected to pay the same or any part thereof. The defendant, George Foote, has also neglected to put up the required bond of One thousand ($1,000.00) Dollars required in said final decree as aforesaid.

I am informed and believe it to be true that on March 22, 1927, a certified copy of the order for the payment of alimony and counsel fees and a certified copy of the final decree and of the taxed bill of costs on the motion for alimony and a certified copy of the taxed bill of costs on the final decree were served personally upon Frank Bartletta. I am also informed that a written demand was also served upon the said Frank Bartletta on the same day for the sum of $210.16 which consisted of a balance of $10.00 due on the counsel fee on the order for alimony, the sum of $100.00 counsel fee awarded in the final decree and the sum of $100.16

total taxed costs on the entire suit. Since these papers were served upon the said Frank Bartletta, the sum of $10.00 has only been paid by the defendant, George Foote, leaving a total balance of $200.16, and the said Frank Bartletta has neglected to pay the same or any part thereof. The said Frank Bartletta has also failed to see that the proper bond of $1,000.00 be furnished according to said final decree and has also failed to furnish the same himself.

CHARLES W. STOVER.

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

JOSEPH GREENBERG,
Attorney at Law,
of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

ANNA FOOTE,
Petitioner,

and

GEORGE FOOTE,
Defendant.

} Affidavit.

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

Elizabeth Brennan, of full age, being duly sworn, according to law on her oath deposes and says:

On Monday, March 21st, 1927, I served upon George Foote, the above defendant, personally, a certified copy of an Order forAlimony together with a certified copy of the final decree in the above cause. I also served upon the said George Foote, personally, a certified copy of the taxed bill of costs on the application for alimony and counsel fees, and a certified copy of the taxed bill of costs on the final decree together with a demand for the sum of Two hundred fifteen Dollars and sixteen ($215.16) Cents, requiring the said George Foote to pay the same to Charles W. Stover. I explained to the said George Foote the meaning of said papers when I served him with same and he thoroughly understood them.

ELIZABETH BRENNAN.

Sworn to and subscribed before me
this 28th day of March, 1927.

NORMAN R. WYNNE,
Master in Chancery
of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between
ANNA FOOTE,
Petitioner,
and
GEORGE FOOTE,
Defendant.

Affidavit.

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

Elizabeth Brennan, of full age, being duly sworn, according to law on her oath deposes and says:

On Tuesday, March 22nd, 1927, I served upon Frank Bartletta personally, a certified copy of an order for alimony together with a certified copy of the final decree in the above cause. I also served upon the said Frank Bartletta personally a certified copy of the taxed bill of costs on the application for alimony and counsel fees, and a certified copy of the taxed bill of costs on the final decree. I also served a demand upon the said Frank Bartletta to pay to Charles W. Stover the sum of Two hundred ten Dollars and sixteen ($210.16) Cents, the amount due him on said orders of the court. I explained to the said Frank Bartletta the meaning of said papers when I served him with same and he thoroughly understood them.

ELIZABETH BRENNAN.

Sworn to and subscribed before me
this 28th day of March, 1927.

NORMAN R. WYNNE,
Master in Chancery
of New Jersey.

Petitioner's Costs on Application for Alimony.

(Filed Feb. 5, 1927)

IN CHANCERY OF NEW JERSEY.

Between
ANNA FOOTE,
Complainant,
and
GEORGE FOOTE,
Defendant.

Petitioner's Costs on Application for Alimony.

	S.&C.	Ch.	Clk.	Als.
Drawing, engrossing and filing petition	5.10		.06	
Drawing, takg & filg. affdt to ditto	6.80		.24	1.00
Drawg. serving & filg. notice	.40		.06	
Motion for order for alimony	1.50	.50		
Argument fee on do.	3.00			
Drawg., eng., and filg. order 4 fol.	1.20		.06	
Copy of Order			.40	
Serving copy of order				.40
Serving copy of costs				.40
Drawing and engrossing costs	.80			
Taxing and filing costs and copy			.70	
	18.80	.50	2.02	1.80
Taxed at Twenty-three Dollars	.50			
	2.02			
and Twelve cents	1.80			
	$23.12			

Feb. 5, 1927.

Thomas Barber, Clerk.

Complainant's Costs.

(Filed March 15, 1927)

IN CHANCERY OF NEW JERSEY.

Between
ANNA FOOTE,
Complainant,
and
GEORGE FOOTE,
Defendant.

Compl't. Costs

	S.&C.	Ch.	Clk.	Als.
Retaining fee for sol.	2.00			
Drawing and eng. bill, 20 fol.	6.00			
Filing bill and entering action			.16	
Copy of bill	1.00		1.00	
Drawing, eng. and sealing subp'a	.40	.30	.08	
Filing do., and sheriff's fees			.06	3.78
Motion for interlocutory decree	1.50	.50		
Argument fee on do.	3.00			
Drawg., eng. & filg. decree, 6 fol and copy	1.80		.66	
Counsel attending Master	3.00			
Master's fees on report				34.70
Witness fees				1.00
Filing report and depositions			.24	
Motion for decree	.80			
Argument upon final hearing, &c.	4.00		.25	
Chancellor on decree		1.75		
Drawg., eng. and filg. decree 12 fol & copy	3.60		1.26	
Enrolling proceedings, 34 fol.			2.04	
Drawing & eng., costs	1.20			
Taxing and fil'g costs and copy			.80	
	28.30	2.55	6.71	39.48
	2.55			
Taxed at Seventy-seven	6.71			
Four	39.48			
	$77.04			

March 15, 1927.

