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Notice of Argument.

New Jersey Court of Errors and Appeals

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Between 10  
DORA EITNER,  
Complainant-Appellee,  
  
and  
  
ALFRED EITNER,  
Defendant-Appellant. } On Appeal.  
Notice of  
Argument.

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To: HERBERT ELINS, ESQ., Solicitor for Dora Eitner; JOHN CLANCY, ESQ., and PHILLIP J. SCHOTLAND, ESQ. 20

Sir:

PLEASE TAKE NOTICE of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals to be held at the State House, City of Trenton, State of New Jersey, on the third Tuesday of May, 1931, at ten o'clock in the forenoon, or as soon thereafter as the said court can attend to the same. 30

Sat below: Vice Chancellor JOHN H. BACKES.

Dated: Newark, N. J.  
May 12th, 1931.

RICHARD H. CASHION,  
Substituted Solicitor for  
Defendant-Appellant 40

**Substitution of Solicitor.**

IN CHANCERY OF NEW JERSEY.

10	Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	}	On Bill, &c. Substitution of Solicitor.
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20 I hereby consent to the substitution of Richard H. Cashion as solicitor for and of counsel with the defendant in the above cause in my place and stead.

May 6, 1931.

LOUIS AUERBACHER, JR.

I hereby consent to the above substitution.

RICHARD H. CASHION.

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## Order.

## IN CHANCERY OF NEW JERSEY.

Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	}	On Bill, &c. Order.	10
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This matter being opened to the Court by Eugene Blankenhorn, of counsel with complainant, and in the presence of Michael J. Tansey, of counsel with defendant, 20

And the Honorable John P. Manning, Esquire, Special Master in Chancery, having filed his report in this cause on or about May 23, 1928, made pursuant to the order made herein April 19, 1928, from which it now appears to the Court that the said defendant has received as interest on the mortgages mentioned in the order made in this cause on March 13, 1928, from November 16, 1927, which is the date of the filing of the bill in this cause, up to and including March 13, 1928, the sum of Twelve Hundred and Seventy Dollars (\$1270.), and that the said defendant has received, since March 15, 1928, as interest on the mortgages aforesaid, the sum of \$330; 30

It is on this 7th day of November, 1928, ORDERED that the said Alfred Eitner, the above-named defendant, do pay to the complainant, or to her solicitor, forthwith, one-half of the moneys received 40

*Decree for Alimony and Counsel Fees.*

by him as in said Master's report set out, that is to say the sum of \$800.00.

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,

10 V. C.

**Decree for Alimony and Counsel Fees.**

IN CHANCERY OF NEW JERSEY.

20	Between DORA EITNER, Complainant,  and  ALFRED EITNER, Defendant.	}	On Bill, &c. Decree for Alimony and Counsel Fees.
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30 This matter being opened to the Court by Eugene Blankenhorn, of counsel with complainant, and in the presence of Michael J. Tansey, of counsel with defendant,

40 And upon reading and filing the report of John P. Manning, Esquire, Special Master in Chancery of New Jersey, made pursuant to the order made herein on June 20, 1928, whereby it was referred to the said Special Master to ascertain and report what is a reasonable sum that the defendant should be required to pay to the complainant for her support and maintenance, and the support and main-

*Decree for Alimony and Counsel Fees.*

tenance of her daughter, and what surety the defendant should be required to give, and what reasonable sum the defendant should be required to pay to the complainant's solicitor as and for counsel fees;

And considering the exceptions to the said report taken and filed on behalf of said defendant, and upon hearing the arguments of counsel for the complainant and counsel for the defendant thereon;

It is on this 7th day of November, 1928, ORDERED, ADJUDGED and DECREED that the exception to the award of the Master that the sum of \$6,000. a year be allowed for the maintenance and support of complainant, and that this said sum of \$6,000. be paid in weekly installments of \$115.37 each week, be, and the same hereby is, overruled;

And it is further ORDERED that the report of the Master that the sum of \$10. per week be allowed toward the maintenance and support of Constance Eitner, the daughter of said complainant and defendant, be, and the same hereby is, disallowed;

And it is further ORDERED that the report of the Master that the sum of \$2500. be allowed to the complainant as counsel fee in this cause and which said sum is to be paid by said defendant, be, and the same hereby is disallowed;

And it is further ORDERED, ADJUDGED and DECREED that the said defendant Alfred Eitner do pay to the complainant Dora Eitner, or to her solicitor, the annual sum of \$6,000., payable in equal weekly instalments of \$115.37 on the first day of each and every week, commencing on the twentieth day of June, 1928;

And it is further ORDERED, ADJUDGED and DECREED that the said defendant Alfred Eitner pay

*Decree for Alimony and Counsel Fees.*

to the complainant Dora Eitner, or to her solicitor, as counsel fee in this cause the sum of \$1500;

And it is further ORDERED, ADJUDGED and DECREED that the said defendant Alfred Eitner pay to John P. Manning, Special Master in this cause, his costs of both of said references, which are hereby fixed at the sum of \$500;

And it is further ORDERED, ADJUDGED and DECREED that the said allowances hereby made are made instead and in place of alimony *pendente lite* heretofore ordered in this cause, and are to commence from the date of the decree and reference to the Special Master in this cause, to wit, June 20, 1928; and it appearing that the defendant has paid to the complainant the sum of \$100. per month under the order for alimony *pendente lite* heretofore made in this cause, and that there is due to the complainant for alimony from the said date up to the date of this decree at the rate fixed by this decree, after deducting the aforesaid sum of \$100. per month, the sum of \$1938.16.

It is, therefore, ORDERED, ADJUDGED and DECREED that within ten days after service of this decree upon him, or his solicitor, the said defendant do pay to the said complainant, or to her solicitor, the sum of \$1938.16 as and for arrears of alimony;

And it is further ORDERED, ADJUDGED and DECREED that a copy of this decree be served forthwith upon the defendant, or his solicitor, within five days from the date hereof;

And it is further ORDERED, ADJUDGED and DECREED that the said defendant do pay to the complainant, or her solicitor, the costs of this suit to be taxed, and also the sum of \$1500., which is here-

*Decree for Alimony and Counsel Fees.*

by adjudged and decreed to be a reasonable counsel fee, for the counsel of the said complainant; and that the said complainant have execution for said costs and counsel fee according to the practice of this Court;

And it is further ORDERED, ADJUDGED and DECREED that either party have the liberty to apply, upon a future change of the circumstances of the parties, for a variance or modification of this decree, touching said alimony and maintenance, as shall be just and equitable. 10

E. R. WALKER,

C.

Respectfully advised,

JOHN H. BACKES,

V. C.

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**Petition in Contempt.**

IN CHANCERY OF NEW JERSEY.

10	<p>Between</p> <p style="text-align: center;">DORA EITNER, Complainant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">ALFRED EITNER, Defendant.</p>	}	<p>On Bill, &amp;c.</p> <p>Petition in Contempt.</p>
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*To His Honor, Edwin Robert Walker,  
Chancellor of the State of New Jersey:*

20 Your petitioner, Dora Eitner, respectfully shows  
your Honor:

1. On the 7th day of November, 1928, a Decree  
was made by this Court in the above-entitled  
cause, directing the defendant, Alfred Eitner, to  
pay to your petitioner, or to her solicitor, the an-  
nual sum of \$6,000., payable in equal weekly in-  
stalments of \$115.37 on the first day of each and  
every week, commencing on the 20th day of June,  
30 1928, for your petitioner's support and mainten-  
ance; that he pay to your petitioner, or to her so-  
licitor, as counsel fee in this cause, the sum of  
\$1500, and to John P. Manning, Special Master in  
this cause, the sum of \$500. as costs of two refer-  
ences made to said Special Master.

2. Said Decree further ordered that, within ten  
days after service of said Decree upon defendant  
or his solicitor, said defendant do pay to your pe-  
titioner, or to her solicitor, the sum of \$1938.19  
40 as and for arrears of alimony, from January 24,

*Petition in Contempt.*

1928, the date of the order for alimony *pendente lite* heretofore made in this cause, to November 7th, 1928, the date of the above Decree.

3. By another Order of this Court made on the above date, said defendant was ordered to pay to your petitioner, or to her solicitor, forthwith, one-half of the moneys received by defendant, as set forth in the report of the Special Master in this cause, filed on or about May 23, 1928, that is to say, the sum of \$800. 10

4. Said Decree and Order were served upon defendant, Alfred Eitner, personally on November 9, 1928, as more fully appears by the affidavit of service hereto annexed.

5. Your petitioner shows that under the terms of said Decree there are now due and owing to petitioner the sum of \$346.11, the amount of alimony for three weeks since November 7, 1928, at \$115.37 a week, and the further sum of \$1,938.16 as and for arrears of alimony, making a total of \$2284.27; that there is further due and owing to Merritt Lane, Esq., solicitor for petitioner, under said Decree, the sum of \$1500, and to John P. Manning, Special Master in this cause, the sum of \$500; that under the terms of the above-mentioned Order there is further due and owing to petitioner the sum of \$800. No part of said sums have been paid, but defendant has wholly failed and neglected to pay said sums, as directed by said Decree and Order aforesaid. 20 30

6. Your petitioner therefore prays that the said Alfred Eitner may be adjudged guilty of contempt of this Court and be punished therefor, and that your petitioner may have such other and further relief as may be proper in the premises.

MERRITT LANE, 40  
Solicitor for Petitioner.

**Affidavits Attached to Petition.**

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

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

I am the petitioner named in the foregoing petition. I have personal knowledge of the matters  
 10 and things therein set forth, and they are true.

DORA EITNER.

Subscribed and sworn to before me  
 this 3rd day of December, 1928.

Elizabeth A. Coons,  
 Notary Public of  
 New Jersey

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

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

I am of counsel with the petitioner named in the foregoing petition. No part of the sum of \$1500. which Alfred Eitner was ordered to pay to Merritt Lane, Esq, solicitor for petitioner, by the order set  
 30 forth in said petition, has ever been paid; and the whole sum of \$1500. is still due and owing to Mer-

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*Affidavits Attached to Petition.*

ritt Lane, Esq., solicitor for said petitioner, under the terms of said Order.

EUGENE BLANKENHORN.

Sworn and Subscribed to before me  
this 27th day of November, 1928.

Elizabeth A. Coons,  
Notary Public  
of New Jersey.

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

John P. Manning, of full age, being duly sworn according to law, on his oath deposes and says:

I am the Special Master named in the foregoing petition. I have received no part of the sum of \$500. which Alfred Eitner, the defendant in said petition, was ordered to pay to me by Decree of the Court made November 7, 1928; and the whole of said sum of \$500 is now due and owing to me under the terms of said Decree.

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JOHN P. MANNING.

Sworn and Subscribed to before me  
this 27th day of November, 1928.

Ruth W. Garvin,  
nee Ruth E. Whiteley,  
Notary Public of New Jersey.

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*Affidavits Attached to Petition.*

## IN CHANCERY OF NEW JERSEY.

10	Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	}	Affidavit of Service.
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State of New Jersey, }  
 County of Essex,    } <sup>ss.</sup> :

20 Eugene F. Frey, of full age, being duly sworn according to law, on his oath deposes and says:

On Friday, November 9, 1928, I served copies of the Decree for Alimony and counsel fees and of an Order, both dated November 7, 1928, in the above-entitled cause, upon the defendant, Alfred Eitner, by handing the same to him personally at his usual place of business, at 152 Fleming Avenue, Newark, N. J.

EUGENE F. FREY.

30 Sworn and Subscribed to before me  
 this 26th day of November, 1928.

Elizabeth A. Coons,  
 Notary Public  
 of New Jersey.

**Order to Show Cause.**

IN CHANCERY OF NEW JERSEY.

<p>Between</p> <p style="padding-left: 40px;">DORA EITNER,</p> <p style="padding-left: 80px;">Petitioner,</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">ALFRED EITNER,</p> <p style="padding-left: 80px;">Defendant.</p>	}	<p>On</p> <p>Petition, &amp;c.</p> <p>Order to</p> <p>Show Cause.</p>	10
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This matter being opened to the Court by Merritt Lane, of counsel with the petitioner, and upon reading and filing the verified petition of petitioner;

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It is, on this 6th day of December, 1928, ORDERED, that the defendant, Alfred Eitner, show cause before the Chancellor at Chancery Chambers in the City of Newark, on Tuesday the 11th day of December, 1928, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why an order should not be made adjudging him guilty of contempt of this court for his failure to comply with an Decree and Order of this Court, dated November 7th, 1928, directing him to pay alimony and support for his wife, and further ordering him to pay counsel fees and Master's fees, and why he should not be punished for said contempt, and why petitioner should not have such other and further relief as may be proper; and

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It is further ORDERED, that a copy of this order, together with a copy of the petition and affidavits, neither of which need be certified, be served upon

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*Affidavit of Dora Eitner.*

the said defendant, Alfred Eitner, within two days of the date hereof.

E. R. WALKER,  
C.

Respectfully advised,

ALONZO CHURCH,

V. C.

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**Affidavit of Dora Eitner.**

IN CHANCERY OF NEW JERSEY.

20	Between DORA EITNER, Complainant,  and  ALFRED EITNER, Defendant.	}	On Bill, &c. On Petition to Adjudge Defendant in Contempt.  Affidavit.
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30 State of New Jersey, }  
 County of Essex, } ss.:

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

I am the petitioner in the above entitled cause. On or about the 26th day of January 1929, I made a further affidavit upon the petition to adjudge the defendant in contempt.

40 I have received no further moneys either on account of the arrearages of alimony or on account of the payments of interest upon mortgages held

*Affidavit of Dora Eitner.*

by me and the defendant since the making of the previous affidavit, and I have been informed and verily believe that neither Merritt Lane, my solicitor, or John P. Manning, Special Master in this cause, have received any part of the allowances directed to be paid to them by the decree of this Court made on or about November 7, 1928. 10

Although the defendant has not made the payments required to be made by the decree of November 7, 1928, I know that he has sufficient funds with which to pay the same. I was informed that he was still visiting one Gertrude Wright, who was formerly a housekeeper for the defendant, and one of the witnesses who testified in his behalf upon the trial of the main cause. I was further informed that she maintained an apartment at 153 Milford Ave., Newark, N. J., and that he had given the said Gertrude Wright a Christmas present of \$100. and a diamond ring, and that she had also a further check of \$150. from the defendant, and I was also informed that the defendant and the said Gertrude Wright were at the Shelbourne Hotel for the week-end about the middle of January 1929. 20

On Wednesday, February 6, accompanied by my daughter Constance and a friend of hers, and one Russo, a member of the Newark Police Department, I went to the apartment of the said Gertrude Wright at about 8:45 P. M. The apartment is on the third floor of the building. When we got to the apartment no lights were burning, and my daughter knocked at the door and asked to be admitted, saying that she wanted to see her father, the defendant. There was no response and, after repeated efforts to secure admittance, my daughter pushed upon the door and I went into the room 30  
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*Affidavit of Dora Eitner.*

with my daughter, the police officer and the other gentleman who was present. Immediately before we entered the room, a light was turned on in another room in the apartment. This I know because I saw the light under the door of that room. When we got into the room I saw the defendant in his underclothes attempting to put on his trousers, and the said Gertrude Wright was also in her chemise. I asked the defendant what he was doing there. He refused to answer, and I charged the defendant at that time with having given the said Gertrude Wright a diamond ring and money at various times, and I charged him with maintaining the apartment for himself and the said Gertrude Wright, and I also charged him with having been there on a number of occasions, and with having stayed there over night, and he refused to deny the statements, but most of the time said nothing. Thereafter I made a complaint in the Police Court and the Family Court.

I verily believe that the defendant has sufficient means to comply with the order of the Court, and I refer more specifically to the report of John P. Manning, Special Master, heretofore filed in this cause. I believe that the defendant is maintaining the apartment occupied by Gertrude Wright at 153 Milford Ave., Newark, N. J., and that he has given her moneys to run the apartment.

DORA EITNER.

Subscribed and sworn to before me  
this 11th day of February, 1929.

Elizabeth A. Coons,  
A Notary Public  
of New Jersey.

**Affidavit of Constance Eitner.**

IN CHANCERY OF NEW JERSEY.

Between

DORA EITNER,  
Complainant,

and

ALFRED EITNER,  
Defendant.

On Bill, &c.

On Petition  
to Adjudge  
Defendant  
in Contempt.

Affidavit.

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

Constance Eitner, being duly sworn according to law on her oath deposes and says:

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I am twenty years of age. On Wednesday, February 6, accompanied by my Mother, a friend of mine and one Russo, a member of the Newark Police Department, I went to the apartment of Gertrude Wright at 153 Milford Ave., Newark, N. J., at about 8:45 P. M. The apartment is on the third floor of the building. When we got to the apartment no lights were burning, and I knocked at the door and asked to be admitted, saying that I wanted to see my father, the defendant. There was no response and, after repeated efforts to secure admittance, I pushed open the door and I went into the room with my Mother, the police officer and the other gentleman who was present. Immediately before we entered the room, a light was turned on in another room in the apartment. This I know because I saw the light under the door of that room. When we got into the room I saw

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*Affidavit of Constance Eitner.*

10 the defendant in his underclothes attempting to put on his trousers, and the said Gertrude Wright was also in her chemise. I heard my Mother ask the defendant what he was doing there. He refused to answer, and my Mother charged the defendant at that time with having given the said Gertrude Wright a diamond ring and money at various times, and my Mother charged him with maintaining the apartment for himself and the said Gertrude Wright, and I heard my Mother also charge him with having been there on a number of occasions, and with having stayed there over night, and he refused to deny the statements, but most of the time said nothing.

CONSTANCE EITNER.

20 Subscribed and sworn to before me  
this 11th day of February, 1929.

Elizabeth A. Coons,  
A Notary Public  
of New Jersey.

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## Order for Writ.

IN CHANCERY OF NEW JERSEY.

Between

DORA EITNER,  
Complainant,

and

ALFRED EITNER,  
Defendant.On  
Application  
for Writ of  
Sequestration.

10

Order  
for Writ.

This matter being opened to the court by John J. Clancy, appearing for Merritt Lane, solicitor for the complainant herein, and it appearing that the defendant Alfred Eitner has been heretofore ordered and decreed to pay a certain sum of alimony for the support and maintenance of the petitioner herein, and it appearing that the said Alfred Eitner has defaulted therein, and that there is due and owing at this time on account of said alimony the total sum of \$4441.14, and it appearing that the said Alfred Eitner is attempting to evade the service of personal process against him and that he is in contempt of this court for his failure to abide by the decrees of this court;

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It is, on this 8th day of August, 1929, ORDERED, that a Writ of Sequestration do issue against the said Alfred Eitner, directed to the Sheriff of the County of Essex, directing him to immediately sequester the said defendant Alfred Eitner's personal estate and the rents, and issues and profits of his real estate, until the said defendant shall pay to the complainant or her solicitor the said sums so due to her and/or that he appear and abide

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*Order for Writ.*

by the orders of this court, and/or that he clear his contempt of this court until the further order of this court.

E. R. WALKER,  
C.

10 Respectfully advised,  
JOHN H. BACKES,  
V. C.

**Order for Warrant.**

Filed Oct. 21, 1929.

## IN CHANCERY OF NEW JERSEY.

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Between

DORA EITNER,  
Complainant,

and

ALFRED EITNER,  
Defendant.

On  
Application  
for a Warrant  
of Com-  
mittment.  
Order for  
Warrant.

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This matter being opened to the court by John J. Clancy for Merritt Lane, of counsel for the complainant, and upon reading and filing the affidavit presented herewith, and it appearing that the defendant, Alfred Eitner was adjudged in contempt of this honorable court for his failure to make payments of alimony as required by a decree of this court, by an order made February 19, 1929, and,

40

It further appearing that said order provided

*Order for Warrant.*

that the said defendant be committed to the Essex County jail or any jail within the state wherever he may be found, and that a warrant issue for that purpose, and

It further appearing that a warrant did issue forthwith and was returned non est inventus; and it further appearing that the said defendant is still in arrears at the present time to the amount of \$5710.21 up to and including Oct. 21, 1929, 10

It is, on this 21st day of October, 1929, ORDERED that the alias Warrant for Commitment do issue, by reason of the foregoing, directed to the Sheriff of the County of Essex, committing the said defendant, Alfred Eitner, to the county jail until such time when he may purge himself of the contempt aforesaid by paying up the arrearages as aforesaid and complying with the orders of this honorable court. 20

And it is further ORDERED that a copy of this order together with the affidavit upon which it is based, neither of which need be certified, be served upon the said defendant together with the Warrant for Commitment.

