

New Jersey Court of Errors and Appeals

Between	
ADOLPHINE OSTERGAARD, Complainant-Respondent,	10
and	
SOREN CHRISTIAN OSTER- GAARD, Defendant-Appellant.	

BRIEF OF ADRIAN LYON, COUNSEL WITH RESPONDENT	20
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FACTS

On July 2, 1915, after hearing in which both complainant and defendant appeared and testified with other witnesses produced by them, a decree (page 6) was advised ordering the defendant to pay the complainant six dollars (\$6.00) per week for her support, the costs of suit to be taxed and a counsel fee of One hundred dollars (\$100.00). The decision of the Vice Chancellor was rendered in open court at the conclusion of the hearing, the defendant being present. He appealed from the decree. The appeal was heard by this court at the November term, 1915, and the decree was affirmed within a few days after argument. (96 Atl. Rep. 1102). 30

On April 1, 1916, the complainant served on the defendant a copy of the final decree, a copy of the re- 40

mittitur and a copy of the complainant's taxed costs. No attention being paid to the matter by the defendant the petition (page 1) praying for an order that the defendant show cause why he should not be adjudged in contempt of court was filed. It was served on defendant May 2d, the matter was regularly referred by the Chancellor to Vice Chancellor Backes (page 19), the Vice Chancellor fixed the hearing by order (page 20) for May 23, 1916, counsel for defendant being
10 present at said time.

The matter came on for hearing on May 23, 1916, in the presence of counsel for defendant. No offer was made for settlement of the decree, but counsel opposed the motion for the order adjudging defendant in contempt on technical grounds, and upon the ground as set forth in the affidavit (page 21). That affidavit sets forth that no demand was made for any specific sum and that defendant had no funds to pay the amount
20 of the decree. At the same time a further affidavit (page 24) of the defendant was presented setting forth that he had been served with the papers in question, but with none other and no demand for any specific sum. No offer was made at this or any other time to pay the decree or any part thereof.

It will be noticed that notwithstanding he sets up in the first part of the affidavit (page 21) that no demand was made for any specific sum, he says in the final clause of the affidavit that as soon as he is able he
30 will comply with the decree.

ARGUMENT

I.

It is respectfully submitted that when the defendant knew of the decree against him and appealed from it, and resisted the order to adjudge him guilty of contempt
40 for disobeying it, without offering upon the return of

the order to show cause or at any other time to pay the amount of the decree or any part of it, that defendant cannot now object that no formal demand was made upon him to comply with the decree. When he was served with the decree and taxed bill of costs that was an implied demand for the money. Upon the return of the rule to show cause he could have avoided the order adjudging him in contempt by paying the money required by the decree. Surely, if no demand had been made upon him before, the rule to show cause was notice of a demand. 10

No formal demand for any specific sum of money is necessary. The case of *Adams vs. Adams*, 80 N. J. Eq., 175, referred to in appellant's brief, does not refer to a demand for a specific sum before the rule to show cause is issued. All that case requires is that when the order adjudging the defendant in contempt of court is entered it shall definitely "state the sum of money which the defendant is required to pay in order to purge himself and be discharged from imprisonment." 20

The order adjudging the defendant in contempt (page 28) does set forth a specific sum as required by the case of *Adams vs. Adams*.

Counsel in his brief says that the papers were served nine months after the entry of the final decree and four months after the decree had been affirmed by this court. The matter was pending on appeal. The remittitur was filed January 28, 1916, and the papers served April 1, 1916. 30

The favor given to the defendant of waiting a reasonable time, about sixty days, to give him a chance to pay the money is now used as a ground why he should not pay at all.

II.

There can be no question about the fact that the defendant was guilty of contempt of court. He admits 40

the decree, admits in his affidavit that he was served with a copy of it, and further admits that he has not complied with it. What further proof could possibly be presented?

III.

Defendant sets up as a reason for not complying
10 with the decree his inability to do so.

That he is able to do so is *res adjudicata*. After a hearing in which his ability to pay was investigated by the court the decree was made. If new conditions had arisen thereafter so that the defendant's position or ability had changed the court below would have, on proper application, modified the decree or set it aside as the circumstances might warrant.

No such application, however, was made, and the
20 decree stands as far as this proceeding is concerned in full force. Further, when he presented his affidavits on return of the order to show cause the complainant was not given notice thereof, had no opportunity to dispute it, or to show he was earning good wages. The Vice Chancellor had found as a matter of fact a short time before that the defendant was able to comply with the decree he advised.