Thomas Barber, Clerk.

Opinion.

(Filed 6/17/27)

IN CHANCERY OF NEW JERSEY.

Between

ANNA FOOTE,
Petitioner,

and

GEORGE FOOTE,
Defendant.

} Opinion.

June 10, 1927.

CHARLES W. STOVER, Esq., for Petitioner.
ANTHONY P. LAPORTA, Esq., for Frank J. Bartletta, Surety.

BENTLEY, V. C.:

On motion to forfeit the penalty expressed in a *ne exeat* bond.

The petitioner has secured a final decree for alimony under the 26th Section of the Divorce Act, and, at the time of initiating this motion, was entitled to arrearages of costs and counsel fee aggregating $200.16. This sum is made up of taxed costs amounting, the petitioner says, to "the sum of $100.16 total taxed costs of the entire suit" and $100 counsel fee allowed in the final decree. In the "$100.16 total taxed costs" there is included an item of $23.12 which is costs allowed on a preliminary motion. She has caused a petition to be filed upon which there has been issued an order to show cause, directed to the surety who was joined in the defendant's bond to compel him to

deposit with the Clerk, or pay to the petitioner, the penalty above referred to.

It is known to everybody that, under the ancient practice, such a writ required the giving of security that the person named therein "will not go or attempt to go into parts beyond the seas" etc. 3 Dan. Ch. Pl. and Pr., star page 2328. Now, by virtue of rule 216, it is provided that, instead of restraining the person who is to answer, within the jurisdiction of the court, he may substitute as the condition of the bond to be given that he, among other things, "shall at all times render himself amenable to the *orders and process* of this court pending the suit, and to such *process* as shall be issued to compel the performance of the final decree therein, and shall appear before this court, or any officer thereof, when so required by the order of this court." (I have italicized, for the purpose of accentuating what it is intended to be said.) It will be observed that three things are intended to be accomplished by the section of the rule that has been quoted. First, that the person against whom the writ is awarded must obey any orders or process before decree, and, secondly, after decree has been entered, to obey any process issued to compel the performance thereof; and, lastly, to appear before the court when so ordered.

Under the new form of bond (and that is the form that was given in this case), it would seem to me that the surety would be liable in the amount of his bond for any failure by the husband to pay alimony *pendente lite,* or obey any other order. But after the entry of the decree he would only be liable in the event of the principal in the bond rendering it impossible to execute the warrant of commitment, if one should be allowed, to compel compliance with the decree.

When the new form of bond was authorized the situation theretofore to be met was to keep the person complained against within the power of the court, and that was accomplished by making him give security that he would not depart beyond the jurisdiction. In other words, it was intended to make more certain the fact that the court could exercise its power of punishment if the decree was not obeyed. After decree, the present rule intends that the court shall exercise its regular process to compel performance if the person of whom obedience is demanded disobeys, but remains "amenable * * * to such process as shall be issued to compel the performance of the final decree." Not that the surety shall be penalized. In all fairness, this is all that should be required. I am unable to bring to mind any practice in this court, except under the writ of *ne exeat,* that requires a defendant, or one in the position of a defendant, to give security for the performance of a decree which may be made against him. The *actor* may be required to provide indemnity as a condition for the immediate relief he seeks; but he cannot secure the aid of the court to force an adversary party to do likewise. Of course, defendants may, and frequently do, volunteer to perform some such act which will make some preliminary order, sought against them, unnecessary. So, not only from a reading of the rule itself but from a consideration of the necessities of the case, it is my opinion that, after decree, a bond given to the sheriff, pursuant to the directions of the writ of *ne exeat,* may not be declared forfeited for failure to pay permanent alimony or counsel fee, where the husband remains amenable to the appropriate writ to enforce such payments.

Although many authorities have been collected by respective counsel, I find none of them that is

of much assistance in the case at bar. Ksiazek v. Ksiazek, 89 N. J. Eq., 139, was a case in which Vice-Chancellor Lane was dealing with an application by sureties to surrender their principal and to be discharged, and grew out of a bond conditioned that their principal would not depart the state. In Schreiber v. Schreiber, 85 N. J. Eq., 303, Vice-Chancellor Stevenson distinctly said, that he understood a single point was involved and that was, whether or not the simple practice of an order to show cause based upon a petition was an appropriate proceeding in a proper case for declaring a bond forfeited. The Court of Errors and Appeals said that question was not before them in the same case on appeal. 86 N. J. Eq., 439. In Penny v. Penny, 88 N. J. Eq., 160, the decision of Vice-Chancellor Backes was in a case where the petitioner, long after the award of the writ and at final hearing, was unable to prove her petition as it was framed when the bond was given, and then materially amended her cause by substituting the charge of abandonment for that of extreme cruelty. He decided:

> That a material amendment to a cause of action, upon which, as amended, the plaintiff relies for judgment, without the consent of the sureties, discharges the sureties, is uniformly laid down in the text-books and the reports of decisions.

All of the other authorities cited on behalf of the petitioner are from other jurisdictions and I cannot follow them, because of inability to be sure that their practice is based upon the same foundation as ours.

I do not consider Wauters v. Van Vorst, 28 N. J. Eq., 103, to be authority in any way favorable

to the respondent. There, the Chancellor applied the doctrine of mistake, where the condition of the bond was more stringent than was required by the terms of the order directing it to issue.