E. R. WALKER,  
C.

Respectfully advised, 30  
JOHN H. BACKES,  
V. C.



*Order to Show Cause.*

IT IS FURTHER ORDERED that in the meantime and until the further order of this court the said complainant, Dora Eitner, and the Sheriff of the County of Essex be restrained from executing the said warrant for the arrest of the said Alfred Eitner; and

IT IS FURTHER ORDERED that a copy of this order and of the said petition of the said Alfred Eitner be served upon the said Dora Eitner within one day from the date hereof.

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,  
V. C.

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## Affidavit of Alfred Eitner.

D. 66/228.

IN CHANCERY OF NEW JERSEY.

10	Between DORA EITNER, Complainant,  and  ALFRED EITNER, Defendant.	}	On Bill, etc. Affidavit.
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20 State of New Jersey, }  
 County of Essex, } ss.:

Alfred Eitner, being duly sworn on his oath, according to law deposes and says:

1. Pursuant to an order of this court made on the 8th day of August, 1929, a writ of sequestration issued, directed to the Sheriff of the County of Essex.

30 2. In pursuance of said writ, the Sheriff sequestered all my real and personal property so far as I can ascertain, including Nos. 512, 514 and 516 Ferry Street, Newark, New Jersey, and No. 152 Fleming Avenue, Newark, New Jersey. My equity in said properties amounts to the sum of approximately \$16,000.00 subject to the inchoate right of dower of Dora Eitner, my wife.

3. The amount to be satisfied by said writ of sequestration amounted to approximately \$4500.00.

40 4. By direction of this court on Monday, October 21st, 1929, a warrant was issued for my arrest for the reason that I am alleged not to have com-

*Affidavit of Alfred Eitner.*

plied with orders of this court with respect to payment of alimony to the said Dora Eitner, counsel fee to her solicitor and a balance owing to John Manning, Esq., a special master of this court.

5. On the 23rd day of October, 1929, at the office of John Clancy, Esq., and in the presence of the said Dora Eitner, I presented a certified check in the sum of \$5,000.00 in payment of the said moneys claimed to be owing as aforesaid, with a request, however, that the said Dora Eitner agree to release her inchoate right of dower in premises No. 152 Fleming Avenue, Newark, New Jersey, and turn over to me two certain stock certificates, one of shares of capital stock of the Labor National Bank of the City of Newark, New Jersey, and one for shares of capital stock of the Irvington Trust Company of Irvington, New Jersey. I had borrowed the said sum of \$5,000.00 on condition that the lender would receive a warranty deed for the said premises No. 152 Fleming Avenue, Newark, New Jersey, and the said stock certificates to hold as collateral security.

6. The said Dora Eitner and her said solicitor, John Clancy, Esq., refused to accept the said \$5,000.00 on the said condition.

7. It is absolutely impossible for me to raise moneys with which to pay the said sums claimed to be due unless the said stock certificates are returned to me. The said certificates are owned by me and stand in my name. They were in a safe belonging to me and without my knowledge, during the month of May, 1929, the said Dora Eitner broke into the said safe and seized the said stock certificates, together with jewelry and other personal property belonging to me.

*Affidavit of Alfred Eitner.*

8. I have frequently requested the said Dora Eitner to return the said personal property, including the said stock certificates, but she refuses to do so.

10 9. I have endeavored to dispose of said properties but cannot do so without the signature of the said Dora Eitner, and the said Dora Eitner refuses to release her inchoate right of dower for this purpose.

20 10. The said Dora Eitner and I are parties complainant in a foreclosure suit instituted against Michael J. Tansey for the foreclosure of a certain mortgage in the sum of \$4,000.00. A final hearing was held before Vice-Chancellor Berry on Monday, October 21st, 1929, and the said Vice-Chancellor Berry directed that there be paid to complainants the sum of approximately \$3500.00. The said Michael J. Tansey has stated that he will pay the said decree within a few days. The said Dora Eitner will receive thereupon for her claim of the said mortgage moneys, the sum of approximately \$1900.00. I have offered to said Dora Eitner my share of the said moneys amounting to approximately \$1600.00 to apply on account of said alimony and counsel fees.

30 11. The said Dora Eitner has ample means of her own and has received large sums of money from me. Since January 31st, 1928 to date, the said Dora Eitner has received alimony payments from me in the sum of \$4773.00. During the year 1928 the said Dora Eitner has received about \$2500.00 being one half of the principal amount of the mortgage of one Henry Meyer. During the year 1928 I gave the said Dora Eitner the sum of \$6500.00 which was received in payment of principal of mortgage of one Osmus. I told the said

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*Affidavit of Alfred Eitner.*

Dora Eitner to place this money on a bond and mortgage. She took the money and had the bond and mortgage made out in her own name and when the said principal sum of \$6500.00 was paid off, she kept the entire proceeds herself. The said Dora Eitner has a mortgage on premises of Daniel Eitner at Union, New Jersey in the sum of \$3,000.00. 10

12. The said Dora Eitner has a Packard straight eight automobile which is registered in the name of the daughter, Constance, but which said automobile belongs to the said Dora Eitner.

13. The said Dora Eitner seized all the household furnishings which were at #44 Courter Avenue, Maplewood, New Jersey, which she has kept. The said household furnishings are worth approximately \$10,000.00. 20

14. The said Dora Eitner has jewelry which was given to her by me worth over \$8,000.00. She also has a very elaborate wardrobe worth about \$3,000.00.

15. In April, 1929, I transferred premises #44 Courter Avenue, Maplewood, New Jersey to the said Dora Eitner. The title to the said premises was in my name. Said premises are worth about \$30,000.00. 30

16. At that time the said Dora Eitner transferred to me what she claimed to be her interest in certain first and second mortgages, the principal sum of which was about \$30,000.00 many of which are uncollectible. In transferring the title to the said premises to the said Dora Eitner it was agreed that the alimony payments were to be reduced from the sum of \$115.00 a week to the sum of \$62.50 a week. The said Dora Eitner has represented to this court that I am in contempt of this 40

*Affidavit of Alfred Eitner.*

court for the reason that I have not paid the sum of \$115.00 a week.

17. The title to certain premises located on Franklin Terrace, Newark, New Jersey, worth about \$12,000.00 is an estate by the entirety in the name of the said Dora Eitner and myself. The  
10 said Dora Eitner claims that her interest therein is one half, that is to say, \$6,000.00.

18. The said Dora Eitner seized certain life insurance policies of mine this year and has cancelled the said policies and received thereon the sum of \$170.00 on one and \$345.00 on another.

19. The said Dora Eitner, for the past few years, has been in the business of selling fur coats and has earned approximately on the average of  
20 \$50.00 a week at this business.

20. On the other hand, my financial condition has become worse and worse. I had to borrow large sums of money in order to make alimony payments to the said Dora Eitner and the constant publicity attendant upon the efforts of the said Dora Eitner to place me in jail has resulted in ruining my credit and financial standing.

21. The premises Nos. 512, 514 and 516 Ferry Street, Newark, New Jersey and Nos. 152 Fleming Avenue, Newark, New Jersey, are in my name.  
30 The said premises are free and clear of all encumbrances with the exception of taxes and assessments now due and amounting to the sum of approximately \$3100.00. The equity in said premises is approximately \$16,000.00 less the said taxes and assessments.

22. In January, 1929, a judgment was recovered against me and I was compelled to pay in cash,  
40 to satisfy said judgment, the sum of \$11,666.22.

*Affidavit of Alfred Eitner.*

23. My coal and ice business was sold by the Sheriff of Essex County to one Joseph Petty. The said Joseph Petty then formed a corporation known as Al. Eitner, Inc., the purpose of which was to continue the business with me identified with it so as to retain whatever good will there had been in the business.

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24. My share in the business is inconsequential except that for my services I am drawing the sum of \$40.00 a week.

25. The liabilities of the said business are \$5,000.00. The business equipment, etc., are worth about \$2,000.00. There are accounts receivable of about \$900.00. Of moneys collected by the corporation of accounts receivable, some \$6,000.00 were invested in mortgages to be used as collateral when the corporation needed money or credit from coal companies.

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26. At the present time, I reside with my son at Union, New Jersey.

27. I have in my own name at the present time, mortgages aggregating about \$60,000 of which approximately \$20,000. is practically uncollectible. There are mortgages of the principal sum of \$43,500.00 standing in the name of the said Dora Eitner and myself.

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28. As to the income on real estate, there is a yearly rental of \$1800.00 on the premises Nos. 512, 514 and 516 Ferry Street, Newark, New Jersey. The taxes amount to approximately \$900.00 a year and repairs, depreciation, etc., about \$600.00 a year.

29. There is a rental paid on premises No. 152 Fleming Avenue, Newark, New Jersey, of \$55.00 a month, or \$660.00 a year. The taxes amount to

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*Affidavit of Alfred Eitner.*

\$170.00 a year and repairs, depreciation, etc., to about \$250.00 a year.

10 30. I have \$1,000.00 in bonds of the Steuben Holding Company on which I have borrowed the sum of \$700.00. I have debts of \$21,400.00 in addition to the said taxes and assessments due as aforesaid and alimony claimed to be due, amounting to \$5500.00.

20 31. As stated hereinabove, the said Dora Eitner in the month of May, 1929, broke into my safe and seized among other things, the following: 1 diamond ring, diamond pin, watch, Elks buttons and jewelry belonging to my mother, all worth about \$2,000.00; Liberty Bonds worth about \$900.00 and two bank stock certificates worth approximately \$9000.00 altogether. Therefore, as far as I can ascertain, the said Dora Eitner has property which she owns or claims to own, aggregating approximately \$100,000.00 made up as follows:

	Premises #44 Courter Avenue, Maplewood, N. J.	\$30,000.00
	Household furnishings at premises #44 Courter Avenue, Maplewood, New Jersey	10,000.00
	Jewelry	8,000.00
30	Wardrobe	3,000.00
	Mortgage on premises Union, New Jersey	3,000.00
	Claim to one half premises Franklin Terrace, Newark, New Jersey	6,000.00
	Packard automobile	1,500.00
	Claim to one half proceeds to Michael J. Tansey mortgage, premises Belmont Avenue, Newark, New Jersey	2,000.00
40	Claim to one half interest in bonds and mortgages	21,750.00

*Affidavit of Alfred Eitner.*

Alimony payments claimed to date	3,700.00
Proceeds of mortgage moneys received from one Osmus	6,500.00
One half proceeds of Meyer mortgage	\$2,500.00

32. I have property and property rights as follows:

Bonds and mortgages	\$40,000.00	10
Real estate as hereinabove set forth (Subject to inchoate dower right)	16,000.00	
Equity in Steuben Holding Company bonds	300.00	
Liberty bonds	900.00	
Bank stock	9,000.00	
Jewelry	2,000.00	
Interest Franklin Terrace property \$12,000.00 of which the said Dora Eitner claims one half	6,000.00	20
Mortgages of \$43,500.00 1/2 claimed by the said Dora Eitner	21,750.00	

33. I owe the following:

Unpaid taxes and assessments	\$ 3,100.00
Notes and other debts and obligations	21,000.00
Alimony payments, counsel fees, etc., claimed to be due by the said Dora Eitner	5,500.00

34. According to the above I therefore have a net worth of \$65,950.00. However, the said Dora Eitner has not permitted me to raise the money which is claimed to be due now for alimony and counsel fees. She refuses to turn over the said Liberty Bonds, stock certificates and jewelry to me. She refuses to release her inchoate right of dower in the said real estate so that the property can be sold, pledged, mortgaged or otherwise disposed of in order to raise cash.

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*Affidavit of Alfred Eitner.*

35. As to the mortgages, I am making every effort to collect those which are due.

36. The statements hereinabove set forth by me as to the property rights claimed by the said Dora Eitner, I wish to state that many of these claims, particularly as to mortgages, are in dispute between me and the said Dora Eitner and I will shortly file a bill for an accounting in this court in order to properly ascertain what rights the said Dora Eitner may have therein.

37. My present income is \$40.00 a week received from Al. Eitner, Inc., and net income from mortgages amounting to approximately \$30.00 a week, which makes a total of about \$70.00 a week.

38. I am willing to make every possible effort to do what is fair and just in this matter. However, I believe that the efforts of my wife, the said Dora Eitner, are directed to ruin me financially for she said repeatedly, and even said last night at the premises on Ferry Street, Newark, New Jersey, "I am going to break Mr. Eitner financially. I am going to get every dollar he has and drive him in the gutter."

ALFRED EITNER.

Sworn and subscribed to before me  
this 28th day of October, 1929.

G. Billie Ferguson,  
A Notary Public  
(Seal) of New Jersey.

## Affidavit of Dora Eitner.

IN CHANCERY OF NEW JERSEY.

Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	}	On Bill, &c.      10 Affidavit.
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State of New Jersey, }  
 County of Essex,     } ss. :

Dora Eitner, of full age, being duly sworn according to law on her oath deposes and says: 20

I am the complainant in the above entitled cause. I have read the affidavit of Alfred Eitner dated October 28, 1929, which was served upon my solicitor last night.

I deny as alleged in the affidavit of Alfred Eitner that it is impossible for him to raise money with which to pay the sums which are due unless the stock certificates are returned to him. I deny that said Alfred Eitner has attempted to dispose 30 of his real property and that I have refused to execute a deed for the various properties. Last Monday, October 21st, was the first time I was ever approached to join in a deed for a piece of real estate on Flemming Avenue., Newark. I deny that the said Alfred Eitner has offered me his share of the moneys due under a foreclosure decree about to be entered. I deny that I have ample means of my own to support myself. The said Alfred Eitner has failed to comply with the orders of this 40

*Affidavit of Dora Eitner.*

Court and has not made the payment required by the various orders of this Court for my support and maintenance. Included in the payments alleged to have been made by the said Alfred Eitner, there was included a note of \$1,000. which was discounted at the Irvington Trust Company. Alfred Eitner agreed to pay this note at maturity, but he has failed and neglected to do so, and a judgment was entered and execution issued, and a levy made upon my household effects, and the Sheriff threatens to sell them unless the judgment is met. The judgment was entered against Alfred Eitner as well as against me, and he refuses to make any effort to pay the judgment, although he refused to meet the note at maturity, and although the note was given to be discounted on account of the payment of alimony.

With respect to the \$6500. alleged to have been given to me by Alfred Eitner, I received of this sum only \$5800., and was obliged to pay out of this \$2,000. on account of a note for an automobile which the said Alfred Eitner purchased for me, but which note he agreed to pay.

I deny as alleged in paragraph 12 that I am the owner of a Packard Straight Eight automobile. This automobile belongs to my daughter, Constance. I deny that the household furnishings in 44 Courter Ave., Maplewood, N. J., are worth approximately \$10,000. All the furnishings in the household have been in use for a number of years, and they were purchased by me with moneys of my own. I deny that I have a very elaborate wardrobe worth about \$3,000. I deny that the premises at 44 Courter Ave., Maplewood, N. J., are worth \$30,000., and allege that they are worth no more than \$22,000. or \$24,000.

*Affidavit of Dora Eitner.*

With respect to the allegations contained in paragraph 16, I agreed at the time I transferred my interest in said mortgages, the principal sum of which was about \$30,000., to consent to the payment of \$62.50 per week as alimony for a period of six months provided that the payments were made regularly on Monday of each and every week, and provided that the note for \$1,000. which had been given to me by Mr. Alfred Eitner to discount was met at maturity, and provided the counsel fee of \$1500. allowed to Merritt Lane, my solicitor, was paid, and provided further that the allowance of \$500. heretofore made herein to John P. Manning, Esquire, the Special Master, to whom this matter was referred, was paid. None of these things has been done. 10

I deny that the premises on Franklin Terrace in Newark are worth \$12,000. I endeavored to secure a purchaser for said property, but was unable to get an offer of \$9,000. for it. It is true that I received \$170. from a cancelled life insurance policy, but the said Alfred Eitner permitted me to retain this money to apply it on account of arrearages of alimony. 20

I deny that for the past few years I have been in the business of selling fur coats, and deny that I have earned approximately \$50. per week. I have not been engaged in this business for the past two-and-a-half years. Due to the trouble I have had with the said Alfred Eitner, I have been unable to attend to any business, and have had no income of any kind except those payments which were made to me by the said Alfred Eitner. 30

I deny that the constant publicity attendant upon my efforts has resulted in ruining the credit and financial standing of the said Alfred Eitner. 40

*Affidavit of Dora Eitner.*

If the credit and financial standing of the said Alfred Eitner have been impaired, it is the result of his own conduct.

10 I deny the allegation in paragraph 21 that the premises at 514 and 526 Ferry Street, Newark, are in the hands of the defendant. The title of the premises is in my name as well. I deny that the equity in said premises is approximately \$16,000., but state that the equity in the premises described in paragraph 21 is approximately \$30,000.

20 It is true as alleged in paragraph 22 that in January 1929, a judgment was recovered against the said Alfred Eitner and that he was compelled to pay \$11,666.22, to satisfy said judgment, and I assigned my interest in the mortgages, the principal sum of which was approximately \$30,000., so that the said Alfred Eitner might raise sufficient moneys to satisfy said judgment.

30 I do not know whether it is true as alleged in paragraph 23 that the coal and ice business of the said Alfred Eitner was bought at a sheriff's sale by one Joseph Petty. If the said Joseph Petty bought the business for Alfred Eitner and formed a corporation known as Al Eitner, Inc., the formation of the corporation was a subterfuge of the said Alfred Eitner to avoid the payment of the alimony decreed by this Court, and to prevent me from learning of its business. I deny that the said Alfred Eitner's share is inconsequential, but charge that he is the controlling factor in the business, and that he directs all its operations, and retains all its moneys, and I am informed and verily believe that there is at the present time in the Irvington Trust Co. to the credit of Al Eitner, Inc., the sum of \$7,000., approximately \$5600. of which  
40 is a deposit made of the proceeds of a mortgage

*Affidavit of Dora Eitner.*

held by the said Alfred Eitner, individually. I deny as alleged in paragraph 27 that approximately \$27,000. of mortgages are uncollectible. The said Alfred Eitner has appropriated to himself the rents and profits of various real estate standing in both names. He has retained for his own use and interest in the various mortgages, the bonuses received for renewals thereof and has never accounted to me for any of the moneys. 10

I deny that I have property aggregating approximately \$100,000. The premises at 44 Courter Ave., Maplewood, New Jersey, are not worth \$30,000. as alleged in paragraph 31. They are worth no more than \$24,000. Of this I paid approximately \$15,000. by assigning my interest in mortgages to the said Alfred Eitner, and I also paid approximately \$3,000. to repair the said premises which had been sadly in need of repair. The household furnishings are not worth \$10,000., and they have a sale value of approximately \$1500. to \$2500. I have been compelled to put some of my jewelry in pawn and I do not own jewelry worth \$8,000., nor is my wardrobe worth \$3,000. 20

My interest in the Franklin Terrace property at its present price is worth no more than \$4,000. The Packard automobile has only a second-hand or used car value. I note throughout paragraph 31, while the said Alfred Eitner charges that I am worth approximately \$100,000., in the schedule he lists a claim to one-half of the premises on Franklin Terrace, a claim to one-half of the proceeds of the Michael Tansey mortgage, a claim to one-half interest in bonds and mortgages, but does not admit that I own a one-half interest in these various mortgages and properties, but on the other hand, lists my claim as a part of my net worth. 30 40

*Affidavit of Dora Eitner.*

The said Alfred Eitner is worth far in excess of \$65,950., as alleged in paragraph 32. He has mortgages in his own name amounting to \$46,000. and has an interest with me in mortgages aggregating \$67,000., including those which were assigned, so that he now has in his own name mortgages amounting to approximately \$76,000. He is the owner of real estate worth upwards of \$50,000. He was the owner of Liberty Bonds but has since given them to a Mrs. Schaffter and is now the owner of a Packard and Cadillac automobile. He has adequate means and is able to make the payments directed by this Court for my support and maintenance. He is attempting to conceal his assets and induce me to join in various conveyances with him so that he might dispose of his properties. He is able to raise sufficient moneys on the sale of his bank stock alone with which to satisfy the decree and order of this Court. I believe the said Alfred Eitner is attempting to conceal his assets and to avoid the payments of the sums due me, and I believe he does so contemptuously and without regard for the orders of this Court.