What the defendant in effect asked was that the
30 court upon the hearing of an application to adjudge him in contempt would on an *ex parte* affidavit without notice to the complainant practically set aside the final decree.

The cases of *Walton vs. Walton*, 54 N. J. Eq., page 607, and *Grand Lodge vs. Jansen*, 62 N. J. Eq., 737, are cases where the decree was for the payment of money under a contract. Those cases differ from cases for the enforcement of decrees for the payment of alimony. Such decrees are not "to enforce the performance of a contract. The obligation of the husband
40 to support the wife arises out of the marital relation

and not out of the agreement between them.” Adams vs. Adams, supra.

IV.

Appellant’s objection on constitutional grounds is entirely met by the fact that he not only had due and legal notice of every step in this case but was present by counsel and was heard at great length.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed. 10

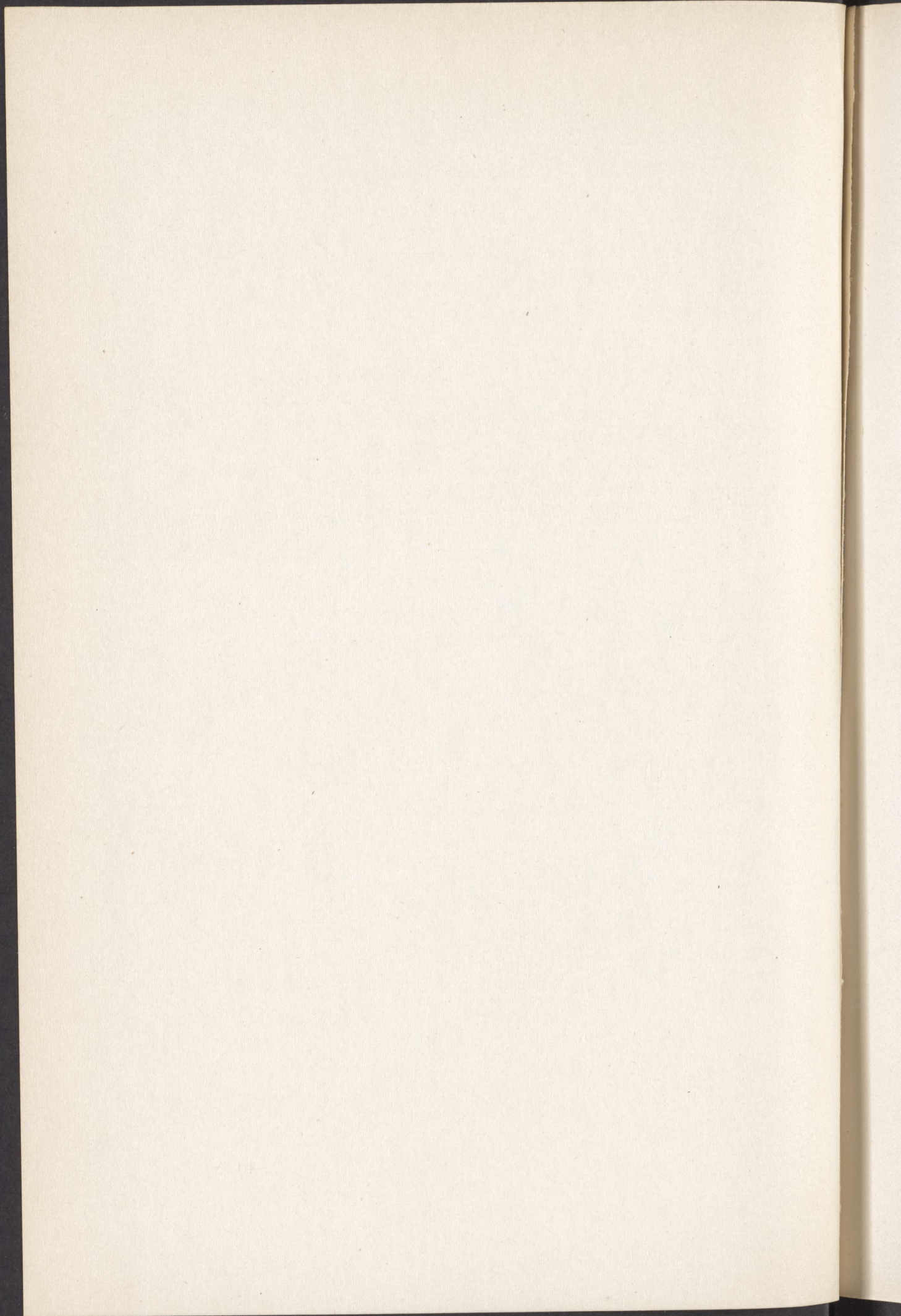
ADRIAN LYON,

Solicitor for and of
Counsel with Respondent.