The only case with which I am familiar that is at all in point with the question to be decided here is the recent opinion by Vice-Chancellor Backes, in Gasteiger v. Gasteiger, 136 Atl., 497. There, the application was upon the defendant's motion to vacate a final decree or suspend its operation, and to set aside a writ of *ne exeat,* and on an order to show cause, granted to the petitioner, why the defendant should not be adjudged guilty as of a contempt for failing to pay alimony. While the precise point involved here was not presented in the case in hand, the Vice-Chancellor, after declaring the defendant guilty, said that he would direct a warrant to issue, and then used the following language:

> If he fails to submit to the writ committing him for his contempt, proceedings may then be taken to forfeit the bond, which will be breached, according to its condition, upon his failure to render himself amenable to such process as shall be issued to compel the performance of the final decree.

From this language it is apparent that the Vice-Chancellor came to the same reading of the condition required by the 216th rule that I have reached.

While I have indicated my views on the question presented to me and so earnestly argued by counsel, there is a consideration not mentioned in the briefs that renders it out of the question to discharge the order to show cause. It will be recalled that of the $200.16 counsel fees and costs remaining unpaid, $23.12 thereof represent the costs taxed on the application for alimony *pendente lite.* This being an order made "pending the suit," the surety guaranteed that the defendant would render himself amenable thereto, and his principal having failed in his duty there has been a breach of the condition of the bond and the penal sum of $500 therein mentioned must consequently be deposited with the Clerk to be disbursed under orders to be made by the court.

New Jersey Court of Errors and Appeals

Between

ANNA FOOTE,
Respondent,

and

GEORGE FOOTE,
Defendant,

FRANK J. BARTLETTA,
Appellant.

On Appeal from the Court of Chancery.

BRIEF OF CHARLES W. STOVER, SOLICITOR FOR AND OF COUNSEL WITH ANNA FOOTE, RESPONDENT.

Statement of Facts.

Counsel for appellant takes this appeal from an order forfeiting the ne exeat bond made by the Chancellor on the advice of Vice-Chancellor John Bentley. Arguments were heard before his Honor, Vice-Chancellor Bentley, in the Court of Chancery on a rule to show cause in behalf of the respondent, Anna Foote, by her solicitor, Charles W. Stover, why a ne exeat bond given by the defendant, George Foote, as principal and Frank J. Bartletta as surety (the appellant) on January 18, 1927, should not be forfeited. His Honor, Vice-Chancellor Bentley, advised an order forfeiting

said bond because of a breach of a condition of said bond. The matters and things alleged in the petition and affidavits for forfeiture of the bond aforesaid are true and were conceded to be so by the parties to this appeal. The defendant, George Foote, failed to pay the costs of suit and counsel fees totaling Two hundred dollars and sixteen ($200.16) Cents; he failed to obey the orders of the court pending this suit; he failed to provide an additional bond and concealed himself so that service upon him requiring him to pay was made almost impossible and because of said reasons, the proceeding upon the order to show cause was made against Frank Bartletta to compel the forfeiture of said bond. *The sole question involved is whether or not any condition of the bond which is taken from Chancery Rule No. 216 has been violated in any particular instance which condition reads as follows:*

> "Now the condition of this obligation is such, that if the said George Foote shall cause his appearance to be entered in the said suit, and continue such appearance by a Solicitor of said 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."

Reply to Point 1.

The Chancellor had jurisdiction to make the order appealed from.

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 Chancery, 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 and principal are proper parties to a proceeding on the forfeiture of a writ of ne exeat bond. The bond given is a joint and several bond, and therefore, either party can be proceeded against. This is shown by that part of the bond which reads as follows:

> "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."

Even if there is merit in the argument made by counsel for the bondsman to the effect that his Honor the Chancellor had no jurisdiction to make the order, COUNSEL FOR THE BONDSMAN HAS AGREED WITH ME TO NOT URGE THIS POINT BECAUSE IT DOES NOT GO TO THE MERITS OF THE CASE. The reason for not

urging this point is that at the hearing of the order to show cause for forfeiture, counsel for the bondsman had already agreed not to raise this technical objection, which objection was only placed in the brief by counsel for the bondsman merely to find out what the law might be about the same. COUNSEL FOR THE BONDSMAN IS NOT URGING POINT ONE AND HAS SO STIPULATED IN WRITING IN HIS BRIEF.

Reply to Point 2.

The facts alleged in the petition to forfeit the ne exeat bond are sufficient in equity to show a breach of the condition of the bond.

It is not necessary to set forth in the petition to forfeit a ne exeat bond that the defendant failed to appear when required by the order or process of the Chancery Court. The petition, on its face, shows a breach of the condition to pay the sum of $23.12, taxed costs on the temporary order for alimony, a balance of $10.00 due on counsel fees on the order for alimony, a counsel fee of $100.00 awarded in the Final Decree and the total taxed costs of the entire suit. The defendant also failed to put up a new bond for $1,000. The defendant, George Foote, was not at all times amenable to the orders and process of the court. The defendant has not always been available for service. Nowhere does it appear in this proceeding that the defendant was always available for service and process and that he ever rendered himself amenable to the orders of this court.

It must be remembered that at the outset, said George Foote intended to run away from his wife

and child and for this reason the writ of ne exeat was advised by his Honor, Vice-Chancellor Bentley. It can also be plainly seen that the defendant concealed himself so that service could not be made upon him, by the following affidavit.