I deny that the present income of the said Alfred Eitner is \$40. per week, and that his net income from mortgages amounts to approximately \$30. per week. I deny that my efforts are directed to ruin the said Alfred Eitner financially. I only desire to receive what I am entitled to and what was found to be due me after an exhaustive hearing upon the ability of the defendant to pay, and upon the station in life to which I was accustomed, and in which the said Alfred Eitner and I lived when we were living together. I deny that I threatened to break Mr. Eitner financially and

*Affidavit of Dora Eitner.*

that I was going to get every dollar he had and drive him in the gutter.

DORA EITNER.

Subscribed and sworn to before me  
this 29th day of October, 1929.

Elizabeth A. Coons,  
Notary Public  
of New Jersey.

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**Order.**

D. 66/228.

IN CHANCERY OF NEW JERSEY.

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Between

DORA EITNER,  
Complainant,

and

ALFRED EITNER,  
Defendant.

On Bill, &c.  
Order.

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This matter being opened to the court by Louis Auerbacher, Jr., Esq., solicitor for the defendant, Alfred Eitner, and in the presence of John J. Clancy, Esq., of counsel with the complainant, Dora Eitner, and it appearing that the defendant has paid to the complainant the sum of \$5607.22 being in full payment of all arrearages of alimony claimed to be due from the defendant to the said com-

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*Order.*

10 plainant up to and including October 21st, 1929 and also including the sum of \$1500.00 counsel fee allowed the complainant and including the balance owing John P. Manning, Esq., Special Master, and it appearing further that the defendant has purged himself of his contempt of this court and has satisfied all previous orders and decrees made in this cause,

20 It Is Thereupon on this 30th day of October, 1929, ORDERED that the order for contempt dated February 19, 1929, be vacated and the warrant for commitment issued thereunder be discharged together with alias warrant for commitment made and issued October 21st, 1929, and that the writ of sequestration made herein on or about August 8th, 1929, directed to the Sheriff of the County of Essex, be vacated and set aside and that the moneys collected by the Sheriff of the County of Essex in accordance with the direction of said writ of sequestration be turned over to the said Alfred Eitner, the defendant, or his solicitor.

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,  
30 V. C.

**Petition in Contempt.**

Filed Dec. 17, 1929.

IN CHANCERY OF NEW JERSEY.

D. 66/228.

Between

DORA EITNER,

Complainant,

and

ALFRED EITNER,

Defendant.

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On Bill, &amp;c.

Petition in  
Contempt.

*To His Honor, Edwin Robert Walker,  
Chancellor of the State of New Jersey:*

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Your petitioner, Dora Eitner, respectfully shows unto your Honor:

1. She is the complainant in the above entitled cause.

2. On the 7th day of November, 1928, an order was made by this Court in the above entitled cause directing that the defendant Alfred Eitner do pay to your petitioner the sum of \$6,000. annually, payable in equal weekly instalments, on the first day of each and every week, of \$115.37 as and for your petitioner's support and maintenance.

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3. Almost from the date upon which the order was made, the defendant has been continuously in arrears in making the payments required by said order, and it has been necessary for petitioner on several occasions to bring proceedings to have him adjudged in contempt of this Court for his failure as aforesaid. The last proceeding brought by pe-

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*Petition in Contempt.*

itioner was terminated by an order made by this Court on the 29th day of October, 1929, whereby defendant was required to pay a certain amount which it was agreed between the parties was the amount due as and for said back alimony up to and including Monday, Oct. 21, 1929.

10 4. Since October 29, 1929, the defendant has only made payments aggregating the sum of \$180., so that at the present time up to and including Monday, December 16, 1929, said defendant is in arrears for a period of eight weeks amounting to \$922.97, less the sum of \$180., which has been paid on account as aforesaid, leaving a balance due at this time in the sum of \$742.97.

20 5. Your petitioner shows that on the 29th day of October, there was an order made in this cause on application of the defendant, referring to Hon. Philip J. Schotland, a Special Master of this Court, the cause for the purpose of inquiring into and reporting to the court, with respect to the needs of the petitioner and the ability of defendant to pay for her support and maintenance.

30 6. Your petitioner charges that said application by defendant, is made in bad faith and only for the purpose of delay, and that this is evidenced by his continued failure to make the payments as ordered by this court; your petitioner says that by reason of the aforesaid, defendant is not entitled to proceed on his application before said Special Master, and that said application should be stayed until he has complied with the terms of the order of this Court.

40 Your petitioner therefore prays that the said Alfred Eitner may be adjudged guilty of contempt of this Honorable Court, and be punished therefore; that the application and hearings upon the

*Petition in Contempt.*

reference to the Special Master as aforesaid, be stayed until defendant has made the payments as aforesaid; that your petitioner be allowed a counsel fee upon this application; and that she have such other relief as may be just and proper in the premises.

And your Petitioner will ever pray, &c.

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MERRITT LANE,  
Solicitor for Petitioner.

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

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

I am the petitioner named in the foregoing petition. I have personal knowledge of the matters and things therein set forth and they are true.

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My musband Alfred Eitner is in arrears in the payment of alimony due me at this time in the sum of \$742.97 up to and including Monday, December 16, 1929.

DORA EITNER.

Sworn and subscribed to before me  
this 16th day of December, 1929.

Elizabeth A. Coons,  
Notary Public  
of New Jersey.

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**Order Approving Master's Report.**

IN CHANCERY OF NEW JERSEY.

D. 66/228.

10	Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	} On Bill, etc. } Order } Approving } Master's } Report.
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20 This matter being opened to the Court by Merritt Lane, solicitor for complainant, and in the presence of Louis Auerbacher, Jr., solicitor for and of counsel with the defendant, and it appearing that on October 30, 1929, by an order of this Court it was referred to Philip J. Schotland one of the Special Masters of this Court, on application of the defendant, to examine the complainant with respect to her needs and the defendant with respect to his ability to pay the alimony theretofore ordered by this Court and to

30 hear the same and to report thereon to this Court, and it further appearing that hearings were held before the Special Master during which testimony was taken at great length and that as a result of what was disclosed in the testimony the complainant and the defendant and their solicitors endeavored with the assistance and advice of the Special Master to reach an equitable adjustment between themselves and to so divide and allocate their individual and joint properties and the income

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*Order Approving Master's Report.*

therefrom so that the complainant would receive sufficient money therefrom to properly support and maintain her commensurate with her station in life and with the ability of the defendant to so provide for her, and it further appearing that the parties entered into an agreement on the 31st day of December 1929, and that the said agreement was submitted to the Special Master to whom the matter was referred and that the agreement entered into between the parties is a fair and equitable agreement and does justice to both parties, and the Court having considered the matter; 10

It is, on this 28th day of January, 1930, ORDERED that the report of Philip J. Schotland, the Special Master, which is dated January 6, 1930, be confirmed and that there be allowed to Merritt Lane, solicitor for the complainant, a counsel fee of \$1900.00, to be paid \$1400.00 by complainant and \$500.00 by the defendant as agreed between the parties. 20

It is further ORDERED, that there be paid to Philip J. Schotland, the Special Master to whom the matter was referred, the sum of \$1,000.00 for his services.

E. R. WALKER,  
C. 30

Respectfully advised,  
JOHN H. BACKES,  
V. C.

**Petition in Contempt.**

IN CHANCERY OF NEW JERSEY.

D. 66/228.

10	Between DORA EITNER, Complainant,  and  ALFRED EITNER, Defendant.	}	On Petition to Adjudge Defendant in Contempt.
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20     *To His Honor, Edwin Robert Walker,*  
           *Chancellor of the State of New Jersey:*

Your petitioner Dora Eitner respectfully shows unto your Honor:

1. She is the complainant in the above entitled cause.
2. On the 7th day of November, 1928, an order was made by this Court in the above entitled cause directing that the defendant Alfred Eitner do pay to your petitioner the sum of \$6,000. annually, payable in equal weekly installments on the first day of each and every week of \$115.37 as and for your petitioner's support and maintenance, and it was also provided in said order that there be paid to John P. Manning, Esquire, the Special Master to whom the matter had been referred, the sum of \$500., and in addition that there be paid to Merritt Lane, solicitor of complainant, the sum of \$1,500. as and for a counsel fee.
- 40     3. Almost from the time upon which the order

*Petition in Contempt.*

was made, the defendant has been continuously in arrears in making the payments required by said order, and it has been necessary on a great number of occasions for the petitioner to institute proceedings to have the defendant adjudged in contempt of this Court for his failure to comply with the terms and directions of the order of November 7, 1928. In one of the later proceedings which was terminated by an order made by this Court on the 29th day of October, 1929, defendant was required to pay the arrears of alimony up to and including Monday, October 21, 1929, and defendant also paid the counsel fee and special master fee, as directed by said order of November 7, 1928, which, with the arrearages of alimony, amounted to approximately \$5,600. 10

4. Thereafter and on October 29, 1929, an order was made in this cause on application of defendant referring to Philip J. Schotland, Esquire, a Special Master of this Court, the cause for the purpose of inquiring into and reporting to the Court with respect to the needs of the petitioner and the ability of the defendant to pay the amount required by the order of November 7, 1928, to the petitioner for her support and maintenance. 20

5. A number of hearings were held before the Special Master and testimony was taken as to the ability of the defendant to pay. His financial worth was inquired into, his income from his various real estate holdings and from his mortgages were testified to before the Special Master, and before the hearings were completed there, on the 31st day of December, 1929, petitioner and defendant entered into an agreement which attempted to settle and adjust the matters in dispute between petitioner and defendant, and as part of said 30  
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*Petition in Contempt.*

10 agreement defendant agreed to assign, transfer and set over to petitioner certain bonds and mortgages more particularly enumerated in said agreement, which is attached hereto, and further agreed to convey a piece of property on the northwesterly side of Franklin Street in the Town of Irvington, and agreed further to pay various sums of money  
20 aggregating \$4,262.07, so that petitioner would have an income from the real estate and the mortgages to apply on account of her support and maintenance, and in addition thereto, the defendant agreed to pay to petitioner the sum of \$20. per week for her support and maintenance on the first day of each and every week beginning December 30, 1929, and further agreed to release his inchoate right of courtesy in premises known as No. 44  
30 Courter Ave., Maplewood. Petitioner agreed to grant and convey to the defendant all her right, title and interest in and to certain preprety described in said agreement.

6. The agreement of December 31, 1929, between petitioner and defendant was submitted to the Special Master for his consideration in view of the agreement of the parties, and the matter was considered by the Special Master and a report filed by  
30 him approving and recommending the acceptance by this Court of the agreement made between the parties, and on the 28th day of January, 1930, an order was entered in this cause approving and confirming the report of the Special Master which was dated January 6, 1930, which order provided, in addition, that there be paid to Merritt Lane, solicitor for petitioner, a counsel fee of \$1,900, \$500. of which was to be paid by the defendant and the balance by the petitioner, and that there be paid to  
40 Philip J. Schotland, Esquire, the Special Master,

*Petition in Contempt.*

the sum of \$1,000. for his services. The Master's fee has not been paid, nor has the counsel fee to the solicitor for petitioner.

7. After the entry of the order approving the Master's Report, a time was fixed for settlement of the various matters agreed between petitioner and defendant. At said hearing, the defendant was either unable to, or refused to, produce the bonds and mortgages which were to be assigned to the petitioner in accordance with said agreement and order approving the Master's report, and he refused to pay the sum of \$4,262.07, which he agreed in and by said agreement to pay. He has failed and neglected and has refused, and still refuses, to perform the terms of said agreement or to carry out the provisions of said order made herein on the 28th day of January, 1930, and petitioner has always been ready, and was at the time of said hearing ready, to carry out the agreement and the order of this Court herein referred to. Since December 31, 1929, the defendant has paid to the petitioner the sum of only \$80.00, and, in view of the fact that petitioner has not the income anticipated from the mortgages and the real property which was transferred, assigned and conveyed to her under the terms and directions of the said agreement and order referred to, she has been without the income from that source, except a net rent of \$80., and has been wholly unable to provide for herself and her maintenance out of the sum of \$80., which she received from the defendant since December 31, 1929, or a period of nine weeks.

Petitioner therefore prays that an order may be made adjudging the defendant in contempt for his contumacy in refusing and neglecting to comply with the terms of the order made by this Court on

*Affidavit of Dora Eitner.*

the 28th day of January, 1930, and the terms and directions of the agreement made between the parties on December 31, 1929, and approved by this Court, and that she may have such other and further relief as may be just.

MERRITT LANE,  
Solicitor of Petitioner.

10

**Affidavit of Dora Eitner.**

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

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

20 I am the petitioner in the foregoing petition. I have read the same and it is true.

30 On the 7th day of November, 1928, an order was made by this Court in the above entitled cause directing that my husband Alfred Eitner do pay to me the sum of \$6,000. annually, payable in equal weekly installments on the first day of each and every week of \$115.37 as and for my support and maintenance, and it was also provided in said order that there be paid to John P. Manning, Esquire, the Special Master to whom the matter had been referred, the sum of \$500., and in addition that there be paid to Merritt Lane, solicitor for me, the sum of \$1,500. as and for a counsel fee.

40 Almost from the time upon which the order was made, my husband has been continuously in arrears in making the payments required by said order, and it has been necessary on a great number of occasions for me to institute proceedings to have my husband adjudged in contempt of this Court for his failure to comply with the terms and direc-

*Affidavit of Dora Eitner.*

tions of the order of November 7, 1928. In one of the later proceedings which was terminated by an order made by this Court on the 29th day of October, 1929, my husband was required to pay the arrears of alimony up to and including Monday, October 21, 1929, and my husband also paid the counsel fee and special master fee, as directed by said order of November 7, 1928, which, with the arrearages of alimony, amounted to approximately \$5,600. 10

Thereafter and on October 29, 1929, an order was made in this cause on application of my husband referring to Philip J. Schotland, Esquire, a Special Master of this Court, the cause for the purpose of inquiring into and reporting to the Court with respect to my needs and the ability of my husband to pay the amount required by the order of November 7, 1928, to me for my support and maintenance. 20

A number of hearings were held before the Special Master and testimony was taken as to the ability of my husband to pay. His financial worth was inquired into, his income from his various real estate holdings and from his mortgages were testified to before the Special Master, and before the hearings were completed there, on the 31st day of December, 1929, my husband and I entered into an agreement which attempted to settle and adjust the matters in dispute between us, and as part of said agreement my husband agreed to assign, transfer and set over to me certain bonds and mortgages more particularly enumerated in said agreement, which is attached hereto, and he further agreed to convey a piece of property on the northwesterly side of Franklin Street in the Town of Irvington, and agreed further to pay various sums of money 30 40

*Affidavit of Dora Eitner.*

10 aggregating \$4,262.07, so that I would have an income from the real estate and the mortgages to apply on account of my support and maintenance, and in addition thereto, my husband agreed to pay to me the sum of \$20. per week for my support and maintenance on the first day of each and every week beginning December 30, 1929, and further agreed to release his inchoate right of courtesy in premises known as No. 44 Courter Ave., Maplewood. I agreed to grant and convey to my husband all my right, title and interest in and to certain property described in said agreement.

20 The agreement of December 31, 1929, between my husband and me was submitted to the Special Master for his consideration in view of the agreement between us, and the matter was considered by the Special Master and a report filed by him approving and recommending the acceptance by this Court of our agreement, and on the 28th day of January, 1930, an order was entered in this cause approving and confirming the report of the Special Master which was dated January 6, 1930, which order provided, in addition, that there be paid to Merritt Lane, solicitor for me, a counsel fee of \$1,900., \$500. of which was to be paid by my husband and the balance by me, and that there be paid to Philip J. Schotland, Esquire, the Special Master, the sum of \$1,000. for his services. The Master's fee has not been paid, nor has counsel fee to the solicitor for me.

30 After the entry of the order approving the Master's report, a time was fixed for settlement of the various matters agreed between my husband and me. At said hearing, my husband was either unable to, or refused to, produce the bonds and mortgages which were to be assigned to me in accord-  
40

*Affidavit of Dora Eitner.*

ance with said agreement and order approving the Master's report, and he refused to pay the sum of \$4,262.07, which he agreed in and by said agreement to pay. He has failed and neglected and has refused, and still refuses, to perform the terms of said agreement or to carry out the provisions of said order made herein on the 28th day of January, 1930, and I have always been ready, and was at the time of said hearing ready, to carry out the agreement and the order of this Court herein referred to. Since December 31, 1929, my husband has paid to me the sum of only \$80., and, in view of the fact that I have not the income anticipated from the mortgages and the real property which was transferred, assigned and conveyed to me under the terms and directions of the said agreement and order referred to, I have been without the income from that source, except a net rent of \$80., and have been wholly unable to provide for myself and my maintenance out of the sum of \$80.00 which I received from my husband since December 31, 1929, or a period of nine weeks.

DORA EITNER.

Sworn and subscribed to before me  
this 4th day of March, 1930.

Frederick A. Lorentz,  
An Atty. at Law of N. J.

10  
20  
30

40

*Agreement attached to Affidavit.*

AGREEMENT

Agreement made this 31st day of December, 1929, between Dora Eitner of the Town of Maplewood, County of Essex and State of New Jersey, party of the first part, and Alfred Eitner of the City of Newark, County of Essex and State of New Jersey, party of the second part, Witnesseth that

10

Whereas the said parties have been separated by a decree of the Court of Chancery of New Jersey, wherein among other things, it is provided that the said Alfred Eitner shall pay to the said Dora Eitner the sum of \$6,000.00 a year for her support and maintenance, and

20

Whereas the said Alfred Eitner has alleged that it is impossible for him to pay the said sum to the said Dora Eitner, and

Whereas various controversies have arisen between the parties by reason thereof, and application was made to the said Court of Chancery of New Jersey by the said Alfred Eitner for reduction in the said alimony by reason of his inability to pay the same, and

30

Whereas the matter was referred to Philip J. Schotland, special master in Chancery and the said special master did proceed to take testimony in pursuance thereof, and

Whereas there are other divers disputes between the said parties with reference to respective interests in the real estate or personal property held either in their individual names or jointly, and

Whereas the said parties desire to settle and adjust the said matters in dispute, subject to the approval of the Court of Chancery of New Jersey,

40

It is thereupon agreed by the said parties as follows:

*Agreement attached to Affidavit.*

1. The said Alfred Eitner agrees to assign, transfer and set over all his right, title and interest in and to the following bonds and mortgages, together with interest from the last interest date, and as a further inducement and consideration, the said Alfred Eitner represents that the amounts due on the various bonds and mortgages is the amount herein set forth, and that in the event that it is ascertained that there had been payments on account of the principal sum secured by said bonds and mortgages, then and in that event the said Alfred Eitner agrees to reimburse the said Dora Eitner either in cash or by the assignment of a mortgage or mortgages in the amount of such deficiency and in the event that it appears that the principal amount is in excess of the said amount hereinafter set forth, then and in that event the said Dora Eitner agrees to reimburse the said Alfred Eitner to the extent of the excess.

10

20

(a) Bond and mortgage from John Bayors and Martha Bayors, his wife, to Alfred Eitner and Dora Eitner, his wife, dated August 1st, 1923, recorded August 10, 1923 in the Essex County Register's Office in Book Q 49 of mortgages, page 331, in the original sum of \$10,000. on which there is now due and owing on the principal, the sum of \$9,000.

30

(b) Bond and mortgage from George A. Struble, unmarried, to Alfred Eitner and Dora Eitner, his wife, dated August 9, 1924, and recorded August 11, 1924 in the Essex County Register's Office in Book N 52 of mortgages, page 109, in the principal sum of \$2,000.