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NEW JERSEY COURT OF ERRORS AND APPEALS

Between :

ADOLPHINE OSTERGAARD,
Respondent,

and

SOREN CHRISTIAN OSTER-
GAARD,
Appellant.

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On Appeal
from Order in
Chancery.
Brief of Appellant.

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FACTS.

1. This is an appeal by the appellant, Soren Christian Ostergaard, from an Order of Commitment made in a contempt proceeding in the Court of Chancery of New Jersey on the 23rd day of May, 1916, wherein and whereby it was ordered that the said appellant be adjudged guilty in Contempt of said Court for his failure to comply with the Final Decree entered in said Court of Chancery on the 2nd day of July, 1915. (Printed Pages 28 & 29). Said Decree was entered in a cause in which the said respondent, Adolphine Ostergaard was complainant, and said appellant, Soren Christian Ostergaard defendant (Printed Pages 1, 2, 3, 4, 5, 6 & 28). By the terms of said Decree it was ordered and adjudged that the said Soren Christian Ostergaard do pay the said Adolphine Ostergaard the sum of \$6.00 per week at the termination of each and

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every week from the date of said Decree, for her support and maintenance, and until the further Order of the Court; and in addition thereto the said appellant do pay the respondent the costs of said suit to be taxed and a counsel fee of \$100.00 (Printed Pages 6 & 7).

10 2. From said Final Decree an appeal was taken to this Court by the Appellant. Argument on said appeal was heard in November Term of 1915 and determined in favor of the respondent on the 2nd day of December, 1915. (Printed Page 8).

3. On the 1st day of April, 1916, a copy of said Final Decree; a copy of the Remittitur on Affirmance from this Court; a copy of the Complainant's Costs in Chancery, and a copy of the Costs of the respondent on appeal, were served on the appellant. (Printed Page 14).

20 4. On the 2nd day of May, 1916, a copy of the Petition and Order to Show Cause, in a proceeding for contempt, were served on the appellant. (Printed Page 15).

30 5. The appellant, Soren Christian Ostergaard, was not, until the 1st day of April, 1916, served with a copy of said Final Decree; a copy of the Remittitur on Affirmance; a copy of the Complainant's costs in Chancery; a copy of the taxed Costs of the respondent on appeal. (Printed Pages 14 & 21).

6. Before the commencement of the contempt proceeding no demand for any specific sum was made by the respondent, or her solicitor, on the appellant. (Printed Pages 21, 22 & 24).

40 7. A copy of the respondent's costs on appeal from said Final Decree was also served on said Soren Christian Ostergaard on the 1st day of April, 1916;

but same had been paid by the Clerk of the Court of Chancery to Adrian Lyon, the Solicitor for the respondent. (Printed Pages 26 & 27).

8. On the 23rd day of May, 1916, on the date of said Order, the sum of \$276.00 was due on said Final Decree. (Printed Page 16). The costs and counsel fee allowed in the Court of Chancery, due on the 23rd day of May, 1916, amounted to \$137.12 (Printed Pages 10, 11 & 17). The costs of the respondent, Adolphine Ostergaard, on appeal from said Final Decree amounted to \$25.70 (Printed Page 12).

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9. The appellant was, on April 1st, 1916, at the time when he was served with a copy of said Final Decree and also on the date of said Order of Commitment, wholly unable to comply with said Final Decree and said Order of Commitment; and was, on said dates, indebted to his father in the sum of \$410.00. (Printed Pages 22 & 23). On the date of said Order the appellant was indebted in the sum of \$595.13. (Printed Pages 22 & 23).

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10. The said appellant was on the 23rd day of May, 1916, wholly unable to comply with the said Final Decree and to pay the sum of \$413.12 due on the date of said Order of Commitment. (Printed Page 29).