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

Elizabeth Brennan, of full age, being duly sworn, according to law upon her oath deposes and says:

During the months of March and April, 1927, I had occasion to try to serve George Foote with an order for alimony and with other court papers. At that time he was working for the North German Lloyd. On one occasion, I spoke to Mr. Neuendorf at Mr. Foote's place of business, who approached me concerning the said George Foote. Mr. Neuendorf told me that George Foote was not around there. On one occasion before this I attempted to serve the said George Foote and the said Mr. Neuendorf told me that if I wanted to, I could jump off the pier and try to find him. I knew at the time that the said George Foote must be there because he was served that same day by another man. Several times during these months, I went to the home of the said George Foote where he was supposed to be living at No. 211 Garden Street, Hoboken, New Jersey, and each time I went there I received evasive answers from the lady of the house. Finally after many unsuccessful attempts, I was able to serve him on March 21, 1927, with several papers.

Several times after this, I made several attempts to serve said George Foote with other papers but was unsuccessful since he, no doubt, concealed

himself from me and, therefore, other assistance was required.

ELIZABETH BRENNAN.

Sworn to and subscribed
before me this 2nd day of May, 1927.

THOMAS R. BRENNAN,
Notary Public of New Jersey.

Reply to Point 3.

The bond given in this case is more than an appearance bond. It provides that "the defendant 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, etc." The word *amenable* means *responsible for, accountable to* and if the bondsman (the appellant) in this case is responsible for the orders of the court, he certainly must pay according to said orders if the defendant has refused or neglected to pay.

The case of Ksiazek v. Ksiazek, cited in 89 N. J. Eq. P., 139, holds that "sureties on a bond given to secure release from arrest on a writ of ne exeat bond may not surrender their principal and thus secure exoneration." If any bondsman on a writ of ne exeat bond could surrender his principal at any time he so desired and thus secure exoneration, the bond would simply be an appearance bond but since such surrender cannot be made, a writ of ne exeat bond is more than an appearance bond.

In the case of *Palmer* v. *Palmer,* 84 N. J. Eq. P., 550, his Honor Chancellor Walker said, "The writ of ne exeat is in the nature of equitable bail and

ordinarily issues upon an equitable claim of pecuniary nature in an amount certain, or to *secure the payment of alimony to a wife.*"

In the case of *Penny* v. *Penny,* 88 N. J. Eq. P., 160, although the surety bond of ne exeat was not forfeited in this case for the reason that the petitioner substituted a new cause of action for divorce for the old one, nevertheless the court intimated in this case that it would forfeit the bond because of a default in the payment of the taxed costs on an order for alimony. If it were not for the fact that this default did not occur until after the bondsman was released, the court would have forfeited said bond. *On page 164 of this case, it clearly appears that the court's only reason for not forfeiting the bond for the default of the payment of the taxed costs was because said default did not occur until after the bondsman was released.*

In the case of *Schreiber* v. *Schreiber,* 85 N. J. Eq. P., 303, his Honor, Vice-Chancellor Stevenson, distinctly said that he understood a single point was involved, and that was, whether or not the simple practice of an order to show cause based upon a petition was an appropriate proceeding in a proper case for declaring a bond forfeited. In this case the penalty was enforced by a summary proceeding on an order to show cause why the bond should not be forfeited. This case, however, cannot be cited for authority for the fact that the bond in this case should be forfeited since it only determines the question of procedure. The condition of the bond was entirely different in the Schreiber case and grew out of a bond condition that a principal would not depart the State.

In the case of *Elliot* v. *Elliot,* 36 A., 951, cited by the bondsman in this case (which case is not officially reported), the court forfeited the bond because it appeared that said bond was breached,

in that the defendant left the State. The bond given in this case was a more drastic bond, in that there was also a condition in said bond which required the defendant to remain within the jurisdiction of the court. The defendant, however, left the jurisdiction.

The case of *Wauters* v. *Van Vorst,* 28 N. J. Eq. P., 103, is not in point (cited by counsel for the appellant). His Honor, the Chancellor, applied the doctrine of mistake where the condition of the bond was more stringent than was required by the terms of the order directing it to issue.

Reply to Point 4.

There can be no question that an unreasonable length of time had lapsed from the signing of the final decree. An examination of the proceedings in this case will disclose that the final decree was entered on March 9, 1927, and that these proceedings against the ne exeat bond for forfeiture were instituted on April 6, 1927, less than a month after the entry of the final decree so there can be no question as to an unreasonable delay. The question of reasonable time was not even raised at the time of the hearing by counsel for the appellant, and even if such question was raised, the order to show cause in this case was certainly prosecuted within a reasonable length of time.

The early English practice seems to have entertained proceedings for forfeiture of ne exeat bonds where the defendant was guilty of violating the orders of the court. In the early English case of *Utten* v. *Utten,* 1 Merivale Report, page 51, there was a forfeiture of the bond of the surety. In this case there was a request made on behalf of counsel for the surety that he be discharged on entering into recognizance to abide the event of the courts.

"Sir Samuel Romilly in reply, observed that although a party was sometimes allowed to give security to abide the event of a cause, this can be only done in respect to a private transaction, *not where he had been guilty of violating an order of the court.*"

There are many other foreign decisions which can be submitted from other States but since their practice and procedure might not be based upon the same foundation as ours of the State of New Jersey, it would be useless to cite the same.

Conclusion.

For the reasons above outlined, the surety should not be given the privilege of surrendering the principal before the bond is forfeited. Since the case of Ksiazek v. Ksiazek, 89 N. J. Eq. P., 139, together with the other cases mentioned did not permit the surrender of the principal on the ne exeat bond and since the bond is not discharged by the entry of the final decree or even if the defendant should be in custody for failure to comply with the final decree, said bond should be forfeited. The defendant in this case is not in custody for failure to pay according to the orders of the court. He has not rendered himself amenable to the orders of this court, both the orders pendente lite and the orders in the final decree and, therefore, *the bond given by the bondsman, Frank J. Bartletta, should be forfeited and the order appealed from should be affirmed with costs.*

Respectfully submitted,

CHARLES W. STOVER,
Solicitor for and of Counsel
with Anna Foote, Respondent.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.
[46259]

New Jersey Court of Errors and Appeals

Between
ANNA FOOTE,
Respondent,
and
GEORGE FOOTE,
Defendant,
FRANK J. BARTLETTA,
Appellant.