40

*Agreement attached to Affidavit.*

- (c) Bond and mortgage from Eleanor Kraemer, et al to Alfred Eitner and Dora Eitner, his wife, dated April 29th, 1925, recorded May 12, 1925 in the Essex County Register's Office in Book L 54 of mortgages, page 110, in the principal sum of \$5,000.
- 10 (d) Bond and mortgage from William A. Smith and Helen M. Smith, his wife, to Alfred Eitner and Dora Eitner, his wife, dated November 1st, 1926, recorded November 8th, 1926, in the Essex County Register's Office in Book Y 58 of mortgages, page 584, in the principal sum of \$2000.
- 20 (e) Bond and mortgage from Stuart C. Ross and Virginia B. Ross, dated October 1, 1927 and recorded November 10, 1927 in the Essex County Register's Office in Book X 62 of mortgages, page 264, in the principal sum of \$10,000.
- 30 (f) Bond and mortgage from Stuart C. Ross and Virginia B. Ross, his wife, to Alfred Eitner and Dora Eitner, his wife dated October 1, 1927, recorded November 10, 1927 in the Essex County Register's Office in Book X 62 of mortgages, page 266, in the original principal sum of \$3,500. on which there is now due on the principal, the sum of \$3,000.
- 40 (g) Mortgage recorded in the Essex County Register's Office in Book I 59, page 113, and the bond accompanying same, which were assigned by Samuel Siedoff to Alfred Eitner and Dora Eitner, his wife, by assignment dated August 22nd, 1927, and recorded September 1st, 1927 in the Essex County

*Agreement attached to Affidavit.*

Register's Office in Book 192 of Assignments of Mortgages, page 292, on which there is due and owing the principal sum of \$1,500.

(h) Bond and mortgage from Peter Thier to Alfred Eitner and Dora Eitner, his wife, recorded in the County Clerk's Office of Monmouth County, in the principal sum of \$1,500. 10

2. The said Alfred Eitner further agrees to grant and convey to the said Dora Eitner, her heirs, assigns or designees, all his right, title and interest in and to the following premises in the Town of Irvington, County of Essex and State of New Jersey, and more particularly described as follows:

Beginning at a point in the northwesterly side of Franklin Street distant 275 feet southwesterly from the westerly corner of said Franklin Street and Tiffany Place; thence running North 67 degrees 30 minutes west 238 feet more or less; thence South 29 degrees 20 minutes west 25.18 feet; thence South 67 degrees 30 minutes east 242.80 feet to Franklin Street; thence running along the northwesterly side of said street North 22 degrees 30 minutes east 25 feet to the point and place of Beginning. Being part of the premises conveyed to Alfred H. Eitner and Dora Eitner, his wife, by Anna Richissin and Charles E. Richissin, by deed dated May 12th, 1914 and recorded May 15, 1914 in the Office of the Register of Deeds, Essex County, Book O 54 of Deeds page 17. 20 30

*Agreement attached to Affidavit.*

The conveyance is to be made subject to restrictions, if any, and municipal ordinances, if any, and also subject to any unpaid taxes and assessments.

3. It is further agreed that the said Alfred Eitner shall pay to the said Dora Eitner the following:

10	(a) One half of a payment of \$1,000. on the principal sum of mortgage of John Bayor hereinbefore set forth	\$ 500.
	(b) One half of a payment of \$500. on the principal sum of mortgage of Stuart C. Ross hereinbefore set forth	250.
20	(c) Judgment recovered by the Irvington Trust Company against Alfred and Dora Eitner on a note made by the said Alfred Eitner for \$1,000. the total of the judgment with costs, interest and Sheriff's fees	1,182.07
	(d) One half of interest collected on mortgages standing in both names for a period of 18 months amounting to	1,530.00
30	(e) The amount due in accordance with an order of this court (Court of Chancery of N. J.) dated November 7th, 1928	800.00
		<hr/> \$4,262.07

and in addition, the said Alfred Eitner further agrees to pay the said Dora Eitner the sum of \$20.00 a week for her support and maintenance on the first day of each and every week, beginning De-

40

*Agreement attached to Affidavit.*

ember 30th, 1929, and to continue until the further order of the Court of Chancery of New Jersey.

4. The said Alfred Eitner further agrees to transfer and convey to the said Dora Eitner, her heirs, assigns or designees, all his right, title and interest, including his inchoate right of courtesy, in premises known as #44 Courter Avenue, Maplewood, New Jersey. 10

5. The said Dora Eitner agrees to grant and convey to the said Alfred Eitner, his heirs, assigns or designees, all her right, title and interest, dower and right of dower in and to the following property:

(a) Premises known as #512 Ferry Street, Newark, N. J.

(b) Premises known as #514 and 516 Ferry Street, Newark, N. J. 20

(c) Premises known as #152 Fleming Avenue, Newark, N. J.

(d) Premises known as #155 Fleming Avenue, Newark, N. J.

(e) Premises at Ideal Beach, Monmouth County, New Jersey.

(f) Premises at Woodbridge, Middlesex County, New Jersey.

The said transfer and conveyances by the said Dora Eitner shall be subject to all liens, charges and encumbrances of any kind. 30

(g) Miscellaneous articles of furniture and jewelry.

6. The said Dora Eitner further agrees to assign, transfer and set over to the said Alfred Eitner, all her right, title and interest in mortgage dated April 24th, 1926, between Michael J. Tansey, widower, to Alfred Eitner and Dora Eitner, recorded June 11th, 1926, in the Essex County Reg- 40

*Agreement attached to Affidavit.*

ister's Office in Book B 58 page 192, etc., which said mortgage is in the principal sum of \$6,000.

7. It is understood and agreed that there are no further sums due and owing from the said Alfred Eitner to the said Dora Eitner for alimony under any previous order of the Court of Chancery of New Jersey, up to and including December 30th, 1929.

8. It is further understood and agreed that the said parties will execute any and all conveyances, assignments of instruments of any kind necessary to carry out the terms of this agreement.

9. It is further understood and agreed that neither of the said parties shall have any claim or interest of any kind in any property of the other party.

10. It is further understood and agreed that neither of the parties hereto are to molest or anywise interfere with the conduct of the other in personal or business affairs, directly or indirectly.

11. It is further understood and agreed that the said Dora Eitner accepts the provisions of this agreement and shall have no further claim whatsoever against the said Alfred Eitner for support and maintenance other than provided herein, regardless of her future financial status.

In Witness Whereof the parties have hereunto set their hands and seals this 31st day of December, 1929.

ALFRED EITNER (L.S.)

DORA EITNER (L.S.)

Signed, sealed and delivered

in the presence of

Louis Auerbacher, Jr.

John J. Clancy.

*Agreement attached to Affidavit.*

State of New Jersey, }  
 County of Essex, }<sup>ss. :</sup>

Be it Remembered that on this 2nd day of January, in the year of our Lord, One thousand Nine Hundred and Thirty, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Alfred Eitner, who I am satisfied is one of the parties mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 10

LOUIS AUERBACHER, JR.

A Master in Chancery of New Jersey.

State of New Jersey, }  
 County of Essex, }<sup>ss. :</sup>

20

Be it Remembered that on this 2nd day of January, in the year of our Lord, One Thousand Nine Hundred and Thirty, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Dora Eitner, who I am satisfied is one of the parties mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed. 30

JOHN J. CLANCY,

A Master in Chancery of New Jersey.

## Order to Show Cause.

D. 66/228.

IN CHANCERY OF NEW JERSEY.

10	Between DORA EITNER, Complainant,  and  ALFRED EITNER, Defendant.	}	On Petition to Adjudge Defendant in Contempt.  Order to Show Cause.
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20 This matter being opened to the Court by Merritt Lane, solicitor for complainant, and upon reading and filing the petition of Dora Eitner and the affidavit thereto annexed, and good cause appearing;

30 It is, on this 5th day of March, 1930, ORDERED that the defendant Alfred Eitner show cause before the Chancellor at Chancery Chambers, Industrial Building, Newark, N. J., on Tuesday, the 11th day of March, 1930, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, why he should not be adjudged guilty of contempt for his contumacy in refusing to comply with the terms of an order of this Court made herein on the 28th day of January, 1930, and the terms of the agreement made between complainant and defendant, approved by this Court by an order made herein on the 28th day of January, 1930; and that complainant may have such other and further relief as may be just;

40

*Order to Show Cause.*

And it is further ORDERED that a copy of this order to show cause, together with a copy of the petition and affidavit upon which the same is based, certified to be true copies by the solicitor of the complainant, be served upon the defendant, either personally or by leaving at his usual place of abode or business within three days of the date hereof.

10

E.R. WALKER,

C.

Respectfully advised,  
ALONZO CHURCH,  
V. C.

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30

40

## Affidavit of Dora Eitner.

IN CHANCERY OF NEW JERSEY.

10	Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	}	On Bill, &c. Affidavits.
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State of New Jersey, }  
 County of Essex,    }ss.;

20     Dora Eitner, of full age, being duly sworn according to law upon her oath deposes and says:

I am the complainant in the above entitled cause. I have been informed that my husband, the defendant, intends to leave this State as soon as he can conveniently do so. I believe that he means to do this for the reason that he has continuously defaulted in the payment of the alimony which was decreed to be paid to me under the orders of this court ever since the last time he was adjudged in contempt of court for his failure so to do.

30     I therefore, pray that a writ of ne exeat issue out of this court apprehending the defendant and providing that he give bond to make himself amenable to the processes of this court.

DORA EITNER.

Sworn and subscribed to before me  
 this 14th day of March, 1930.

Frederick A. Lorentz,  
 An Attorney at Law of New Jersey.

### Affidavit of Daniel Eitner.

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

Daniel Eitner, of full age, being duly sworn according to law upon his oath deposes and says:

I am the son of Alfred Eitner and Dora Eitner, the complainant and defendant in the above entitled suit. 10

On Wednesday March 12, 1930, my father visited me at my home at #1616 May Street, Union, N. J., and during the course of our conversation made the following statements: "I am going to sail for Europe." "I am not going to stay here any longer and I don't care for the court or Mr. Clancy or Mrs. Eitner." He made other statements showing clearly that he intended to immediately make preparations for his departure out of the State of New Jersey. 20

He made a further statement to the effect that he was going to give all of his clothes to his brother.

DANIEL EITNER.

Sworn and subscribed to before me  
 this 14th day of March, 1930.

Frederick A. Lorentz,  
 An Attorney at Law of New Jersey. 30

## Petition.

D. 66/228.

## IN CHANCERY OF NEW JERSEY.

10	Between	DORA EITNER,	}	On Bill, etc. Petition.
		Complainant,		
		and		
		ALFRED EITNER,		
		Defendant.		

*To His Honor, Edwin Robert Walker,  
Chancellor of the State of New Jersey:*

20 The petition of Alfred Eitner, of the City of Newark, County of Essex and State of New Jersey, respectfully shows that:

1. I was apprehended by the Sheriff of Essex County on Saturday, March 15th, 1930, about 12:30 o'clock in the afternoon and placed in the jail at Newark Street, Newark, New Jersey, where I have been confined ever since.

30 2. I have not intended to leave the State. I have a coal business in this City which I still operate. I am the owner of several parcels of real estate and the holder of numerous mortgages. My total assets in real estate and mortgages are approximately \$55,000.00.

40 3. I have made no attempt to dispose of my real estate nor of my mortgages directly or indirectly. I am not in default in the payment of alimony. I paid up completely all that I owed my wife and I entered into an agreement with her which I am ready and willing to perform if she will do the

*Petition of Defendant.*

things required of her under the said agreement, which she refuses to do.

4. I deny that I said on Wednesday, March 12th, 1930, to my son, Daniel Eitner, that I was going to sail for Europe. I deny that I said, "I am not going to stay here any longer," and I don't care for the court or Mr. Clancy or Mrs. Eitner." Nor did I make any other statement indicating an intention to leave the State of New Jersey. I deny that I said I was going to give all of my clothes to my brother. 10

Petitioner therefore prays that the writ of ne exeat issued by this court be vacated and discharged, and that he be released from the custody of the Sheriff of Essex County, and in particular that he be released from the Essex County Jail at Newark Street, Newark, New Jersey. 20

ALFRED EITNER,  
Petitioner.

LOUIS AUERBACHER, JR.,  
Solicitor for Petitioner.

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

Alfred Eitner, being duly sworn on his oath, according to law, deposes and says that: 30

I am the petitioner in the foregoing petition named, and all the matters and things therein set forth are true to the best of my knowledge and belief.

ALFRED EITNER.

Sworn and subscribed to before me  
this 18th day of March, 1930.

John C. Tinney,  
(Seal) Notary Public of N. J. 40

## Petition.

D. 66/228.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	Between DORA EITNER, Complainant,  and  ALFRED EITNER, Defendant.	}	On Bill, &c. Petition.
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20    *To His Honor, Edwin Robert Walker,*  
           *Chancellor of the State of New Jersey:*

Your petitioner, Dora Eitner, respectfully shows  
 unto your Honor:

1. She is the complainant in the above entitled  
 cause.

30    2. On the 7th day of November, 1928, an or-  
 der was made by this Court in the above entitled  
 cause directing that the defendant Alferd Eitner  
 do pay to your petitioner the sum of \$6,000. annu-  
 ally, payable in equal weekly instalments on the  
 first day of each and every week of \$115.37 as and  
 for your petitioner's support and maintenance, and  
 it was also provided in said order that there be  
 paid to John P. Manning, Esq., the Special Mas-  
 40    ter to whom the matter had been referred, the sum  
 of \$500., and in addition, that there be paid to  
 Merritt Lane, Esq., solicitor of complainant, the  
 sum of \$1,500. as and for a counsel fee.

*Petition of Complainant.*

3. Almost from the time upon which the order was made, the defendant has been continuously in arrears in making the payments required by said order, and it has been necessary on a great number of occasions for the petitioner to institute proceedings to have the defendant adjudged in contempt of this Court for his failure to comply with the terms and directions of the order of November 7, 1928. In one of the later proceedings which was terminated by an order made by this Court on the 29th day of October, 1929, defendant was required to pay the arrears of alimony up to and including Monday, October 21, 1929, and defendant also paid the counsel fee and Special Master's fee, as directed by said order of November 7, 1928, which, with the arrearages of alimony, amounted to approximately \$5,600.

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4. Thereafter and on October 29, 1929, an order was made in this cause on application of defendant referring to Philip J. Schotland, Esq., a Special Master of this Court, the cause for the purpose of inquiring into and reporting to the Court with respect to the needs of the petitioner and the ability of the defendant to pay the amount required by the order of November 7, 1928, to the petitioner for her support and maintenance.

31

5. A number of hearings were held before the Special Master and testimony was taken as to the ability of the defendant to pay. His financial worth was inquired into, his income from his various real estate holdings and from his mortgages were testified to before the Special Master, and before the hearings were completed there, on the 31st day of December, 1929, petitioner and defendant entered into an agreement which attempted to settle and adjust the matters in dispute between pe-

40

*Petition of Complainant.*

10           titioner and defendant, and as part of said agree-  
ment defendant agreed to assign, transfer and set  
over to petitioner certain bonds and mortgages  
more particularly enumerated in said agreement,  
which is attached hereto, and further agreed to  
convey a piece of property on the northwesterly  
side of Franklin Street in the Town of Irvington,  
and agreed further to pay various sums of money  
aggregating \$4,262.07, so that petitioner would  
have an income from the real estate and the mort-  
gages to apply on account of her support and main-  
tenance, and in addition thereto, the defendant  
agreed to pay to petitioner the sum of \$20.00 per  
week for her support and maintenance on the first  
day of each and every week beginning December  
30, 1929, and further agreed to release his inchoate  
20           right of courtesy in premises known as No. 44  
Courter Ave., Maplewood. Petitioner agreed to  
grant and convey to the defendant all her right,  
title and interest in and to certain property de-  
scribed in said agreement.

          6. The agreement of December 31, 1929, be-  
tween petitioner and defendant was submitted to  
the Special Master for his consideration in view of  
the agreement of the parties, and the matter was  
considered by the Special Master and a report filed  
30           by him approving and recommending the accept-  
ance by this Court of the agreement made between  
the parties, and on the 28th day of January, 1930,  
an order was entered in this cause approving and  
confirming the report of the Special Master which  
was dated January 6, 1930, which order provided,  
in addition, that there be paid to Merritt Lane, so-  
licitor for petitioner, a counsel fee of \$1,900, \$500.  
of which was to be paid by the defendant and the  
40           balance by the petitioner, and that there be paid  
to Philip J. Schotland, Esq., the Special Master,

*Petition of Complainant.*

the sum of \$1,000. for his services. The Master's fee has not been paid, nor has the counsel fee to the solicitor for petitioner.

7. After the entry of the order approving the Master's report, a time was fixed for settlement of the various matters agreed between petitioner and defendant. At said hearing, the defendant was either unable to, or refused to, produce the bonds and mortgages which were to be assigned to the petitioner in accordance with said agreement and order approving the Master's report, and he refused to pay the sum of \$5,262.07, which he agreed in and by said agreement to pay. He has failed and neglected and has refused, and still refuses, to perform the terms of said agreement or to carry out the provisions of said order made herein on the 28th day of January, 1930, and petitioner has always been ready, and was at the time of said hearing ready, to carry out the agreement and the order of this Court herein referred to. Since December 31, 1929, complainant has received the following moneys and credits the defendant on their account therewith:

January 8, 1930—	\$ 50. rent	
January 8, 1930—	60. cash	
January 13, 1930—	400. received from Maplewood Police Department, being a return of bail fur- nished by Mr. Eitner.	30
January 21, 1930—	45. rent	
February 3, 1930—	50. rent	
February 4, 1930—	45. rent	
February 19, 1930—	20. cash	
March 2, 1930—	50. rent	
March 2, 1930—	45. rent	
March 7, 1930—	20. cash	
March 11, 1930—	40. cash, making a	
	<hr/>	40
total credit of	\$825.	

*Petition of Complainant.*

8. Petitioner entered into said agreement because she desired, if possible, to settle the matters in dispute between her and the defendant and because the defendant was on December 31st, at the date of the making of said agreement, in arrears for alimony to the extent of \$800.00 in addition to the sum of \$3,462.07 for payments on account of the principal of mortgages held in her name as well as in the name of the defendant, and the sum of \$1,182.07 for a judgment recovered by the Irvington Trust Company against petitioner on a note given by defendant for \$1,000.00, the proceeds of which were to be applied on account of the payments of alimony, and the further sum of \$1,530.00 for one-half of the interest on mortgages collected by the defendant. She has been required to litigate this suit for upwards of two years in an endeavor to compel the defendant to properly support her and to comply with the orders of this Court. Her efforts in this direction had been attended by constant publicity and her health had been undermined by reason of the frequent appearances made in Court and her ceaseless efforts to secure her support and maintenance from the defendant and it was to put an end to all the trouble, expense and discomfort that she had undergone and with the thought in mind that she might secure sufficient income from the mortgages to be assigned by virtue of the agreement and the real estate which was to be transferred to her that she entered into an agreement, a copy of which is hereto annexed and made a part hereof. The defendant, however, has claimed that the bonds and mortgages to be assigned to her have been lost or mislaid and that he is unable to locate them. At the time fixed for performance of the agreement

*Petition of Complainant.*

the defendant refused to pay the sum of \$4,262.07 which he agreed in and by said agreement to pay and he left the meeting to raise money and to secure substitute bonds from the various mortgagors and agreed to indemnify them in case the original bonds should ever be located.

9. Petitioner has heard nothing from the defendant since the day fixed for settlement, which was in the early part of February, 1930. He has made no efforts, to the knowledge of petitioner, to secure substitute bonds or to execute the assignments of mortgages which were prepared on the original closing date, and by virtue of his refusal to carry out the agreement and to transfer, assign and set over these mortgages to petitioner she has been deprived of the income therefrom, and the defendant has further refused to make the payments of \$20.00 per week provided in said agreement and petitioner has had no funds with which to support herself except the sums referred to in paragraph 7 herein. 10

10. Said agreement was made between petitioner and defendant with the understanding that it would immediately be carried out and that upon the day fixed for settlement all the things required to be done by both petitioner and defendant would be done and that immediately thereafter she would have the income anticipated by the agreement itself and it was upon this representation and coupled with her own desire to settle the dispute between her and the defendant and to eliminate all the trouble that she agreed to accept the terms and provisions of the agreement in substitution of the order of this Court heretofore made on November 7, 1928, which order directed the defendant to 20

*Petition of Complainant.*

pay her the sum of \$6,000.00 annually in equal weekly instalments of \$115.37 for her support and maintenance.