11. Said indebtedness was caused and brought about by reason of the appeal taken from said Final Decree. (Printed Pages 22 & 23).

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STATEMENT OF GRIEVANCES

The contention of the appellant is that the Court of Chancery was without jurisdiction to make said Order.

1. Before the commencement of the contempt proceeding, the respondent had failed to make a demand on the appellant for a specific sum.

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2. There is no evidence to show that the appellant had wilfully refused and neglected to comply with said Final Decree.

3. The evidence shows that the appellant was wholly unable, on the date of said Order, to comply with said Final Decree and with said Order.

10 4. There was no evidence produced on behalf of the respondent which rebutted or contradicted the evidence of the appellant.

5. The evidence shows that said Order violates the constitutional rights of the appellant and controvenes Article 14, Section 1, U. S. Const., and deprives the appellant of his property and liberty without due process of law.

20 6. The evidence shows that the respondent was guilty of laches in making her application for said Order, and that, by reason of said laches, the appellant was injured and made unable to comply with said Final Decree and said Order.

7. The effect of said Order is to compel the appellant to borrow the additional sum of \$413.12 in order to comply with said Order.

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ARGUMENT.

1. A DEMAND FOR A SPECIFIC SUM DUE SHOULD BE MADE ON THE DEFENDANT BEFORE THE COMMENCEMENT OF PROCEEDING FOR CONTEMPT.

40 It is the practice of the Court of Chancery not to allow a complainant to proceed for Contempt until it is satisfied that a demand and a refusal has been made for a specific sum due at the time of the demand. That

rule was, at least, by implication, laid down by this Court in the case of

Adams vs. Adams, 80 N. J. Eq. 175.

There is nothing to show in the Adams case, *Supra*, that the defendant did not know the amount due on said Decree. The reason for the rule is obvious. The proceeding in Contempt is quasi-criminal.

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Barnett Foundry Co. vs. Grove, 80 N. J. Eq. 109.

The State vs. Raborg, 5 N. J. L. 545.

Probasco vs. Probasco, 30 N. J. Eq. 61.

The proceeding for contempt is quasi-criminal and is like a criminal proceeding for embezzlement. In such case it is the practice to produce proof to the Judge before a warrant is issued to the effect that a demand and refusal have been made; unless it appears that an act of embezzlement has in fact been committed or otherwise; in such case a demand and refusal are unnecessary. Such practice is founded on justice.

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In the case at Bar, there was no demand made for any specific sum. Nine months after the entry of said Final Decree, and four months after said Decree had been affirmed by this Court, a copy of said Decree together with Bills of Costs in chancery and in this Court were served on the appellant without a word of explanation. It is evident that he could not have been in contempt of Court for refusal to pay the costs of the respondent on appeal, which amounted to \$25.70, (Printed Page 13), and which Bill of Costs had been paid to Adrian Lyon, the Solicitor of the respondent, on or about the 25th day of February, 1916. (Printed Pages 26 & 27). There was no other demand made. The appellant cannot be in contempt for failure to pay a bill which had been paid or which was not due.

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2. THE PARTY ALLEGING A CONTEMPT OF COURT, MUST MAKE IT OUT CLEARLY TO THE SATISFACTION OF THE COURT.

McGinnes vs. Parkhurst, 4 N. J. Eq. 433.

There is no presumption of guilt. It must rest in proof.

10 Barnett Foundry Co. vs. Growe, Supra.
McGinnes vs. Parkhurst, Supra.

20 The respondent produced no other evidence at the hearing, save and except her affidavit that the defendant had refused and neglected to comply with the said Final Decree. (Printed Pages 1, 2, 3, 16 & 17). That contention was not corroborated by proof, but it was rebutted and met by the affidavits of the appellant to the effect that he was unable to comply with said Decree. His affidavit was not contradicted in any manner. (Printed Pages 21, 22 & 23).

The proceeding for contempt is quasi-criminal and in so far as it is so, it must carry with it the usual and ordinary presumptions that would affect the proceedings if it were being conducted in the Criminal Court.

30 Barnett Foundry Co. vs. Growe, Supra.
The State vs. Raborg, Supra.
Probasco vs. Probasco, Supra.

It is the spirit and not the letter of the command to which obedience is required.

McGinnes vs. Parkhurst, Supra.

It is a well known principal in contempt proceedings that a respondent should not be adjudged guilty of contempt if there is a reasonable doubt on the facts and on the law as to his guilt.