On Appeal from the Court of Chancery.

BRIEF FOR ANTHONY P. LA PORTA, SOLICITOR FOR AND OF COUNSEL WITH FRANK J. BARTLETTA, APPELLANT, SURETY FOR GEORGE FOOTE, DEFENDANT.

Statement of Facts.

Briefly, this is an appeal from an order forfeiting an Ne Exeat Bond made by the Chancellor on the advice of Vice Chancellor John Bentley. The matter came up before Vice Chancellor Bentley in the Court of Chancery on a Rule to Show Cause in behalf of the respondent, Anna Foote, by her solicitor, Charles W. Stover why a Ne Exeat Bond given by the defendant, George Foote, as principal and Frank J. Bartletta, as surety (the appellant), to the Sheriff of Hudson County on the 18th day of

January, 1927 should not be forfeited and the penalty of the bond in the sum of $500.00 paid into court. The matters and things alleged in the petition for the forfeiture of the bond aforesaid are true and conceded to be so by the parties to this appeal. The condition of the bond which is taken verbatim from *Chancery Rule No. 216* is as follows:

> "Now the condition of this obligation is such, that if the said George Foote shall cause his appearance to be entered in the said suit, and continue such appearance by a Solicitor of said 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."

Anna Foote, the respondent, alleged and assigned as a reason why the Ne Exeat Bond should be declared forfeited, the fact that the defendant, George Foote, has not paid to her the taxed bills of costs and her counsel fees in pursuance to the *order made* in her favor for alimony, counsel fee and costs *pendente lite,* and a final decree on her bill for maintenance; because of that fact she now contends that the surety, Frank J. Bartletta, appellant, under and by virtue of the condition of the bond aforesaid became liable and responsible for the alleged forfeiture.

Questions Involved.

1. Did the Chancellor have jurisdiction to make said order forfeiting the Ne Exeat Bond?

2. Are the facts alleged in the petition to forfeit the Ne Exeat Bond sufficient in law or equity to show a breach of the condition of the bond?

3. Did the court err in holding that the defendant, George Foote, was not amenable to the orders of the court under the facts alleged on the petition to forfeit the Ne Exeat Bond?

4. Did the court err in refusing to dismiss the petition and order to show cause why the Ne Exeat Bond should not be forfeited, as alleging facts insufficient in law or equity to show a breach of the condition in the Ne Exeat Bond?

5. Did the court err in holding that the non-payment of $23.12 which were the costs taxed on the application for alimony pendente lite constituted a breach of condition of the Ne Exeat Bond?

6. Did the court err in holding that the Ne Exeat Bond is still in full force and effect although there is a final decree for maintenance which required the defendant, George Foote, to furnish another bond in the sum of $1,000.00?

POINT 1.

The Chancellor had no jurisdiction to make the Order Appealed From.

The Ne Exeat Bond was made to the Sheriff of Hudson County. No assignment appears to have been made to respondent, Anna Foote; however proceedings were instituted to forfeit the Ne Exeat

"No writ of ne exeat shall be granted, unless satisfactory *proof be made that the defendant designs quickly to depart from this state;* and if granted, the Chancellor, a vice chancellor, or an injunction master, shall direct to be indorsed thereon the sum in which the party shall give bond, with satisfactory surety or sureties. (P. L. 1902, p. 512.)"

THE WRIT OF NE EXEAT IS ALSO REGULATED *BY CHANCERY RULE NUMBER 216* WHICH ALSO PRESCRIBES THE *FORM OF BOND* REQUIRED ON THE DISCHARGE OF WRIT.

Chancery Rule No. 216 which was promulgated (Dec. 23rd, 1871) by Chancellor Zabriskie and adopted by *Chancellor Walker* without any modification provides as follows:

"When a defendant shall be arrested on a writ of ne exeat, *the sheriff may, in lieu of the bond heretofore used and required, take a bond* in the sum endorsed on the writ, with sureties as required by law (*with condition that the defendant shall cause his appearance by a solicitor of this court, residing in the State; and shall at all times render himself amenable to the orders and process of this court pending the suit, and to such process as shall be issued to compel the performance of the final decree therein, and shall appear before this court, or any officer thereof, when so required by the order of this court*)."

THE PRACTICE AND PROCEDURE ON NE EXEAT (IMPORTANT).

The practice and procedure for the discharge of a writ of ne exeat is nicely summarized by Mr.

Justice Harlan in *Griswold* v. *Hazard,* 141 U. S., 260, 281, as follows:

"A party arrested upon *ne exeat* may obtain the discharge of the writ, upon motion or petition, and after notice, and according to some authorities, 'it is a matter of course to order the *ne exeat* to be discharged, upon the defendant's giving security to answer the complainant's bill, and render himself amenable to the process of the court pending the litigation, and to such process as may be issued to compel a performance of the final decree. * * * Or where the defendant cannot procure such security as will satisfy the sheriff, or if he wishes to leave the State before the termination of the suit, he may apply to the court to discharge the *ne exeat* upon his giving proper security to answer and be amenable to process. And upon such application, the court will take such security as it may deem sufficient, and will discharge the sheriff from liability." Citing 2 Barb. Ch. Pr., 655, 656; Mitchel v. Bunch, 2 Paige, 606, 621; Brayton v. Smith, 6 Paige, 489, 491; McNamara v. Dwyer, 7 Paige, 239, 244; See also Jacob's Law Dict. title Ne Exeat Regno: Johnson v. Clendenin, 5 Gill & J., 463, 481 (Md.).