10 11. By reason of the defendant's default and wilfullness in refusing to carry out the terms of the agreement and his failure to do so or to make any attempt to do so, which failure has deprived petitioner of her just support and maintenance, petitioner desires to withdraw from the agreement and to rely upon the order of this Court made here-  
in on November 7, 1928. In pursuance to this orde-  
re there is now due and owing to petitioner the sums of \$800. alimony due up to December 31st and \$1,265. alimony acquired from December 31st to March 17th, making a total of \$2,065, to which  
20 there is to added the following sums: \$3,462.07, back interest; \$1,182.07 due on note of Irvington Trust Co., and \$1,530. due as back interest, making a total of \$6,174.14, making a grand total of \$8,239.14, from which is to be deducted the credits acknowledged aforesaid amounting to \$825., leaving the balance due and owing up to March 17, 1930, of \$7,414.14.

Petitioner therefore prays:

30 1. That the agreement dated December 31, 1929 between her and the defendant be abrogated and declared null and void and of no effect and set aside and that the order confirming the Master's Report dated January 6, 1930, be vacated and set aside and that it be ordered that the order dated November 7, 1928, is in full force and effect, and that an order to show cause be made requiring the defendant to show cause why the petitioner should  
40 not have the relief herein prayed for and why he

*Petition of Complainant.*

should not be required to give a bond with good and sufficient surety to insure the payments required by the order of November 7, 1928. And why petitioner should not have such other relief as may be just and proper in the premises.

MERRITT LANE,  
Solicitor of Petitioner. 10

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

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

I am the petitioner named in the foregoing petition. I have read the same and am familiar with the matters and things therein set forth and the same are true except as to those matters alleged upon information and belief and as to them I believe it to be true. 20

DORA EITNER.

Sworn and subscribed to before me  
this 21st day of March, 1930.

Eugene F. Frey,  
An Attorney at Law  
of New Jersey.

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*Agreement attached to Petition of Complainant.*

## AGREEMENT

Agreement made this 31st day of December, 1929, between Dora Eitner of the Town of Maplewood, County of Essex and State of New Jersey, party of the first part, and Alfred Eitner of the City of Newark, County of Essex and State of New Jersey, party of the second part, Witnesseth that

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Whereas the said parties have been separated by a decree of the Court of Chancery of New Jersey, wherein among other things, it is provided that the said Alfred Eitner shall pay to the said Dora Eitner the sum of \$6,000.00 a year for her support and maintenance, and

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Whereas the said Alfred Eitner has alleged that it is impossible for him to pay the said sum to the said Dora Eitner, and

Whereas various controversies have arisen between the parties by reason thereof, and application was made to the said Court of Chancery of New Jersey by the said Alfred Eitner for reduction in the said alimony by reason of his inability to pay the same, and

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Whereas the matter was referred to Philip J. Schotland, special master in Chancery and the said special master did proceed to take testimony in pursuance thereof, and

Whereas there are other divers disputes between the said parties with reference to respective interests in the real estate or personal property held either in their individual names or jointly, and

Whereas the said parties desire to settle and adjust the said matters in dispute, subject to the approval of the Court of Chancery of New Jersey,

It is thereupon agreed by the said parties as follows:

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*Agreement attached to Petition of Complainant.*

1. The said Alfred Eitner agrees to assign, transfer and set over all his right, title and interest in and to the following bonds and mortgages, together with interest from the last interest date, and as a further inducement and consideration, the said Alfred Eitner represents that the amounts due on the various bonds and mortgages is the amount herein set forth, and that in the event that it is ascertained that there had been payments on account of the principal sum secured by said bonds and mortgages, then and in that event the said Alfred Eitner agrees to reimburse the said Dora Eitner either in cash or by the assignment of a mortgage or mortgages in the amount of such deficiency and in the event that it appears that the principal amount is in excess of the said amount hereinafter set forth, then and in that event the said Dora Eitner agrees to reimburse the said Alfred Eitner to the extent of the excess.

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(a) Bond and mortgage from John Bayors and Martha Bayors, his wife, to Alfred Eitner and Dora Eitner, his wife, dated August 1st, 1923, recorded August 10, 1923 in the Essex County Register's Office in Book Q 49 of mortgages, page 331, in the original sum of \$10,000. on which there is now due and owing on the principal, the sum of \$9,000.

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(b) Bond and mortgage from George A. Struble, unmarried, to Alfred Eitner and Dora Eitner, his wife, dated August 9, 1924, and recorded August 11, 1924 in the Essex County Register's Office in Book N 52 of mortgages, page 109, in the principal sum of \$2,000.

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*Agreement attached to Petition of Complainant.*

- (c) Bond and mortgage from Eleanor Kraemer, et al to Alfred Eitner and Dora Eitner, his wife, dated April 29th, 1925, recorded May 12, 1925 in the Essex County Register's Office in Book L 54 of mortgages, page 410, in the principal sum of \$5,000.
- 10 (d) Bond and mortgage from William A. Smith and Helen M. Smith, his wife, to Alfred Eitner and Dora Eitner, his wife, dated November 1st, 1926, recorded November 8th, 1926, in the Essex County Register's Office in Book Y 58 of mortgages, page 584, in the principal sum of \$2000.
- 20 (e) Bond and mortgage from Stuart C. Ross and Virginia B. Ross, dated October 1, 1927 and recorded November 10, 1927 in the Essex County Register's Office in Book X 62 of mortgages, page 264, in the principal sum of \$10,000.
- 30 (f) Bond and mortgage from Stuart C. Ross and Virginia B. Ross, his wife, to Alfred Eitner and Dora Eitner, his wife dated October 1, 1927, recorded November 10, 1927 in the Essex County Register's Office in Book X 62 of mortgages, page 266, in the original principal sum of \$3,500. on which there is now due on the principal, the sum of \$3,000.
- 40 (g) Mortgage recorded in the Essex County Register's Office in Book I 59, page 113, and the bond accompanying same, which were assigned by Samuel Siedoff to Alfred Eitner and Dora Eitner, his wife, by assignment dated August 22nd, 1927, and recorded September 1st, 1927 in the Essex County

*Agreement attached to Petition of Complainant.*

Register's Office in Book 192 of Assignments of Mortgages, page 292, on which there is due and owing the principal sum of \$1,500.

(h) Bond and mortgage from Peter Thier to Alfred Eitner and Dora Eitner, his wife, recorded in the County Clerk's Office of Monmouth County, in the principal sum of \$1,500.

2. The said Alfred Eitner further agrees to grant and convey to the said Dora Eitner, her heirs, assigns or designees, all his right, title and interest in and to the following premises in the Town of Irvington, County of Essex and State of New Jersey, and more particularly described as follows:

Beginning at a point in the northwesterly side of Franklin Street distant 275 feet southwesterly from the westerly corner of said Franklin Street and Tiffany Place; thence running North 67 degrees 30 minutes west 238 feet more or less; thence South 29 degrees 20 minutes west 25.18 feet; thence South 67 degrees 30 minutes east 242.80 feet to Franklin Street; thence running along the northwesterly side of said street North 22 degrees 30 minutes east 25 feet to the point and place of Beginning. Being part of the premises conveyed to Alfred H. Eitner and Dora Eitner, his wife, by Anna Richissin and Charles E. Richissin, by deed dated May 12th, 1914 and recorded May 15, 1914 in the Office of the Register of Deeds, Essex County, Book O 54 of Deeds page 17.

*Agreement attached to Petition of Complainant.*

The conveyance is to be made subject to restrictions, if any, and municipal ordinances, if any, and also subject to any unpaid taxes and assessments.

3. It is further agreed that the said Alfred Eitner shall pay to the said Dora Eitner the following:

10	(a) One half of a payment of \$1,000. on the principal sum of mortgage of John Bayor hereinbefore set forth	\$ 500.
	(b) One half of a payment of \$500. on the principal sum of mortgage of Stuart C. Ross hereinbefore set forth	250.
20	(c) Judgment recovered by the Irvington Trust Company against Alfred and Dora Eitner on a note made by the said Alfred Eitner for \$1,000. the total of the judgment with costs, interest and Sheriff's fees	1,182.07
	(d) One half of interest collected on mortgages standing in both names for a period of 18 months amounting to	1,530.00
30	(e) The amount due in accordance with an order of this court (Court of Chancery of N. J.) dated November 7th, 1928	800.00
		<hr/> \$4,262.07

and in addition, the said Alfred Eitner further agrees to pay the said Dora Eitner the sum of \$20.00 a week for her support and maintenance on the first day of each and every week, beginning De-

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*Agreement attached to Petition of Complainant.*

cember 30th, 1929, and to continue until the further order of the Court of Chancery of New Jersey.

4. The said Alfred Eitner further agrees to transfer and convey to the said Dora Eitner, her heirs, assigns or designees, all his right, title and interest, including his inchoate right of courtesy, in premises known as #44 Courter Avenue, Maplewood, New Jersey. 10

5. The said Dora Eitner agrees to grant and convey to the said Alfred Eitner, his heirs, assigns or designees, all her right, title and interest, dower and right of dower in and to the following property:

(a) Premises known as #512 Ferry Street, Newark, N. J.

(b) Premises known as #514 and 516 Ferry Street, Newark, N. J. 20

(c) Premises known as #152 Fleming Avenue, Newark, N. J.

(d) Premises known as #155 Fleming Avenue, Newark, N. J.

(e) Premises at Ideal Beach, Monmouth County, New Jersey.

(f) Premises at Woodbridge, Middlesex County, New Jersey.

The said transfer and conveyances by the said Dora Eitner shall be subject to all liens, charges and encumbrances of any kind. 30

(g) Miscellaneous articles of furniture and jewelry.

6. The said Dora Eitner further agrees to assign, transfer and set over to the said Alfred Eitner, all her right, title and interest in mortgage dated April 24th, 1926, between Michael J. Tansey, widower, to Alfred Eitner and Dora Eitner, recorded June 11th, 1926, in the Essex County Reg. 40

*Agreement attached to Petition of Complainant.*

ister's Office in Book B 58 page 192, etc., which said mortgage is in the principal sum of \$6,000.

7. It is understood and agreed that there are no further sums due and owing from the said Alfred Eitner to the said Dora Eitner for alimony under any previous order of the Court of Chancery of New Jersey, up to and including December 30th, 1929.

8. It is further understood and agreed that the said parties will execute any and all conveyances, assignments of instruments of any kind necessary to carry out the terms of this agreement.

9. It is further understood and agreed that neither of the said parties shall have any claim or interest of any kind in any property of the other party.

10. It is further understood and agreed that neither of the parties hereto are to molest or anywise interfere with the conduct of the other in personal or business affairs, directly or indirectly.

11. It is further understood and agreed that the said Dora Eitner accepts the provisions of this agreement and shall have no further claim whatsoever against the said Alfred Eitner for support and maintenance other than provided herein, regardless of her future financial status.

In Witness Whereof the parties have hereunto set their hands and seals this 31st day of December, 1929.

ALFRED EITNER (L.S.)

DORA EITNER (L.S.)

Signed, sealed and delivered

in the presence of

Louis Auerbacher, Jr.

John J. Clancy.

*Agreement attached to Petition of Complainant.*

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

Be it Remembered that on this 2nd day of January, in the year of our Lord, One thousand Nine Hundred and Thirty, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Alfred Eitner, who I am satisfied is one of the parties mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 10

LOUIS AUERBACHER, JR.

A Master in Chancery of New Jersey.

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

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Be it Remembered that on this 2nd day of January, in the year of our Lord, One Thousand Nine Hundred and Thirty, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Dora Eitner, who I am satisfied is one of the parties mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed. 30

JOHN J. CLANCY,

A Master in Chancery of New Jersey.

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**Order to Show Cause.**

Filed March 25, 1930.

IN CHANCERY OF NEW JERSEY.

D. 66/228.

10	Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	}	On Bill, &c. On Petition. Order to Show Cause.
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20 This matter being opened to the Court by Merritt Lane, solicitor for petitioner, and upon reading and filing the petition and affidavit thereto annexed and good cause appearing;

30 It is on this 25th day of March, 1930, ORDERED, that the defendant show cause before the Chancellor at Chancery Chambers, Industrial Building, Newark, N. J., on Tuesday, the 1st day of April, 1930, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why the agreement made between the parties on December 31, 1929, should not be abrogated, set aside and be declared of no effect, and why the petitioner should not be permitted to withdraw therefrom, and why the order dated January 28, 1930, confirming the Master's Report heretofore made should not be set aside, and why the order dated November 7, 1928 should not be declared to be in full force and effect,

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*Order to Show Cause.*

and why the defendant should not be required to comply with the terms and directions of that order, and why he should not be required to give a bond with good and sufficient sureties to insure his compliance with the terms and directions of said order of November 7, 1928, and why the petitioner should not have such other and further relief as may be just; and 10

It is further ORDERED, that a copy of this order and the petition upon which it is based, both certified to be true copies by the solicitor for the petitioner, be served upon the defendant by service upon him either personally or by leaving at his usual place of abode or business, or by service upon his solicitor, within 3 days of the date hereof.

E. R. WALKER, 20

C.

Respectfully advised,

JOHN H. BACKES,

V. C.

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## Affidavit of Alfred Eitner.

D. 66/228.

IN CHANCERY OF NEW JERSEY.

10	Between DORA EITNER, Complainant,  and  ALFRED EITNER, Defendant.	}	On Bill, etc. Affidavit.
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20 State of New Jersey, }  
 County of Essex, } ss. :

Alfred Eitner, being duly sworn on his oath, according to law, deposes and says:

1. I have been ready and willing to carry out the terms of the agreement between myself and the complainant but the main difficulty has been that I have been unable to produce the original bonds and mortgages which complainant required.
- 30 2. I have been willing to execute assignments of the said mortgages and to do everything else that I could possibly do in order to turn these mortgages over to complainant. I was also ready to execute a deed conveying my right, title and interest in the real estate which I agreed to convey to my said wife, the complainant. As proof of my good faith, I have permitted my wife to collect the rent from the said premises and I have paid her the weekly payments required of me according to
- 40 the said agreement. Furthermore, I have not at-

*Affidavit of Alfred Eitner.*

tempted to collect the interest on the mortgages, my interest in which I agreed to transfer to complainant.

3. According to the said agreement I was to pay my wife the sum of \$4262.07. At the time I executed the agreement I expected that I would receive this amount of cash from Michael J. Tansey, who owed me some \$6,000. on mortgages which were past due and which I had to foreclose. The promised moneys were not forthcoming and I have been unable to raise this amount of cash. I have, however, agreed to give my wife in lieu of this cash, interest in a mortgage or mortgages of equal value, which however, she refused to accept. 10

4. The complainant has not offered to convey to me her right, title and interest in certain premises as set forth in paragraph 5 of the said agreement, nor has she offered to turn over to me articles of furniture and jewelry as agreed by her in paragraph 5. In fact, I made a formal request to transfer the said furniture to me and sent a truckman to get the furniture, but she refused to deliver it to me. 20

5. My wife has refused to transfer to me all her right, title and interest in a certain mortgage as set forth in paragraph 6 of the said agreement. 30

6. It has been clearly shown that it has been absolutely impossible for me to pay alimony in the sum of \$6,000. a year. Such a sum is grossly excessive considering my present resources and I have desired to carry out the said agreement of December 31st, 1929. I am still ready and willing to transfer my interest in said bonds and mortgages and in the said real estate as set forth in paragraphs 1 and 2 of the said agreement, and I 40

*Affidavit of Alfred Eitner.*

will endeavor to raise the cash required of me to be paid according to paragraph 3 if my wife will assist me by transferring to me her right, title and interest in the Michael J. Tansey mortgage referred to in paragraph 6. I can raise at least \$3,000. by borrowing on this mortgage if it is transferred to me. As a matter of fact, my wife agreed to transfer her interest in this said Michael J. Tansey mortgage of \$6,000. about a year ago in consideration of my conveying to her a piece of property in Maplewood, New Jersey, worth \$30,000. She is now living in this property but never performed her part of the agreement, to wit; transferring her right, title and interest in said mortgage.

7. I have believed right along, and so informed my wife, that the said bonds and mortgages were in a safe belonging to me which my wife broke open as heretofore set forth in affidavits filed by me in this cause. I have called up my wife several times recently asking her to make further search. Her only answer was, "Go to h--".

ALFRED EITNER.

Sworn and subscribed to before me  
this 1st day of April, 1930.

G. Billie Ferguson,  
A Notary Public  
(Seal) of New Jersey.

## Affidavit of Dora Eitner.

D. 66/228.

## IN CHANCERY OF NEW JERSEY.

Between

DORA EITNER,  
Complainant,

and

ALFRED EITNER,  
Defendant.

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On Bill, &c.  
Affidavit.State of New Jersey, }  
County of Essex, } ss.:

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

I have read the answering affidavit of Alfred Eitner dated April 1, 1930. I deny that the said Alfred Eitner has been willing to carry out the terms of the agreement made between him and me, and I deny that he was ready to execute any of the deed, assignments of mortgage, or other instruments required to be executed to effectuate said agreement. I deny the allegation in paragraph 3 of said affidavit that the said Alfred Eitner expected to receive \$4,262.07 in cash from Michael J. Tansey on mortgages which were foreclosed. The fact is that I am a half owner of the mortgage of Michael J. Tansey which was foreclosed, and I also have a half interest in the decree and in the property which was purchased from the Sheriff at the Sheriff's sale of said mortgaged premises. I deny that the said defendant agreed to give me in

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*Affidavit of Dora Eitner.*

lieu of cash an interest in a mortgage or mortgages of equal value. The fact is that the agreement calls for the payment of cash.

I have offered and have been ready at all times to convey my right, title and interest in the premises referred to in the agreement, and on the day  
10 fixed for settlement at the office of my solicitor I had with me the jewelry which I agreed to turn over to the defendant. At the time of closing my solicitor had prepared all the instruments necessary to carry out the agreement and they were ready for execution. The solicitor for the defendant had also prepared instruments which were ready to be executed, but the defendant could not and would not carry out the terms of the agreement. The defendant refused to pay the moneys  
20 required to be paid by said agreement and did not have the bonds which accompanied the mortgages to be assigned to me. He agreed to see the various mortgagors and have them execute a duplicate bond and give each of them an indemnity agreement to return the original bond if it were found and to extinguish any claim thereunder. There was no complaint made by the defendant or his  
30 solicitor at the time fixed for the closing of said agreement that I would not carry out the agreement on my part, but the only reason it was not carried out is that the defendant refused to carry it out and refused to produce the bonds which accompanied the mortgages to be assigned to me, and he has not from that day to this, which is a period of several months, offered to comply with the terms of the agreement, and neither he nor his solicitor have communicated with me or with my solicitor to fix another time for closing, or to attempt in  
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*Affidavit of Dora Eitner.*

any way to comply with the terms of the agreement.

It was agreed at the time of the closing that all the transactions contemplated by the agreement were to be completed simultaneously, and on the advice of my solicitor I did refuse to turn over to the defendant the furniture because he was not in a position to comply with the agreement and had refused to comply with the things required of him by said agreement, and his visit to my home to secure certain articles of furniture, which are not worth any more than \$75., was an attempt on his part to place me in the position of refusing to carry out the agreement. I believe that he wanted the furniture in order to establish a home for himself and Gertrude Wright, with whom I had caught him in an apartment and in whose company he has been constantly for the past six or eight months. He is at the present time living with her in an apartment owned by him in the name of Al Eitner, Inc., at 53 Grand Ave., Newark, N. J. The apartment which they occupy is a four-room apartment consisting of a living room, bedroom, dining room and kitchen, with bath. There is only one bedroom. The furniture was purchased within the last three weeks from a furniture house in the City of Newark and was made to order and paid for by the said Alfred Eitner. I learned this by causing inquiry to be made at the place where the furniture was purchased.

On Monday night, March 31st, I saw the defendant, Alfred Eitner, in the front room of the apartment assisting the said Gertrude Wright to hang window curtains, and I watched him from an automobile which was parked across the street.

The mortgages have not been assigned to me and

*Affidavit of Dora Eitner.*

I am unable to collect the interest on the mortgages, and consequently, I have no income therefrom, and the money which has been sent me by the defendant is wholly inadequate to support me.