40 Barnett Foundry Co. vs. Growe, Supra.

If the appellant is guilty of contempt, his guilt consists in having protected his legal rights in the Court of Chancery and in taking an appeal from said Final Decree, by reason of which appeal &c he became indebted and financially embarrassed. (Printed Pages 21, 22 & 23).

3. INABILITY TO RENDER OBEDIENCE TO AN ORDER OR DECREE OF COURT IS A GOOD DEFENCE TO A CHARGE OF CONTEMPT FOR THE DISOBEDIENCE OF SUCH ORDER OR DECREE. 10

Walton vs. Walton, 54 N. J. Eq. 607.

Grand Lodge &c vs. Jansen, 62 N. J. Eq. 737.

In practically all jurisdictions it is held that a husband who is unable to obey a decree for the payment of alimony will not be adjudged in contempt for not obeying such decree, unless he has voluntarily created the disability for the purpose of avoiding such payment. 20

Kempson vs. Kempson, 63 N. J. Eq. 787.

McClung vs. McClung, 33 N. J. Eq. 462.

Am. & Eng. Ann. Cases, Vol. 15, Page 944 & 945.

4. THERE IS NO PRESUMPTION OF GUILT. IT MUST REST IN PROOF. 30

Barnett Foundry Co. vs. Growe, Supra.

McGinnes vs. Parkhurst, Supra.

There was no evidence produced to contradict or rebut the evidence of the appellant. The evidence shows that the appellant was not guilty of Contempt of Court beyond a reasonable doubt. As the matter stood he could not even have been found guilty by a preponderance of evidence. 40

5. "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW."

"Article 14, Section 1, U. S. Const."

In re: Holt, 55 N. J. L. 384.

10 The term "Due process of Law," when applied to judicial proceedings, means that there must be a competent tribunal to pass on the subject-matter; notice actual or constructive, an opportunity to appear and produce evidence, TO BE HEARD IN PERSON OR BY COUNSEL.

8 Cyc 1084.

20 The defendant's disability to comply with said Final Decree and Order of Commitment was caused because he appeared in the Court of Chancery by counsel to defend his legal rights and took an appeal from said Final Decree to this Court. That was his constitutional and legal right to do so. He could not appear in the court below or in this Court by counsel without payment for legal services and disbursements. The right to employ counsel must, of necessity, imply the right to pay him.

30 The privilege of employing counsel is guaranteed by the Const. of the U. S., Supra. The duty to pay alimony is only created by the laws of the State. That duty can be modified at any time by the legislature, while the right to employ counsel cannot be changed except by an amendment of the Federal Constitution.

Hence, the right to pay counsel is paramount to the duty to pay alimony.

40 In case of a contempt not committed in the presence

of the Court, due process of law requires that the accused shall have a day in Court.

Holt's Case, Supra.

27 Atl. 909.

8 Cyc 1087.

6. LACHES IS A GOOD DEFENCE IN A CONTEMPT PROCEEDING WHERE THE DEFENDANT HAS BEEN INJURED BY REASON OF SAME.

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9 Cyc 36.

The evidence shows that the appeal from said Final Decree was dismissed by this Court on the 2nd Day of December, 1915, and that a period of four months elapsed before the appellant was served with a copy of said Final Decree, &c; that only one month elapsed from the service of same before the respondent applied for the Order from which this appeal is taken. No notice or explanation was served with said Final Decree, which might have put the appellant on his guard. He evidently did not believe that his wife intended to incarcerate him in the Common Jail of Middlesex County.

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It would have been much easier for the appellant to have complied with said Final Decree in the 1st part of December, 1915, than it was on the 23rd day of May, 1916. She was sleeping on her legal rights for a period of nearly six months, thereby making the appellant still more unable to comply with said Decree.

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7. THE COURT OF CHANCERY HAS THE POWER TO PUNISH A PERSON FOR REFUSAL TO WORK, BUT IT IS WITHOUT JURISDICTION TO COMPEL A PERSON TO BORROW MONEY TO PAY A MATRIMONIAL OBLIGATION.

The evidence clearly shows that the appellant had given a true account of all his income and outlay since

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the 2nd day of July, 1915, and up to the 23rd day of May, 1916. On that day he was indebted in the sum of \$595.12. Evidently, he was without power to pay. That is established in this case.