THE WRIT OF NE EXEAT IS A MESNE PROCESS.

The writ of Ne Exeat is purely an equitable remedy in the nature of bail at common law. In Adams v. Whitcomb, 46 Vt., 708, the nature of the writ was described as follows:

"The writ of ne exeat, as at present used in this country, is a mesne process, issuing from

> the Court of Chancery, to hold a party to equitable bail, that he may not depart from the realm or the jurisdiction of the court, but be present with his body to answer any decree which the Court of Chancery may make in the case against him, and commanding the arrest and imprisonment of the defendant, if he or she fails to furnish such bail."

This quotation was also made by Vice Chancellor Howell in *Greisner* v. *Greisner,* 86 N. J. E., 76, 97 A. 287, 289.

THE PURPOSE OF THE WRIT OF NE EXEAT IS *TO SECURE MERELY THE PRESENCE OF THE DEFENDANT IN COURT.*

Shipman on Equity Pleading, page 128, under Section 72, says, among other things, that the writ was to secure the presence of the defendant and commented upon the subject as follows:

> "The writ of *ne exeat regno* has been suggested as having probably originated in a desire *to prevent a subject of the King of England from leaving the kingdom* when the king wished *to secure control over his person,* and seems, as a matter of practice, to have been at first chiefly used for political purposes. Later it was used by the Court of Chancery, in private cases, *in order to secure the presence of the defendant* when sued in that court upon an equitable right, and whose departure from the jurisdiction was apprehended, so that it was in fact nothing more than a means of procuring equitable bail. Fetter Eq., 200; Dunham v. Jackson, 1 Paige (N. Y.), 629; Johnson v. Clendenin, 5 Gill & J. (Md.), 463;

> Bonesteel v. Bonesteel, 28 Wis., 245; Cable & Alvord, 27 Ohio St., 654, 666; Gresham v. Petersen, 25 Ark., 377."

THE OBJECT AND DESIGN OF THE WRIT OF NE EXEAT IS TO HOLD A PARTY *AMENABLE TO JUSTICE.* THE SURETY IS ONLY LIABLE IN CASE OF THE PARTY'S NON-APPEARANCE.

The court in *Johnson* v. *Clendenin,* 5 Gill & Johnson Reports, 463 (Md.), cited with approval in *Dunsmore* v. *Bankers Surety Co.,* 206 Mass., 23, and *Griswold* v. *Hazard,* 141 U. S., 260, 281, said:

> "What is the object and design of the writ of ne exeat, as used by the courts of chancery in the exercise of their equity jurisdiction, it is *to hold the party amenable to justice, and to render him personally responsible for the performance of their orders and decrees.*"

WITH RESPECT TO THE SURETY'S LIABILITY UNDER A NE EXEAT BOND THE COURT SAID, IN THE CASE OF *JOHNSON* v. *CLENDENIN, SUPRA:*

> "The obligations devolved upon the sureties entering into the bond, bear a close resemblance to the duties and responsibilities of a bail at common law. The bail assume upon themselves the obligation, that their principal shall pay the debt or be personally amenable to the final process of the court. And *the sureties in the ne exeat bond undertake that the defendant shall be personally responsible for the performance of the orders and decrees of the court.* To this extent they become an-

swerable, and when this duty has been fulfilled their engagements, under their bond are at an end."

ORDER AND PROCESS ARE INTERCHANGEABLE WORDS.

In the case of *Gondas* v. *Gondas,* 98 N. J. E., 107, 134 A., 615, Chancellor Walker said:

> "Process is writ, warrant, subpoena, or other formal writing issued by authority of law, and is *means of compelling defendant to appear in court,* and need not necessarily be subpoena or other writ, *but may be 'order'* or notice."

THE FORM OF THE CONDITION OF THE BOND USED IN THE CASE *SUB JUDICE* APPEARS TO HAVE BEEN COPIED FROM KENTUCKY PENAL STATUTE.

The phrase that, *"he shall at all times render himself amenable to the orders and process of the court"* was the language used in a bail bond to answer for criminal offenses. So we have the case of *Miller* v. *Commonwealth,* 62 Ky., 14, 17, which says:

> "Section 77, Criminal Code, only requires that the recognizance shall be substantially as in the form prescribed therein. One of the stipulations in this form is 'to answer said charge, and (*shall at all times render himself amenable to the orders and process of said court in the prosecution of said case*')."
>
> "The undertaking in this recognizance is to appear and 'answer the charge of murder for which he stands indicted, and that he render

> himself obedient to the orders and process of this court.' The words 'shall at all times,' are left out, and the word 'obedient' is used for 'amenable,' but these are not technical words which have a peculiar legal signification."
>
> "Obedient, is to be 'submissive to authority yielding compliance with commands, orders, or injunctions; performing what is required, or obstaining from what is forbid.'"
>
> "Amenable, is to be 'liable to answer, responsible; answerable; liable to be called to account.'"
>
> "These words are of such similar import that either might be used with propriety to express the same thing."

A BOND GIVEN IN THE WORDS AND LANGUAGE OF *CHANCERY RULE 216 IS CONSTRUED TO BE A MERE APPEARANCE BOND* BY U. S. SUP. COURT.