DORA EITNER.

10 Sworn and subscribed to before me  
this 7th day of April, 1930.  
Elizabeth A. Coons,  
Notary Public  
of New Jersey.

**Affidavit of Daniel Eitner.**

20 State of New Jersey, }  
County of Essex, } ss.:

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

I am the son of Dora Eitner and Alfred Eitner, the parties to the above suit. I was present at the office of Merritt Lane on the day fixed for the settlement of the agreement made between complainant and defendant and approved by a special master of this court. At that time my mother had with her various articles of jewelry which my father claimed and which she agreed to turn over to him at that time when all the papers were signed. I saw a number of papers which I learned were assignments of mortgages which had been prepared by Mr. Clancy. I know that the defendant my father did not have with him the sum of \$4,262.07, which he had agreed to pay, and he stated that he had not been able to raise it at that  
30  
40 time. Mr. Clancy asked for the bonds which were

*Affidavit of Constance Eitner.*

given with the mortgages that were to be taken over by my mother and the defendant said he did not have them, but he agreed to see all the persons who made the mortgages to secure duplicate bonds which were to be turned over to my mother.

I know that my mother was ready at that time to carry out the terms of the agreement. I was present and I heard her say so, and no objection was raised by my father or his counsel that my mother was not ready to carry out the terms of the agreement, and the only reason the agreement was not carried out was because the defendant, my father, claimed he was unable to do so at that time and refused to go through with the agreement. He has never since that time, which was several months ago, offered to carry out the agreement, or made any attempt to do so to my knowledge. 10

DANIEL EITNER. 20

Sworn and subscribed to before me  
this 7th day of April, 1930.

Eugene F. Frey,  
An Attorney at Law  
of New Jersey.

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**Affidavit of Constance Eitner.** 30

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

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

I am the daughter of Dora Eitner and Alfred Eitner, the parties to the above suit. I was present at the office of Merritt Lane on the day fixed for the settlement of the agreement made between 40

*Affidavit of Constance Eitner.*

complainant and defendant and approved by a special master of this court. At that time my mother had with her various articles of jewelry which my father claimed and which she agreed to turn over to him at that time when all the papers were signed. I saw a number of papers which I learned were assignments of mortgages which had been prepared by Mr. Clancy. I know that the defendant my father did not have with him the sum of \$4,262.07, which he agreed to pay, and he stated that he had not been able to raise it at that time. Mr. Clancy asked for the bonds which were given with the mortgages that were to be given over by my mother and the defendant said he did not have them, but he agreed to see all the persons who made the mortgages to secure duplicate bonds which were to be turned over to my mother.

I know that my mother was ready at that time to carry out the terms of the agreement. I was present and I heard say so, and no objection was raised by my father or his counsel that my mother was not ready to carry out the terms of the agreement, and the only reason the agreement was not carried out was because the defendant, my father, claimed he was unable to do so at that time and refused to go through with the agreement. He has never since that time, which was several months ago, offered to carry out the agreement, or made any attempt to do so to my knowledge.

CONSTANCE JANE EITNER.

Sworn and subscribed to before me  
this 7th day of April, 1930.

Elizabeth A. Coons,  
Notary Public  
of New Jersey.

**Petition in Contempt.**

D. 66/228.

IN CHANCERY OF NEW JERSEY.

Between DORA EITNER, Complainant, and ALFRED EITNER, Defendant.	}	On Bill, &c.      10 Petition to Adjudge Defendant in Contempt.
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*To His Honor, Edwin Robert Walker,*  
*Chancellor of the State of New Jersey:*      20

The petition of Dora Eitner respectfully shows unto your Honor:

1. She is the complainant in the above entitled cause.

2. On November 7, 1928, an order was made by this Court requiring the defendant Alfred Eitner to pay to the complainant the sum of \$6,000. per year for her support and maintenance, to be payable in equal weekly installments on the first day of each and every week at the rate of \$115.38, and, in order to enforce payment of said allowance, it has been necessary for complainant a great many times to institute proceedings to adjudge the defendant in contempt. It was also required to sue out a writ of sequestration in order to make out of the defendant's property the sums due her under the order of this Court, and, on a later occasion when the defendant threatened to leave the country she secured a writ of ne exeat to prevent

*Petition in Contempt.*

the defendant from leaving the jurisdiction of this Court and the defendant was duly incarcerated, but upon the filing of a bond for \$5,000, he was released.

10 3. Thereafter the defendant made application for reduction in the amount required to be paid by him to the complainant and on October 30, 1929, an order was made by this Court referring the application for the reduction of alimony to Philip J. Schotland, Esq., a Special Master of this Court, to examine complainant and defendant with respect to complainant's needs and the defendant's ability to pay, and said order further provided that in the event that the Court shall find that the amount of said alimony payments should be reduced then and in that event payments made by 20 the defendant after October 30, 1929, in excess of the amount found by this Court should be credited to the defendant on account of future alimony payments.

30 4. During the course of the hearings before the Special Master, complainant and defendant entered into an agreement, which agreement was approved by the Special Master and an order was entered by this Court confirming the Master's report. The said agreement was not performed and has been abrogated and, on application to this Court, an order was made on April 22, 1930, setting aside the order confirming the Master's report made January 28, 1930 and reinstating the order of November 7, 1928.

40 5. Up to the time of the making of the agreement of December 31, 1929, the defendant was in arrears in alimony to the extent of \$800.00 and from that time down to the present time, a period of eighteen weeks, further arrearages have accrued

*Petition in Contempt.*

to the extent of \$2,076.84 which with the \$800. due as of December 31, 1929, makes the total indebtedness of the defendant to the complainant \$2,876.84, against which are allowed the following credits—\$240.00 received from the defendant; \$400.00 received from the Maplewood Police Department on the return of bail posted by the defendant, and five months' rent from one of the properties at \$95.00 a month, a total of \$475.00, making a grand total of credits of \$1275.00, leaving a balance due to complainant of \$1,761.84 on account of arrearages of alimony. 10

6. Defendant refused and still refuses to perform and carry out the order of this Court made November 7, 1928. He has made no effort since April 22nd to continue the hearings before the Special Master on his application for reduction. He deliberately refuses to comply with the order of this Court made November 7, 1928 and wilfully contemns same. His application for reduction and the order referring the same to the Master required the defendant to make the payments required by the order of November 7, 1928 and permitted all amounts so paid to be credited on future alimony payments if the Special Master or this Court should allow a reduction in the amount required to be paid by the defendant. and petitioner says that it would be inequitable to permit the defendant to continue the hearings before the Special Master without first complying with the order of this Court. 20 30

7. The defendant is financially responsible. He is the owner of mortgages worth upwards of \$50,000. or \$60,000. in his own name, and is the joint owner with complaint of mortgages of the value of \$70,000. more. Defendant refuses to sign a re- 40

*Petition in Contempt.*

10 ceipt for an interest payment on the mortgage of one Ross who is willing to pay the interest and make a payment on account of the principal, and there is now in the hands of Harry Phillipson, Esq., an attorney at law of this State, the sum of approximately \$700.00 on account of interest and principal of a mortgage held in the joint names of complainant and defendant. The defendant's attorney informed Mr. Phillipson and Mr. Clancy, who is associated with petitioner's solicitor, that defendant would not sign a receipt for said moneys and petitioner is unable to collect the interest and part of the principal of said joint mortgages jointly held by her and the defendant who absolutely refuses to make any effort to comply with the order of this Court.

20 8. Petitioner is the owner with defendant of several parcels of real estate in the City of Newark, County of Essex and State of New Jersey, and of a parcel of land in the Town of Irvington, County of Essex and State of New Jersey. For the past four months petitioner has collected the rents from the property in Irvington, but over a period of years the defendant has collected the rents from the other properties held in the joint names and out of the rents agreed to pay the taxes, 30 upkeep and carrying charges on all the property, but the testimony of the defendant given before Philip J. Schotland, Esq., Special Master of this Court, shows that the taxes on all the properties held jointly by petitioner and defendant have been in arrears for over two years and that the municipal authorities will sell the properties for non-payment of taxes. All these properties are 40 sufficient to pay the taxes, repairs and carrying

*Petition in Contempt.*

charges but the defendant has collected the money for his own use and dissipated the same. He has spent some of the moneys in furnishing and maintaining an apartment for another woman with whom he now lives. Unless this Court intervenes by the appointment of a receiver to collect said rents and apply them for the upkeep of the properties, repairs and carrying charges, there will be loss and petitioner alleges that the defendant has designedly suffered the taxes to fall in arrears so that the properties would be sold by the City and bought in by the defendant or someone selected by him to hold the properties for his use, well knowing that the petitioner is without the means or funds to redeem the properties.

9. Defendant has collected the interest on the mortgages held jointly by him and petitioner and the payments on account of the principal of said mortgages for several years last past and is indebted to the petitioner for upwards of \$5,000. Defendant has taken checks made to the order of himself and the petitioner for interest and payments on account of principal for various mortgages and has appropriated said moneys to his own use by endorsing the name of petitioner on checks and petitioner is unaware at this time of the exact amount of principal and interest due on the various mortgages, the amount collected on account of interest and principal and rents and the times when the same were collected. The files in this cause set forth fully the various real estate holdings of the complainant and defendant, as well as the mortgages held by them jointly.

*Petition in Contempt.*

Petitioner is without an adequate remedy at law and therefore prays:

1. That the defendant may be adjudged guilty of contempt of this Court for his wilfullness in failing and refusing to comply with the order of this Court made November 7, 1929.

10 2. That the hearings before Philip J. Schotland, Esq., Special Master, may be stayed until the defendant pays up the arrearages of alimony due to the complainant under the order of this Court made November 7, 1928.

20 3. That a receiver or trustee may be appointed by this Court to collect the rents from the properties held jointly by complainant and defendant and to pay the carrying charges of said properties and to collect the interest and payments on account of principal from mortgages held jointly by complainant and defendant and apply the moneys due the defendant from that source on account of arrearages of alimony due the complainant so that the estate of complainant may not be dissipated.

30 4. That an order may be made by this Court referring the matter to a Special Master to take an account of the moneys due the petitioner from the defendant, to ascertain the same and report thereon to the Chancellor, and to further ascertain the times when and the amounts collected by the defendant on account of interest and principal of mortgages held in the joint names of complainant and defendant, as well as the amount of rents collected by the defendant from properties owned by complainant and defendant jointly, and to ascertain the taxes due the municipal authorities on said properties and all other charges and costs for

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*Affidavit of Dora Eitner.*

repairs and running expenses, and to report thereon to this Court with all convenient speed.

5. That petitioner may have such other and further relief as may be just.

MERRITT LANE,  
Solicitor for Petitioner.

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**Affidavit of Dora Eitner.**

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

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

1. I am the complainant in the above entitled cause. I have read the petition to adjudge the defendant in contempt and the same is true except as to those matters alleged upon information and belief and as to them I believe it to be true. 20

2. On November 7, 1928, an order was made by this Court requiring the defendant Alfred Eitner to pay to me the sum of \$6,000. per year for my support and maintenance, to be payable in equal weekly installments on the first day of each and every week at the rate of \$115.38, and, in order to enforce payment of said allowance, it has been necessary for me a great many times to institute proceedings to adjudge the defendant in contempt. It was also required to sue out a writ of sequestration in order to make out of the defendant's property the sums due me under the order of this Court, and, on a later occasion when the defendant threatened to leave the country I secured a writ of ne exeat to prevent the defendant 40

*Affidavit of Dora Eitner.*

from leaving the jurisdiction of this court and the defendant was duly incarcerated, but, upon the filing of a bond for \$5,000. he was released.

10 3. Thereafter the defendant made application for reduction in the amount required to be paid by him to me and on October 30, 1929, an order was made by this Court referring the application for the reduction of alimony to Philip J. Schotland, Esq., a Special Master of this Court, to examine defendant and me with respect to my needs and the defendant's ability to pay, and said order further provided that in the event that the Court shall find that the amount of said alimony payments should be reduced then and in that event  
20 payments made by the defendant after October 30, 1929, in excess of the amount found by this Court should be credited to the defendant on account of future alimony payments.

4. During the course of the hearings before the Special Master, defendant and I entered into an agreement, which agreement was approved by the Special Master and an order was entered by this Court confirming the Master's report. The said agreement was not performed and has been abrogated and, on application to this Court, an order  
30 was made on April 22, 1930, setting aside the order confirming the Master's report made January 28, 1930 and reinstating the order of November 7, 1928.

5. Up to the time of the making of the agreement of December 31, 1929, the defendant was in arrears in alimony to the extent of \$800.00 and from that time down to the present time, a period of eighteen weeks, further arrearages have accrued to the extent of \$2,076.84 which with the \$800. due  
40 as of December 31, 1929, makes a total indebted-

*Affidavit of Dora Eitner.*

ness of the defendant to me \$2,876.84, against which are allowed the following credits—\$240.00 received from the defendant; \$400.00 received from the Maplewood Police Department on the return of bail posted by the defendant, and five months' rent from one of the properties at \$95.00 a month, a total of \$475.00, making a grand total of credits of \$1275.00, leaving a balance due to me of \$1,761.84 on account of arrearages of alimony. 10

6. Defendant refused and still refuses to perform and carry out the order of this Court made November 7, 1928. He has made no effort since April 22d to continue the hearings before the Special Master on his application for reduction. He deliberately refuses to comply with the order of this Court made November 7, 1928 and wilfully contemns same. His application for reduction and the order referring the same to the Master required the defendant to make the payments required by the order of November 7, 1928 and permitted all amounts so paid to be credited on future alimony payments if the Special Master or this Court should allow a reduction in the amount required to be paid by the defendant, and it would be inequitable to permit the defendant to continue the hearings before the Special Master without first complying with the order of this Court 20 30

7. The defendant is financially responsible. He is the owner of mortgages worth upwards of \$50,000. or \$60,000. in his own name, and is the joint owner with me of mortgages of the value of \$70,000. more. Defendant refuses to sign a receipt for an interest payment on the mortgage of one Ross who is willing to pay the interest and make a payment on account of the principal, and there is now in the hands of Harry Phillipson, Esq., an attorney 40

*Affidavit of Dora Eitner.*

at law of this State, the sum of approximately \$700.00 on account of interest and principal of a mortgage held in the joint names of defendant and myself. The defendant's attorney informed Mr. Phillipson and Mr. Clancy, who is associated with my solicitor, that defendant would not sign a receipt for said moneys and I am unable to collect the interest and part of the principal of said joint mortgages jointly held by me and the defendant who absolutely refuses to make any effort to comply with the order of this Court.

8. I am the owner with defendant of several parcels of real estate in the City of Newark, County of Essex and State of New Jersey, and of a parcel of land in the Town of Irvington, County of Essex and State of New Jersey. For the past four months I have collected the rents from the property in Irvington, but over a period of years the defendant has collected the rents from the other properties held in the joint names and out of the rents agreed to pay the taxes, upkeep and carrying charges on all the property, but the testimony of the defendant given before Philip J. Schotland, Esq., Special Master of this Court, shows that the taxes on all the properties held jointly by the defendant and myself have been in arrears for over two years and that the municipal authorities will sell the properties for non-payment of taxes. All these properties are productive of income and the income therefrom is sufficient to pay the taxes, repairs and carrying charges but the defendant has collected the money for his own use and dissipated the same. He has spent some of the moneys in furnishing and maintaining an apartment for another woman with whom he now lives. Unless this Court intervenes by the appointment of a receiver

*Affidavit of Dora Eitner.*

er to collect said rents and apply them for the upkeep of the properties, repairs and carrying charges, there will be loss and I allege that the defendant has designedly suffered the taxes to fall in arrears so that the properties would be sold by the City and bought in by the defendant or someone selected by him to hold the properties for his use, well knowing that I am without the means or funds to redeem the properties. 10

9. Defendant has collected the interest on the mortgages held jointly by him and myself and the payments on account of the principal of said mortgages for several years last past and is indebted to me for upwards of \$5,000. Defendant has taken checks made to the order of himself and me for interest and payments on account of principal for various mortgages and has appropriated said moneys to his own use by endorsing my name on checks and I am unaware at this time of the exact amount of principal and interest due on the various mortgages, the amount collected on account of interest and principal and rents and the times when the same were collected. The files in this cause set forth fully the various real estate holdings of defendant and I, as well as the mortgages held by us jointly. 20 30

10. I believe that unless a receiver or trustee is appointed by this Court to collect the rents from the properties held jointly by me and the defendant and to collect the interest and the payments on account of principal of the mortgages held jointly by me and the defendant that the defendant will suffer the taxes to be in arrears and the property sold by the municipal authorities for taxes and will permit in the future, as he has done in the 40

*Affidavit of Dora Eitner.*

past, judgments to be entered against him for  
goods and merchandise furnished him and for re-  
pairs made to the various property and will con-  
tinue to collect moneys from the mortgages held  
jointly by me and the defendant and will dissipate  
the moneys, and that I will be unable to collect  
10 what is due me at the present time and what will  
become due in the future. It is necessary that a  
receiver or trustee be appointed to collect the rents  
and income from the various properties and apply  
the proceeds thereof towards the maintenance of  
the same because the defendant has suffered the  
buildings to become in a state of dis-repair and in  
some instances it is difficult to rent the properties  
and in others it is necessary to rent them at a less-  
er rent than these properties would command if  
20 they were properly kept up and maintained.

DORA EITNER.

Sworn and subscribed to before me  
this 6 day of May, 1930.

Fred W. Mitchell,  
An Attorney at Law  
of New Jersey.

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**Order to Show Cause.**

D. 66/228.

IN CHANCERY OF NEW JERSEY.

Between

DORA EITNER,  
Complainant,

and

ALFRED EITNER,  
Defendant.

On Bill, &amp;c.

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Order to  
Show Cause.

This matter being opened to the Court by Merritt Lane, solicitor for complainant, and upon reading and filing the petition and affidavit of Dora Eitner thereto annexed, and good cause appearing:

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It is, on this 6th day of May, 1930, ORDERED, that the defendant Alfred Eitner show cause before the Chancellor, at Chancery Chambers, Industrial Building, Newark, N. J., on Tuesday the 13th day of May, 1930, at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard, why the petitioner should not have the relief prayed for in her petition and why the defendant should not be adjudged guilty of contempt of this Court for his contumacy in refusing to comply with the order of this Court made November 7, 1928, in the particulars alleged in said petition, and why the hearings before Philip J. Schotland, Esq., Special Master, should not be stayed until the defendant pays the arrearages of alimony due to complainant under the order of this Court made November 7, 1928, and why a receiver or trustee should not be appointed by this Court to collect the rents

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*Order to Show Cause.*

from the properties held jointly by complainant and defendant and to pay the carrying charges of said properties and to collect the interest and payments on account of principal covering mortgages held jointly by complainant and defendant and apply the moneys due the defendant from that source on account of arrearages of alimony due complainant so that the estate of complainant may not be dissipated, and why this matter should not be referred to a Special Master to take an account of the moneys due the complainant from the defendant on account of the rent and income from the properties owned by them jointly and to ascertain the moneys collected by the defendant on account of interest and principal on mortgages held in the joint names of complainant and defendant and to ascertain the taxes due the municipal authorities on properties owned by complainant and defendant together with all other charges and costs for repairs and running expenses, and why the complainant should not have such other and further relief as may be just.

And it is further ORDERED, that a copy of this order, together with a copy of the petition and affidavit upon which the same is based, certified to be true copies by the solicitor of the complainant, be served upon the defendant by serving a copy thereof upon him either personally or by leaving at his usual place of abode or business, or by service upon his solicitor, within      days of the date hereof.

E. R. WALKER,  
C.

Respectfully advised,  
MAJA LEON BERRY,

40 V. C.

## New Jersey Court of Errors and Appeals

Between

DORA EITNER,  
Complainant-Appellee,

and

ALFRED EITNER,  
Defendant-Appellant.

} On Bill, &c.

} On Appeal  
} from Court  
} of Chancery.