10 By implication, said Order adjudges the appellant in Contempt of Court for not borrowing the sum of \$413.12 to pay to the respondent. That is clearly beyond the jurisdiction of the court.

The guilt of the appellant is not established.

The defendant is entitled to the presumptions of innocence and the complainant must prove him guilty. If, however, an affirmative defence is set up the burden is upon the defendant to sustain it. The appellant has done so in this case.

20 9 Cyc 45.

In case of a contempt not committed in the presence of the Court, the evidence admissible should only be such as would be admissible on the trial of an indictment for the same offence.

9 Cyc 45.

30 The appellant does not dispute the right of the Court of Chancery to make an Order with which he is able to comply. The appeal is not taken from an Order which could have been made in said Court, but from the Order which was made.

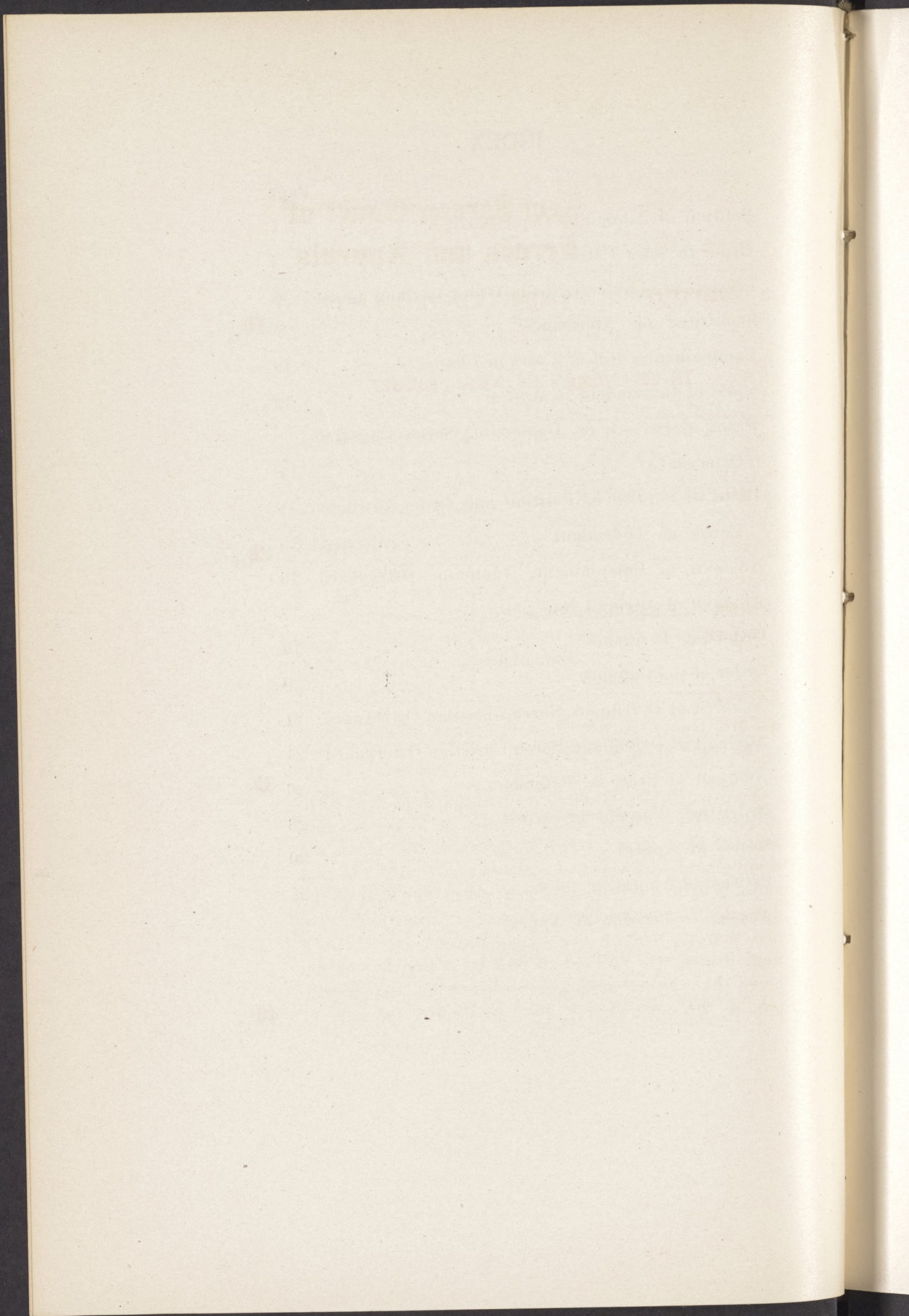
I, therefore, ask that the Order below be reversed or set aside.