In *Griswold* v. *Hazard,* 141 U. S., 260, the court held that a writ of ne exeat could be discharged on the giving of an appearance bond; and that as long as the parties so intended, an unintended performance bond given under a mistake would not be enforced (*at p. 282*), the court said:

> "As, therefore, Durant could have filed his answer, and *conformably to the general rule,* have obtained a discharge of the writ upon giving bond with surety, that *he would be amenable to the orders and process of the court;* as he could not, consistently with his engagements, remain in Rhode Island long enough to have an answer prepared, and to move for the discharge of the writ, upon sufficient bond to

be by him given; and as Hazard and his counsel expressed a desire that Durant should not be held in custody over Sunday,—what more natural and equitable than that the parties should, by consent, bring about that which Durant must have understood from Bradley that he could accomplish, through the orders of the court, namely have a *bond executed with surety compelling his presence in the State when required by the orders of the court, or subjecting his sureties to personal liability if he did not render himself amenable* to its process."

Then again (at p. 283):

"We are of opinion that although the condition of the bond in question was that Durant should 'abide and *perform* the orders and decrees' of the court in the suit in which it was given, all the *parties,* according to the decided preponderance of evidence, *intended* it, at the time, *as an instrument binding the sureties for (the appearance) of the principal so as to be amenable to the process and decrees of the court, upon default in which, and not before, were they to be liable to pay the penalty.*"

IT APPEARS THAT A NE EXEAT BOND GIVEN IN THE WORDS AND FORM PRESCRIBED *BY RULE 216* OF THE CHANCERY ACT HAS BEEN CONSTRUED BY THE *ELLIOTT CASE BY VICE CHANCELLOR REID.*

In the *Elliott case reported in* 36 A., 951, 952 (not officially reported), the principal on the ne exeat bond had fled from the jurisdiction of the

court. *Vice Chancellor Reid (at p. 952)*, speaking of the Ne Exeat Bond said:

"Now the ne exeat bond is *not that he will pay,* but it is that he shall render himself amenable to the process of the court which may issue to compel him to pay, * * * I think it sufficiently appears that *the defendant left the state* for the purpose of avoiding service, or, if served, refused to appear in response to the rule to show cause, and purposely kept himself beyond the reach of this court, and *so did not render himself amenable to its process.*"

In the *Elliott case, supra* the court held, among other things, that the condition in the ne exeat bond was breached because the defendant abandoned the state.

A BOND UNDER RULE 216 HAS ALWAYS BEEN REGARDED AS A MERE APPEARANCE BOND.

In the case of *Wauters* v. *Van Vorst,* 28 N. J. E., 103, 106, 107, the court distinguished a mere appearance bond with one to appear and *"answer."* It considered *Chancery Rule 216* (then Rule 187) and held that the phrase *"amenable to"* should have been used instead of the word *"answer"* to create a mere appearance bond. Then the court said (at p. 207):

"The defendant in this case appears, by the evidence, to have come to an account with the complainants in the cause pending the suit, and the result was a *Final Decree* for an amount fixed by consent as the amount due

from him on such account. *He has tendered himself amenable to any order which may be made in the cause. It does not appear that he has as yet failed to appear when required to answer any order in the cause. When he does so the bond will be forfeited. Until then, it will not.* The petition will be dismissed, but without costs."

In this case the petitioner contended that the condition of the bond was broken because the defendant failed to pay the pecuniary amount provided for in the Fnal Decree which he was ordered to pay.

No forfeiture can be declared of the bond in question unless the defendant principal becomes a fugitive and thereby unamenable to the orders and decree of the court.

The celebrated case of *Schreiber* v. *Schreiber,* 85 N. J. E., 303; 96 A., 85; aff. 86 N. J. E., 437; 99 A., 117, seems to confirm the above. The court below said:

> "The ne exeat bond simply insures a certain course of conduct by the defendant, the principal of the bond, *with reference to the jurisdiction of the court over his person,* and if this conduct is not pursued there is a breach in forfeiture and the principal and surety are alike liable on the Bond."

The court in the *Schreiber case, supra,* ordered the Bond forfeited and the penalty of the Bond paid into court for no reason other than the fact that the defendant fled from the jurisdiction of the court and was a fugitive from justice. Vice Chancellor Fallon who appeared in that case in the Appellate Court, has a copy of the printed state of

case and it appears in the petition to forfeit the Ne Exeat Bond in the state of case of the *Schreiber case,* paragraph 5, as follows:

> "That the said defendant Charles Schreiber failed to appear at the time and place mentioned in said order, etc."

and that therefore, the condition contained in the Ne Exeat Bond was broken, he not being amenable to the orders or process of the court.

A *RULE BOND* UNDER THE *CHANCERY RULE 216* WAS AGAIN CONSTRUED BY VICE CHANCELLOR BACKES IN *GASTEIGER* V. *GASTEIGER,* 136 A., 497 (not yet officially reported).

The defendant applied, among other things, to set aside the writ of ne exeat or discharge the bail. While the petitioner moved to have the defendant adjudged in contempt of court for being in the *arrears for alimony.* The court found that the defendant had contemmed the order of the court and said (at p. 498):

> "If he fails to submit to the writ committing him for his contempt, proceedings then may be taken to forfeit the bond, which will be breached, according to its condition, *upon his failure to render himself amenable to such process* as shall be issued to compel the performance of the final decree."

POINT 4.

The court erred in holding that the ne exeat bond is still in full force and effect although there is a final decree for maintenance which required the defendant, George Foote, to furnish another bond in the sum of $1,000.00

The court should have ordered the bond cancelled and should have dismissed the petition on rule to show cause to forfeit the ne exeat bond, because it had expired by operation of law.