### DEFENDANT-APPELLANT'S BRIEF.

The defendant, Alfred Eitner, has appealed from that part of an order entered in the above-entitled cause on July 1st, 1930, by the Chancellor on the advice of Vice Chancellor John H. Backes, which provides as follows:

“ \* \* \* and that there be allowed to said Philip J. Schotland, Esq., Special Master, for his services, the sum of \$500 in addition to his taxed costs and statutory fees, and that there be allowed to Merritt Lane, Esq., the Solicitor for Complainant, the sum of \$2000 for his services, together with his taxed costs, and the actual cost of said reference, amounting to \$53.00.”

In this matter an application was made by the defendant October 30th, 1929, for reduction of alimony of \$115.37 weekly, in accordance with the terms of an order entered in said Court of Chancery November 7th, 1928. After hearings before the Special Master (said application having been contested by the complainant) the Special Master

recommended a reduction in the amount of alimony to be paid by defendant to \$75 per week. It is contended on the part of the defendant, that, in view of the fact that he was successful in his application for a reduction, he should not be penalized in the sum of \$2000 as counsel fee to complainant's solicitor, and the sum of \$500 as an additional allowance to the special master.

Justice Trenchard, in delivering the unanimous decision of the Court of Errors and Appeals, in the case of Horner vs. Heinecke, 98 Atl. Rep. p. 393, 86 N. J. Eq., p. 176, cites 1 Compiled Statutes of New Jersey, 1910, p. 442, par. 84, and holds that where complainant and defendant are each successful on one or more substantial issues, neither is entitled in Chancery to costs. In the matter of Diocese of Trenton vs. Toman, (1908) 70 Atl. Rep. p. 881, in an opinion by Vice Chancellor Edwin Robert Walker, it was held substantially the same as in the later case of Horner vs. Heinecke, above referred to, namely, viz:

"Independent of statute and under Chancery Act (P. L. 1902, p. 538, Sec. 84) providing that costs in the Court of Chancery shall be discretionary, except where otherwise directed by law, etc., where complainant and defendant are each successful on one or more substantial issues, neither is entitled to costs as against the other."

Chancellor Walker, in an opinion in the matter of Beall vs. New York and New Jersey Water Co., 87 N. J. Eq., 390, at p. 395, held that

"The allowance of counsel fees to one party against another in a case like the one *sub judice* is not compulsory, but discretionary, and, therefore, the rule that where the complainant and defendant are each successful

on one or more substantial issues, neither is entitled to costs as against the other, applies, and this obviously extends to counsel fees as well."

In the case of Lawyers' Title and Trust Co., Executor vs. Comptroller of Treasury of New Jersey, 85 N. J. Eq., p. 481, Hon. John J. Backes, sitting as Vice Ordinary, said:

"Fees and costs of litigation are creatures of statutes",

and quoting Lehigh Valley Railroad vs. McFarland, 44 N. J. Law, p. 674, says:

"And as there is no enabling act, they cannot be allowed."

Justice DePue, delivering the opinion of the Court of Errors and Appeals, in the case of Lehigh Valley Railroad vs. McFarland, aforesaid, at p. 677, said:

"The recovery of costs having been provided for by statute, it became the well settled doctrine of the Courts of Law that costs were the creatures of the statutes and were not recoverable unless by force of a statute, and the allowance of them in any case would depend upon the statute."

The statutes in this state authorizing and regulating the recovering of costs in Chancery Court finds authority in the pamphlet laws of 1902, Chap. 158, Sec. 80, p. 537 (1 Compiled Statutes, p. 440-441, Sec. 80) :

"Whenever the Chancellor shall deem it necessary to call to his assistance one or more of the Masters in Chancery to advise with, upon the hearing of a cause, or an argument, or upon matters of importance, or

when any matter shall be referred to any of said officers, pursuant to the general rules of this Court, or to any special order or decree, in any cause, matter or proceeding, depending therein, the fees for such services shall be proportionate, as nearly as may be to the actual value of such service, and shall be regulated by the Chancellor from time to time."

Pamphlet Laws 1921, Chap. 260, Sec. 1, p. 787  
(Cumulative Supplement 1236 74-33) recites:

"For making every report in pursuance of any order or decree made, taken or entered in any suit, cause, matter or proceeding in the Court of Chancery of this State, after the passage of this Act, every master in chancery and every special master in chancery shall be entitled to receive the sum of ten dollars and no more, and that for drawing every such report every such master in chancery shall be entitled to receive forty cents for every folio of one hundred words."

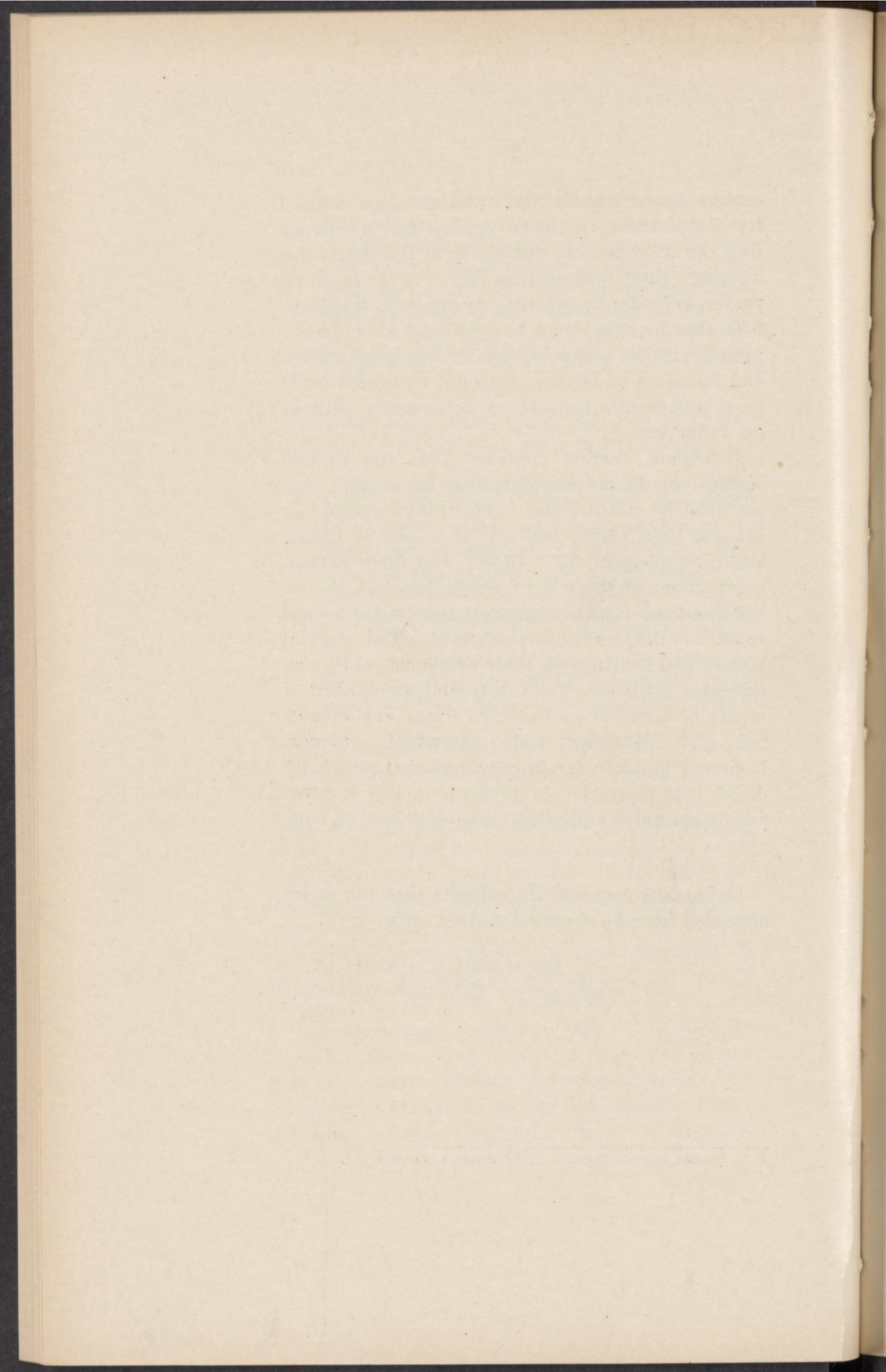
Defendant contends that having succeeded in his motion, costs should not have been taxed against him and bases his contention on the foregoing cited cases, and further contends that the proceedings on his application for reduction, and the proceedings prior thereto, from the date of the initial order for alimony of November 7th, 1928, do not warrant the counsel fee allowed and a special allowance to the Master and are not commensurate with the services rendered or performed. The entire testimony proved to the satisfaction of the Master, in recommending a reduction, that defendant's income had depreciated, and it is contended on the part of the defendant that the prior allowance was in excess of his ability to pay occasioning thereby the resort of the complainant to proceedings for

contempt and sequestration and although counsel for complainant consumed much time in compelling the defendant to comply with the decree for alimony, these proceedings have, in a measure, proven defendant's inability to pay and defendant feels that he should not be penalized for not complying with an order beyond his financial ability, and therefore no allowance should have been made to complainant's counsel on defendant's petition for reduction.

Defendant further contends that the Special Master should not be allowed a fee beyond that provided by statute, and as set forth in pamphlet laws of 1921, Chap. 260, Sec. 1, p. 787 (1 Cumulative Supplement, 1236 74-33), and further, that, independent of the statute regulating fees, the allowance made was not proportionate to the actual value of the services performed. The Special Master had hearings on three occasions, when considerable testimony was taken, and upon which a report of approximately eleven folios was submitted. The allowance made, defendant contends, is proportionately far in excess of that which judicial officers receive in performing like services and is excessive and wholly unauthorized by statute.

**Defendant respectfully submits that the order appealed from be reversed and set aside.**

RICHARD H. CASHION,  
Solicitor for Defendant-Appellant.



## New Jersey Court of Errors and Appeals

No. 100, October Term, 1931.

Between

DORA EITNER,  
Complainant-Appellee,

and

ALFRED EITNER,  
Defendant-Appellant.

Appeal from  
Chancery.

Sat below:  
Backes, V. C.

(Italics, etc., ours, except where otherwise noted.)

### BRIEF FOR RESPONDENT.

#### POINT I.

**The allowance of counsel fees in the order of July 1, 1930, was proper and reasonable.**

Appellant, in his brief, treats this action as an ordinary suit in equity in which general equitable relief is sought. He ignores the fact that this action is a *matrimonial* suit between husband and wife, in which type of suit the Court of Chancery and this Court have uniformly held that the matter of allowances for counsel fees and costs is within the discretion of the Court of Chancery, but that the wife is the favored suitor (*Suydam v. Suydam*, 79 N. J. Eq. 144; *Verbeeck v. Verbeeck*, 93 N. J. Eq. 17; *Hopson v. Hopson*, 95 N. J. Eq. 540).

Appellant predicates his right to a reversal of the order appealed from (printed, pp. 3, 175, State of Case) *solely* upon the fact that, at *one* stage

of the numerous proceedings in the cause, he was successful in securing a reduction of alimony from \$115.37 per week to \$75.00 per week.

Counsel also ignores the fact that, prior to the order granting the reduction, filed July 1, 1930, respondent had been compelled to make numerous applications from November 7, 1928 until July 1, 1930 to the Court below to compel appellant to obey the decree of that Court, filed November 7, 1928, requiring him to pay respondent \$115.37 a week for her support and maintenance (p. 4 of the Supplemental State of Case). The State of Case printed by appellant contains only the pleadings and lengthy depositions taken upon appellant's application to reduce the amount fixed by the order of November 7, 1928, but the Supplemental State of Case printed later by appellant, after objections filed by respondent, shows that between the dates of November 7, 1928, and July 1, 1930, respondent was compelled to make at least five applications, by petition to hold the appellant in contempt, applications for writ of sequestration, applications for writ of *ne exeat* and the like, in order to compel appellant's obedience to the order of November 7, 1928. It is because of this series of applications and the constant litigation resulting therefrom that the Court below made its allowance of counsel fees to respondent's counsel (p. 3).

The opinion of the Court below, filed on October 21, 1930, 107 N. J. Eq. 88, was inadvertently omitted from the Supplemental State of Case and it is printed with and filed as part of this brief (p. 21).

In its opinion, the Court below reviews in detail the steps respondent was compelled to take over a period of twenty months to bring her recalcitrant husband to book. A perusal of the pleadings printed in the Supplemental State of

Case will indicate that it was only after a year of constant litigation between the parties that appellant made his application to have the alimony reduced (Petition, p. 7; Order, p. 12; Depositions, pp. 14 to 171). Prior to appellant's application for reduction (p. 7) appellant had strenuously resisted every effort of respondent to make him pay her the amount of alimony ordered by the Court of Chancery in 1928.

As the Court below stated in its opinion (107 N. J. Eq. 88):

“The story is quickly told but the bulky files tell the tale of nearly two years of vigilant and constant pressure by counsel to bring the defendant, ever evasive and persistently contumacious, to book. It was for these services that counsel applied for compensation at the time of the motion to confirm the Master's report, and these services the court had in mind, not in detail, of course, but it knew from its protracted experiences with the litigation when it made the allowance.”

In the *ordinary* case brought in the Court of Chancery, whether it be by bill or petition, in which the applicant seeks equitable relief, be it general or extraordinary, the matter of costs and counsel fees is largely controlled by statute; and the cases cited by appellant illustrate this fact. *None of the cases* cited by appellant, however, are matrimonial suits, and at no place in his brief does appellant cite any rulings, either of the Court of Chancery or of this Court, regarding the practice of the Court of Chancery in the awarding of counsel fees and costs in *matrimonial* actions.

Matrimonial suits are to be distinguished from other suits seeking relief in the Court of Chancery in that, (1) in the former, the State has a peculiar interest in protecting the matrimonial status,

and (2) the husband is responsible for the reasonable debts of his wife incurred for her support, and this includes the cost of the services in litigation to which she and her husband may be adverse parties involving her matrimonial status.

The statutes permitting the Court of Chancery to allow costs and counsel fees in ordinary actions have no reference whatever to matrimonial suits.

The wife has always been the favored suitor in matrimonial actions and the Court has uniformly allowed her money for the payment of her expenses and counsel fees incident to the prosecution or the defense of any matrimonial cause in which she is one of the principals. This authority has never been derived from or predicated upon any statute, but has been inherent in the Court from the earliest times.

In *Suydam vs. Suydam*, 79 N. J. Eq. 144, the present Chancellor (then Vice-Chancellor) stated (p. 146):

“In divorce cases the wife is a privileged suitor, and, as a general rule, is entitled to alimony and counsel fee *pendente lite*, whether she be complainant or defendant.”

That case was a suit for maintenance under Section 26 of the Divorce Act, 2 C. S. of N. J., page 2038, but the Court concluded, after reviewing earlier cases, that the same rule would apply.

In *Verbeeck vs. Verbeeck*, 93 N. J. Eq. 17, the Chancellor, upon application of the wife for suit-moneys in a suit for divorce filed by her husband, again reviewed the decisions and said (p. 20):

“The matter of costs between husband and wife in a divorce suit is *sui generis*”—

and at page 21, after disapproving an earlier decision he said:

“In 19 C. J. 226, Section 537, it is said:

‘In addition to the sum allowed the wife for her maintenance and support during the pendency of the suit, it is usual to allow her a sum to defray the expenses of the suit.’ ”

And he then refers to the accepted reason for the rule from 2 Bishop, M., D. & S., Section 992:

“It would be a disgrace to the law and a grievous offence against justice, if, after a woman had given her person and property in marriage to a man with whom afterward a litigation arose as to the conduct of either in the new relation, or as to the validity of the marriage itself, she must sustain her prosecution or defense without the money essential thereto, and with no possible access to the fund which she had contributed to accumulate. Hence, the doctrine and practice of suit money.”

The Chancellor said:

“Although the control of the property of married women in this state is no longer given by law to their husbands upon marriage, and while most married women do not contribute to the funds accumulated by their husbands, nevertheless, the doctrine laid down by Mr. Bishop is equally applicable to our women who have no funds, quite irrespective of whether or not they ever had any which went to their husbands. \* \* \* ”

In conclusion, he stated (p. 22):

“I think I may safely assert that it is the policy of our law in all of these cases to see to it that the wives are defended at the husband’s expense, and that their suits are stayed until they provide means ample for the purpose, at least in all cases in which the wives desire to interpose defence.”

In *Hopson vs. Hopson*, 95 N. J. Eq. 540, the late Vice-Chancellor Bentley, after a review of the cases, stated (p. 541):

“It must be common knowledge among the bar that the wife in a divorce suit from the bonds of matrimony is even more favored in the matter of counsel fee than when she seeks alimony, and for perfectly apparent and sound reasons.”

Of course, costs and counsel fees in such actions are not allowed as a matter of right; the matter is within the discretion of the Court. *Harris v. Harris*, 70 N. J. Eq. 586. However, the wife is the privileged suitor; and where she presents a *bona fide* cause of action, seeking either a divorce or separate maintenance, and makes out a *prima facie* case she is entitled to alimony and counsel fees. *Suydam v. Suydam*, 79 N. J. Eq. 144; *Verbeeck v. Verbeeck*, 93 N. J. Eq. 17.

Going even further, the Courts have held that, although the wife may not be entitled to preliminary or permanent alimony, that fact has no bearing upon her rights to counsel fees and expenses which may be granted, notwithstanding the fact that alimony *pendente lite* has been denied. *Oram v. Oram*, 77 N. J. Eq. 1.

In this action the counsel fee allowed to respondent was not an award upon an application for alimony, *pendente lite*, but was based upon and fully justified by the protracted course of litigation which appellant compelled respondent to initiate in order to secure her rights during the progress of the cause. There is no question in this case of the *bona fides* of respondent's application for separate maintenance at the outset. There were proceedings in the cause prior to the decree of November 7, 1928, and hearings were held before a Master which resulted in that decree (p. 4, Supplemental State of Case). That

decree also made provision for an allowance of \$500.00 to the Special Master, based upon the hearings before him, which was paid by appellant without any question being raised as to its propriety or reasonableness. It is, therefore, apparent that all proceedings initiated by respondent up to the petition of appellant for a reduction of alimony (p. 7) which resulted in the order appealed from (pp. 3, 175), were justified and formed a proper basis upon which the Court below exercised its discretion in making the allowances to respondent's counsel as provided by the order of July 1, 1930 (pp. 3, 175).

Appellant contends that, having succeeded upon his single motion for a reduction of alimony, the result thereof should be retroactive and should deprive respondent of all costs incurred in the previous protracted litigation in the cause and of all counsel fee, basing his contention in this respect upon cases, both in this Court and in the Court of Chancery, in which single issues have been brought before the Court, single hearings held and one decision made upon such hearings. None of these cases were matrimonial suits, and in none of them were the parties involved in a long course of litigation such as here involved.

*In this case, a matrimonial cause of action, the Court had the power to allow respondent counsel fees for services rendered by counsel for her in opposing the application of the husband to reduce the alimony, notwithstanding that the husband was successful.*

In a suit similar to the case at bar, however, this Court has recently indicated its views on the question here presented.

In *Farlee v. Farlee*, 101 N. J. Eq. 111, an application was made on behalf of a divorced wife for increased permanent alimony. A decree of divorce had been granted to her in 1917 and an

order made at that time for the payment of \$720.00 annually for her support and maintenance and that of her infant daughter. During the ten years following the entry of that order the circumstances of the parties changed substantially, the petitioner finding it necessary to earn a living for herself and the child and the defendant, on the other hand, gradually gathering material wealth. Upon the application for the increase in 1927, the late Vice-Chancellor Bentley entered a decree for the payment of \$4,000.00 annually for the support of petitioner and her daughter and allowed her a counsel fee of \$1,500.00. An appeal was taken from the whole of the order and this Court affirmed the order insofar as it granted an increase of support and maintenance. 102 N. J. Eq. 249. It appeared, however, that upon the application for the increase of alimony only twenty-seven pages of printed testimony were taken with exhibits covering nineteen printed pages. Under those circumstances, this Court reduced the counsel fee to \$500.00. 102 N. J. Eq. 249.

It is submitted that the decision of this Court in the *Farlee* case indicates that the rule to be applied in matrimonial suits is that the allowance of counsel fee, while discretionary with the Court of Chancery, must not be excessive but must bear some fair relation to the actual value of the services rendered by counsel, the expense to which the successful applicant has been put and the amount of litigation involved. In the *Farlee* case there was but one application for increase of alimony, only one hearing before the Court below at which some forty-six pages of testimony and exhibits were taken and one issue decided favorably to the petitioner.