A NE EXEAT BOND UNDER *CHANCERY RULE 216* LAPSES AFTER REASONABLE TIME FROM THE SIGNING OF THE FINAL DECREE.

The court in *People* v. *Sochet,* 72 Colo., 531, 212 Pac., 832, 834, while considering the liability of a surety under a ne exeat bond, which contained a condition similar to the one provided for in *Rule 216 of our Chancery Rules* held that the ne exeat bond is effective only during the pendency of the action and a reasonable time thereafter for enforcing final judgment, the court said:

> "The provision that he would render himself amenable to the orders and processes of the court must be construed as applying only to orders and processes entered and issued prior to final judgment. The provision that he would render himself amenable 'to such processes as shall be issued to compel the performance of the final decree' must be construed as extending only to such time after the entry thereof as would enable plaintiff, proceeding

> with reasonable diligence, to procure its enforcement."
>
> "All these things the defendant did. He remained within the jurisdiction until final judgment. He made payments exceeding those required prior to final judgment. He remained 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 enter."

To the same effect as the *Colorado case,* we have the famous *Maryland case* cited below holding likewise that the life of a ne exeat bond dies after a reasonable time after the signing of the final decree.

The full opinion in *Johnson* v. *Clendenin,* 5 Gill & Johnson's Reports, 463 (Md.), cited with approval in *Dunsmore* v. *Bankers' Surety Co.,* 206 Mass., 23, 91 N. E., 907, 908, and also in *Griswold* v. *Hazard,* 141 U. S., 260, the court said:

> "This is an appeal from an order of Harford County Court, acting as a court of equity, by which the bond of the appellees was ordered to be cancelled so far as related to them, in their capacity of sureties, for a certain Nathan Walton, who had been taken under a writ of ne exeat, issued against him, in a suit of the appellant against him in said court. By the final decree of the court in the said cause, the defendant, Walton, was ordered to bring into court the sum of money therein mentioned, on or before a certain time specified in said decree."
>
> "Walton having failed to comply with this judicial mandate of the court, process of at-

tachment was issued against him, by virtue of which he arrested, brought into court, and on the application of the complainant, committed by the order of the court to the custody of the sheriff, to be safely kept till he complied with said decree. *While in the custody of the sheriff, he effected his escape from imprisonment,* and the question which this case presents for adjudication is, whether the decree of Harford County Court was correct, according to the principles of equity in discharging the sureties from their responsibility, under the above circumstances? To determine this question, it is only necessary to consider, *what is the object and design of the writ of ne exeat,* as used by courts of chancery in the exercise of their equity jurisdiction. It is to *hold the party amenable to justice,* and to render him *personally* responsible *for the performance of their orders and decrees.* The obligations devolved upon the sureties entering into the bond, bear a close resemblance to the duties and responsibilities of bail, at common law. The bail assume upon themselves the obligation, that their principal shall pay the debt, or be personally amenable to the final process of the court; and *the sureties* in the *ne exeat bond undertake, that the defendant shall be personally responsible for the performance of the orders and decrees of the court. To this extent they become answerable,* and *when this duty has been fulfilled, their engagements, under their bond, are at an end.*"

"That this is a correct view of their responsibility appears from the following case, in 1 Dickens, 95, which is so strikingly similar in all its features, to the present case, that we

think it proper to incorporate the whole of it into this opinion. The case was as follows: 'The plaintiff having sued out a writ of ne exeat regno, against the defendant, he entered into a bond with two sureties, for his not departing the kingdom. The cause was afterwards heard, and there was a decree against the defendant for the same matter, for which the writ of ne exeat issued. The defendant being in contempt, and in custody for not performing the decree, the sureties applied, and obtained an order, that they should be discharged, and the bond, as to them, cancelled.'"

"It is true that in the case referred to, the defendant was in custody for not performing the decree at the time the sureties obtained the order, that they should be discharged, and their bond cancelled, but the principle of the decision shows in the clearest light, the extent of their liability and establishes beyond controversy, that so soon as the defendant is in custody under the final decree, their bond has performed its office, and their responsibility under it is at an end. If such be the legal effect and operation of the commitment of the defendant to the custody of the sheriff, for a contempt in not performing the decree, it is conceived that his sureties are not responsible for his subsequent escape from the sheriff, who is an officer of the law, and whose duty it was to keep him in confinement."

"We therefore think, that the decision of the court in this case was correct, and that the order appealed from ought to be affirmed."

The case of *Ksiazek* v. *Ksiazek,* 89 N. J. E., 139, 104 A., 315, supports the view although by way of dictum seems to be in conflict with the above case.

COURTS OF EQUITY AS WELL AS OF LAW STRICTLY CONSTRUE NE EXEAT BONDS.

Vice Chancellor Backes in *Penny* v. *Penny,* 88 N. J. E., 160, 102 A., 257 at page 258 describes the ne exeat bond as follows:

> "The surety's undertaking was that if the petitioner sustained her charges of extreme cruelty, as laid in the original petition and thereon a divorce was granted with permanent alimony as an incident, he would respond if the *defendant failed to submit himself to proceedings* to enforce the decree and there his engagement ended."

Conclusion.

For the reasons herein stated the petition and rule to show cause should have been dismissed and the bond should have been held to be a mere appearance bond with the right of the surety to surrender the principal before breach.

WHEREFORE it is urged that the order appealed from should be reversed, and set aside.

ANTHONY P. LAPORTA,
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Frank J. Bartletta, Surety
Appellant.