In the instant case we have a record consisting of at least three applications by respondent

to have appellant adjudged in contempt, upon each of which a petition with one or more affidavits was filed (pp. 8, 10, 14, 17, 41, 46, 50, 62, 64, 65, 89, 92, 93, 95, 101, 103 and 107, Supplemental State of Case) together with orders to show cause; hearings held on each petition, at which appellant strenuously contested the application, filing affidavits which necessitated the filing of reply affidavits; an application for sequestration (p. 19, Supplemental State of Case) in order to compel appellant to pay up arrearages of alimony and comply with the decree of November 7, 1928; warrants for appellant's arrest were issued (p. 20, Supplemental State of Case), and it was only after proceedings had gone that far that appellant finally paid up the arrearages of alimony (p. 39, Supplemental State of Case). Upon another occasion appellant threatened to leave the State and to dispose of his property in order to defeat respondent's right to alimony under the decree, and respondent was compelled to apply for a writ of *ne exeat* (pp. 64, 66, Supplemental State of Case).

After the entry of the decree of November 7, 1928, and during the course of the proceedings brought by respondent to compel appellant's obedience thereto, appellant applied for a reference to a Master to ascertain respondent's needs and appellant's ability to make payments under the decree (p. 7). Three hearings were held (pp. 15-119).

During the course of these hearings an agreement was entered into between appellant and respondent which attempted to settle and adjust the matters in dispute, whereby appellant agreed to assign and transfer certain parts of his real estate holdings and mortgages to respondent. This agreement was approved by the Court (p. 44, Supplemental State of Case; Agreement, p. 54, Supplemental State of Case); but appellant

refused to abide by the agreement, necessitating another application to hold him in contempt (pp. 46, 62, Supplemental State of Case).

This was followed by the application for a writ of *ne exeat* to prevent appellant from leaving the State (p. 64, Supplemental State of Case). In order to restore herself to her former position, respondent was then compelled to petition the Court for an abrogation of the settlement agreement (p. 68, Supplemental State of Case) and for reinstatement of the original decree of November 7, 1928. The Court directed that the hearings upon appellant's application for reduction of alimony be resumed before the same Special Master. The hearings were resumed May 12, 1930 (p. 119), and two further hearings held (Testimony, pp. 119 to 172, Original State of Case).

Before the application of appellant for reduction of alimony was finally decided, therefore, five lengthy hearings, held during a period of five months, were necessary before the Special Master, and testimony covering 158 printed pages in the record was taken. A reading of the testimony will indicate that, prior to any examination of witnesses, extensive preparation therefor was required on the part of respondent's counsel. Appellant was examined at great length regarding his coal and ice business (pp. 17 to 25); regarding his real estate, its condition, the rents and profits thereof (pp. 17 to 30); upon cross-examination, his mortgage holdings were inquired into and the mortgages put in evidence (pp. 30 to 34); the status of these mortgages, the interest received from each and the amounts due on each were taken up in detail (pp. 33 to 46); his insurance policies, stock and bonds and other personal property were considered (pp. 46 to 54).

At the second and third hearings before the Special Master, further inquiries were made into

transactions involving the coal and ice business of Al. Eitner, Inc., a corporation owned by appellant, pursued under great difficulty due to the stubbornness of appellant upon the stand and to difficulty in securing records of the corporation regarding its financial transactions (pp. 87 to 119); bank statements, checks, personal records and the like were put in evidence and considered by the Master.

At the last hearings before the Master, May 12 and 19, 1930, further detailed testimony regarding appellant's exact financial condition, the status of his mortgages, his earnings, income and expenses was taken (pp. 119 to 140); the testimony of respondent regarding all of the above was taken and an inquiry into her living expenses, living conditions and exact needs made (pp. 140 to 171).

Appellant contends (p. 4 of his brief) that the decision in his favor upon his motion to reduce the alimony payments should be decisive on the matter of allowances to counsel for all work done and litigation carried through, no matter how arduous or lengthy, prior to the reduction of the alimony. Appellant cites no authority for such contention and it is submitted that there is no rule of law or practice of the Court, nor can any be found, which gives such retroactive effect to a decision which is merely a step in the cause as that such decision will have the effect of nullifying all previous proceedings in the cause, however favorable to the opposing party, and prevent the recovery of any compensation whatsoever by counsel for the opposing party for services rendered in such previous litigation necessarily instituted in the cause.

Orders for alimony made by the Court are always subject to change as circumstances may require. The decree of November 7, 1928, was an

adjudication by the Court that appellant, prior to and up to that date, was financially able to pay respondent \$115.37 a week for her support and maintenance, and it was quite possible that appellant's circumstances might thereafter change in such a way as to make him unable to continue the payment of this amount, but it does not follow that a later change of circumstances is conclusive upon the question of his prior ability to pay \$115.37 a week to respondent. Appellant contends that as the Master has found that appellant's income had depreciated and that appellant was entitled to reduction, the result was an adjudication that the "prior allowance was in excess of his ability to pay, occasioning thereby the resort of the complainant to proceedings for contempt and sequestration".

This is a *non-sequitur*. The mere fact that respondent was compelled from time to time to bring appellant before the Court for his contumacy in refusing and neglecting to obey the decree of November 7, 1928, is not an indication of his *inability* to pay; on the contrary it is rather an indication that he was wilfully neglecting to obey the order of the Court; and the language of the Court below in its opinion indicates that appellant, who had appeared on several occasions personally, and on all occasions through his counsel before the lower court, was "ever evasive and persistently contumacious". The fact that upon adjudication for contempt, appellant paid \$5,607.22 arrearages (Order, p. 39, Supplemental State of Case) is proof of his ability to pay and indicates that he refused to pay until jail was staring him in the face.

If, in fact, the failure of appellant to make payments under the decree of November 7, 1928 was due to his inability to make those payments because of decreased earning power or income, he

should have made the application for reduction before the expiration of a year after the decree of November 7, 1928.

Appellant, in his brief, continually characterizes the allowance of counsel fees and costs as a penalty upon him and he contends that he should not be penalized for not complying with an order beyond his financial ability (p. 5 of his brief).

Appellant loses sight of the fact that upon the entry of the order of July 1, 1930, confirming the Master's report in favor of reduction, there was no adjudication by the Court that appellant's financial ability had been impaired at the time of the entry of the order of November 7, 1928. That order (pp. 3, 175) recites:

“And it further appearing that a number of hearings were had before the Special Master from November 19, 1929, down to and including June 20, 1930, and that testimony was adduced on behalf of the complainant and the defendant and that thereafter on or about June 24, 1930, the said Special Master filed a report *in which he finds that the complainant requires for her support and maintenance the sum of \$75.00 per week and that the defendant is well able to pay to the complainant the sum of \$75.00 per week.*”

This cannot be construed as an adjudication that appellant, as far back as November 7, 1928, had suffered such an impairment of his financial resources and income as that he was only able to pay the sum of \$75.00 per week. It may be that at some time between November 7, 1928, and July 1, 1930, such impairment of his resources did in fact take place, but the order of July 1, 1930, cannot be construed as fixing that change of circumstances at any specific time. It can only be construed as adjudicating that at the time of the entry of the order “the defendant is well able to

pay to the complainant the sum of \$75.00 per week". Appellant filed no exception to the Master's finding in that respect, nor does he appeal from that part of the order of July 1, 1930 directing payment of \$75.00 per week.

Appellant is also under the impression that the allowances to counsel from which he appeals were made solely for services rendered upon his petition for the reduction of alimony. This is erroneous. Although the order of July 1, 1930 (p. 3, 175) does not state the exact services for which the allowances of counsel fees were made, the fact is that such application was made for all of the work performed by counsel for respondent after November 7, 1928. The Court below, in its opinion, 107 N. J. Eq. 88, clearly states, after a résumé of the numerous proceedings respondent was compelled to institute and prosecute against appellant, that:

"It was for these services that counsel applied for compensation at the time of the motion to confirm the Master's report; and these services the Court had in mind not in detail, of course, but it knew from its protracted experiences with the litigation when it made the allowance. It would perhaps have avoided confusion had the allowance been made by separate order but adding the allowance for counsel to an order for alimony is common practice."

In all, therefore, pleadings covering approximately 104 printed pages of the Supplemental State of Case had to be filed by respondent and hearings attended by her counsel upon the applications embodied in these pleadings; and after appellant made his application for a reduction of alimony, depositions were taken before a Special Master which cover 158 printed pages of the Original State of Case and required five lengthy

hearings with the concomitant extensive preparation by respondent's counsel prior to each.

It is submitted that a record of applications made, pleadings filed and depositions taken over a period of nearly two years, and covering 262 printed pages, considering the allowance made by this Court in the *Farlee* case, amply justifies the allowance of \$2,000.00 made to counsel for respondent by the Court below.

## POINT II.

**The allowance of a fee and costs to the Special Master was proper, both under the statute, Section 80, 1 C. S. of N. J., page 440 and under the inherent power of the Court of Chancery.**

At page 3 of his brief, appellant cites Section 80 of the Chancery Act, 1 C. S. of N. J. 440, and P. L. 1921, Chapter 260, 1 Cum. Supp. to C. S., page 1236, Sections 74-33, but does not attempt to draw any conclusion therefrom in support of his contention that the allowance to the Master was excessive.

A perusal of both statutes at once leads to the conclusion that the allowance to Masters under Section 80 of the Chancery Act is usually within the discretion of the Court, depending upon the type, length and value of the services rendered by them in causes referred to them.

Section 80 of the Chancery Act, 1 C. S. of N. J., page 440, states that the fees for a Master's services "*shall be proportionate, as nearly as may be to the actual value of such services, and shall be regulated by the Chancellor from time to time*". The Chancellor has seen fit to prescribe the fees allowed to Masters in certain

cases, as where a Master is ordered to make sale of mortgaged premises *pendente lite* (Chancery Act, Section 62, Chancery Rule 145A); in case of sale of lands upon partition (Chancery Rule 227); and for making deeds of conveyance by order of the Court (Chancery Rule 179).

The fact that the Chancellor has made rules prescribing the fees in such cases indicates that the services to be performed by Special Masters or Masters in the specified instances are fixed and unvarying in all cases and are therefore capable of being compensated under a fixed and uniform rate, comparable to the rate of compensation allowed to sheriffs and other officers authorized to make sale of land by statute.

P. L. 1921, Chapter 260, 1 Cum. Supp. to C. S., page 1236, Sections 74-33, in like manner provides a fixed and uniform fee for the *ministerial* duty of making up and drawing the Master's report upon any reference of a cause to him. It is manifest that, once a Master has made his decision and is ready to render his opinion, the physical process of dictating his report and having it drawn up is a service which is alike in nearly all instances and for which a uniform fee, with an additional small fee depending upon the physical length of the report, should be granted.

There is nothing, however, either in the statutes or in the Chancery Rules, outside of Section 80 of the Chancery Act, 1 C. S. 440, which makes provision for allowances to Special Masters or Masters in extraordinary cases. It was in recognition of the fact that, in many types of cases in which issues are referred to Masters for decision, there may be long and protracted hearings, the introduction of much testimony and many exhibits, with a consequent duty devolving upon the Master of making many decisions regarding the introduction and rejection of testimony and

considering the whole record, that Section 80 of the Chancery Act was passed. That section, as above quoted, leaves it within the discretion of the Court of Chancery, upon the coming in of a Master's report, to grant a fair allowance to the Master in addition to his fixed statutory fees; and in computing the actual value of his services the Court must necessarily take into account the amount and kind of testimony taken, the number of witnesses examined, the number and length of the hearings and the issues referred to the Master for decision. The provision of the Fees and Costs Act, P. L. 1921, Chapter 260, 1 Cum. Supp. to C. S., page 1236, merely fixes the fees to be granted to the Master for making up his actual report and drawing it, in somewhat the same manner that the same statute grants certain costs to the Clerk in Chancery for filing various pleadings, with additional charges based on the number of folios contained in each pleading. This provision fixes the fees for the *ministerial* act of making up and drawing the report. It allows the Master nothing for the mental labor involved in his perusal of the testimony, consideration of the testimony of each witness and giving the proper weight thereto, and a consideration of the exhibits, all of which is part of the *judicial* function devolving upon the Master upon every reference.

It is patent that, in many proceedings in which references are made, notoriously accounting suits in Chancery, references in alimony and maintenance matters such as that here involved and the like, more than ordinary duties are imposed upon the Master; much more testimony is taken than in routine *ex parte* divorce matters, with greater attention to detail, and such testimony usually contains many figures, is often technical and involves the consideration and decision of issues incident to but nevertheless bearing upon the main issue in the reference.

In references in matrimonial suits themselves, where the Master is directed to ascertain what amount a husband should be required to pay his wife for her support and maintenance, which necessarily involves an inquiry into the financial resources and income of the husband, much detailed testimony is usually necessary to bring out the exact financial status of the husband, his income, his property holdings, his expectations and the like; and after all the testimony is in, it is the duty of the Master to sift it, to weigh the testimony of each witness, giving due regard to the credibility of each and setting off the testimony of one witness against that of another, to weigh the figures given by one side as against those brought forth by the other and, after arriving at a fair estimate of the worth and financial status of the husband, to bring that estimate into comparison with the estimated needs of the wife and, between the two figures, work out a fair sum to be awarded to the wife for her support and maintenance.

It was in recognition of these *extraordinary* and *judicial* duties which devolve upon Masters in references in such cases that the Legislature deemed it advisable to leave the exact compensation to be awarded for such services to the discretion of the Court of Chancery, such discretion to be exercised, after a consideration of all the factors entering into the decision and report of the Master, in such a manner as that "*the fees for such services shall be proportionate, as nearly as may be, to the actual value of such service*".

In the case now before this Court, upon the application of appellant for the reduction of alimony payments, testimony covering 158 printed pages of the State of Case was taken before the Special Master at five hearings.

The character of the testimony taken, and the detailed inquiry into appellant's financial status

which developed, have been considered in detail under Point I of this brief, pages 10 and 11.

It was the duty of the Master in the instant case to consider all of the testimony adduced, and render to the Court as accurate an opinion as possible as to the financial condition and status of appellant and the needs of respondent, and a decision as to what amount, in his opinion, was reasonable, regarding both of these factors, for respondent's support and maintenance. It is almost needless to say that a careful study of this amount of testimony and the making of a decision thereon was a work of extraordinary nature and involved arduous and extraordinary labors on the part of the Special Master.

Regarding this, appellant merely states (p. 5 of his brief): "The Special Master had hearings on three occasions *when considerable testimony was taken and upon which a report of approximately 11 folios was submitted.* The allowance made defendant contends is proportionately far in excess of that which judicial officers receive in performing like services and is excessive and wholly unauthorized by statute."

This statement, we submit, is erroneous and manifestly made without regard to the character and extent of the litigation in the Court below, and without consideration of the rules and practice of the Court in such matters, and is apparently predicated to great extent upon the fact that the report of the Master only contained "approximately 11 folios" and covered two and one-half pages in the State of Case (pp. 172 to 174).

A mere hasty glance through the testimony and then a perusal of the report will indicate that the report itself is a model of accuracy and brevity and indicates in itself that very much more thought and careful consideration was given to all of the testimony taken than the physical length

of the report itself would seem to indicate at first glance.

The Court of Chancery, in making this allowance to the Special Master, considered that the only statutory provision binding upon it in the circumstances was Section 80 of the Chancery Act, 1 C. S., page 440, and under that section it took into account the numerous hearings held before the Master, the amount of testimony taken and considered by the Master and the issues to be decided by him; and it is submitted that the Court, in view of this, and particularly in view of the prior agreement of appellant to pay the Special Master \$1,000 as just compensation up to his first report (pp. 45, 52, Supplemental State of Case; Opinion, p. 21 of this brief), properly decided that the sum of \$500 and the statutory costs allowed to the Master were justly proportionate to the actual value of the services rendered by the Master within the meaning and intent of the statute.

### Conclusion.

It is submitted that the order of July 1, 1930, allowing the sum of \$2,000 to counsel for respondent for his services, and the sum of \$500 to the Special Master for his services, together with his statutory fees of \$53, was proper, both from a consideration of the facts in the case and the record and was justified under the statutes, and that the order of July 1, 1930, should be affirmed, with costs to respondent, and a counsel fee to counsel for respondent for services rendered in this Court.

Respectfully submitted,

JOHN J. CLANCY, *Of counsel with*  
~~Schotland~~ Merritt Lane and  
 Philip J. Schotland.

**Opinion.**

## IN CHANCERY OF NEW JERSEY.

Between

DORA EITNER,  
Complainant,*and*ALFRED EITNER,  
Defendant.

Motion for counsel fees and Master's allowance.

1. Counsel fees may be awarded a wife, in a matrimonial action, after a decree in her favor, to prosecute or defend her rights under the decree.

2. Special allowance to Master finds statutory warrant in Section 80 of the Chancery Act (C. S. 440).

For Complainant, Mr. MERRITT LANE.

For Defendant, Mr. LOUIS AUERBACHER, JR.

BACKES, Vice-Chancellor:

The bill was for separate maintenance. The charges were extreme cruelty and the case was contested. The complainant succeeded and, upon a report by a Master as to the amount of support, a decree was entered, November 7, 1928, awarding \$6,000 annually (\$115.37 weekly), \$1,500 counsel fee and to the Master, \$500. October 30, 1929,

the defendant petitioned for a reduction of the alimony. The Master, to whom it was referred, reported that \$75 weekly was a fair sum and that amount was ordered, July 1, 1930, as of the date of the petition. It was also ordered that the defendant pay complainant's counsel \$2,000 and costs and the Master a special allowance of \$500 besides his taxed costs. The appeal is from the allowances. The amounts are not questioned.

Counsel's contention is, that having succeeded in his motion his client should not have been visited with the costs. In ordinary actions that would be sound, but in matrimonial causes the husband is called upon to provide the wife with counsel to prosecute as well as defend her matrimonial rights as well after as before the decree. The allowance to counsel was not a fee on the motion, but to compensate him for twenty months (November 7, 1928-July 1, 1930), of effort in compelling the defendant to comply with the decree for alimony. Three times he had to resort to proceeding for contempt, another time to sequestration and once to a writ of *ne exeat*. After the first warrant for the defendant's arrest issued and a writ of sequestration for \$4,441.14 arrearages was levied on his property, he petitioned for a reduction of alimony, and upon purging himself of contempt by paying the arrearage, the matter was referred to a Master. He held three lengthy hearings, so he reports, and then the parties came to settlement: the defendant to set over to his wife certain bonds and mortgages and cash, approximately \$40,000; transfer to her a piece of real estate and pay her \$20.00 a week alimony; the wife to surrender her right in his real estate and transfer to him her interest in a \$6,000 mortgage. The Master reported the settlement and the Court approved it by a consent order, January 28, 1930, in which an allowance was made to com-

plainant's counsel of \$1,900 (\$1,400 of which the complainant was to pay) and to the Master \$1,000, which the defendant was to pay. These amounts were agreed upon by the parties as fair compensation as of that time. In proceeding to attach him for contempt for his failure to comply with the order approving the settlement, the defendant set up that he could not produce the bonds and mortgages and that he was disappointed in raising the cash. Later, upon petition and order to show cause, the order approving the settlement was vacated and the Master was directed to continue the hearing on the motion to reduce the alimony which resulted in his report of \$75 a week.

The story is quickly told, but the bulky files tell the tale of nearly two years of vigilant and constant pressure by counsel to bring the defendant, ever evasive and persistently contumacious, to book. It was for these services that counsel applied for compensation at the time of the motion to confirm the Master's report, and these services the Court had in mind, not in detail of course, but it knew from its protracted experiences with the litigation when it made the allowance. It would perhaps have avoided confusion had the allowance been made by separate order, but adding the allowance for counsel to an order for alimony is common practice.

The Special Master's allowances. It must be conceded that they were earned. Counsel had agreed upon \$1,000 as just compensation up to his first report. After the matter was referred the Master performed additional services. For the total services the Court allowed less than had been agreed upon for part of them. The statutory warrant for the allowance is to be found in Section 80 of the Chancery Act (C. S. 440).

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