PETER A. PETERSON,

40 Solicitor for and of
Counsel with Appellant.

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New Jersey Court of Errors and Appeals

2 PETITION OF ADOLPHINE OSTERGAARD

(Original filed May 3, 1916.)

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IN CHANCERY OF NEW JERSEY

Between	
ADOLPHINE OSTERGAARD, Complainant,	} On Bill, Etc Petition.
and	
SOREN CHRISTIAN OSTER- GAARD, Defendant.	

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

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Your petitioner, Adolphine Ostergaard, of the Town-
ship of Woodbridge, in the County of Middlesex and
State of New Jersey, respectfully shows that she is the
complainant in the above entitled cause; that the said
cause is upon a bill filed by your petitioner against the
defendant for maintenance; that such proceedings were
had therein, that on the second day of July, 1915, a
final decree was entered in and by which it was de-
creed that the defendant, Soren Christian Ostergaard,
pay to the complainant, your petitioner, the sum of

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\$6.00 weekly, at the termination of each and every week from the date of this decree for her support and maintenance, and that he pay to her or her solicitor, the costs of the said suit to be taxed and a counsel fee of \$100.00, and that execution issue therefor according to the practice of the court; that from said final decree said defendant appealed to the Court of Errors and Appeals of this State; that the same was heard and determined by the said court, and on the twenty-eighth

10 day of January, 1916, the said Court of Errors and Appeals affirmed the said final decree of this Court with costs in the said court and in this Court to be paid by the appellant and dismissed the said petition of appeal of the said defendant, and further ordered that the records be remitted to this Court to proceed further thereon according to law and the practice of this Court;

20 That on the first day of April, 1916, your petitioner caused to be served upon the said defendant a copy of the said final decree of this Court, a copy of the remittitur on affirmance from the said Court of Errors and Appeals, a copy of the complainant's taxed costs in this Court, and a copy of the costs of the respondent in the said Court of Errors and Appeals, by delivering the same to him personally as appears by proof of service filed in this cause;

30 That the said defendant has failed and refused to comply with the decree of this Court and has not paid your petitioner the amount decreed to be paid to her or any part thereof, nor said allowance and taxed costs in this Court and the Court of Errors and Appeals nor any part thereof;

Your petitioner therefore prays that the said defendant may be adjudged in contempt of court for

40 failure to obey the said final decree of this Court and

may be dealt with as law and justice may require.
And your petitioner will ever pray, &c.

ADRIAN LYON,
Solicitor and Counsel with Petitioner.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

Adolphine Ostergaard, of the Township of Wood- 10
bridge, in said County, being duly sworn according to
law on her oath deposes and says that she is the com-
plainant in the foregoing entitled cause and the pe-
titioner named in the foregoing petition; that she has
read the said petition and that the statements con-
tained therein are true.

MRS. ADOLPHINE OSTERGAARD.

Sworn and subscribed to before me this 20
29th day of April, 1916.

CHAS. M. MAC WILLIAM,
Attorney at Law.

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Order to Show Cause
IN CHANCERY OF NEW JERSEY

(Original Filed May 3, 1916)

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Between		
ADOLPHINE OSTERGAARD,		
Complainant,		
and		
SOREN CHRISTIAN OSTER-		
GAARD,		
Defendant.		

On Bill, Etc.
Order.

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This matter being opened to the court by Adrian Lyon of counsel with the petitioner and it appearing that a final decree was entered in this cause on the second day of July, 1915, requiring the defendant to pay to the complainant the sum of \$6.00 per week and costs and counsel fee; and that upon an appeal therefrom to the Court of Errors and Appeals of this State the same was affirmed, the petition of appeal dismissed, and the record remitted to this Court to be dealt with according to the law and practice of this Court; and that a certified copy of said final decree and remittitur and taxed costs was duly served upon the said defendant; and that he has failed and refused to comply with the said final decree and to make payments as therein required:

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It is on this first day of May, 1916, hereby ORDERED that the said defendant, Soren Christian Ostergaard, do show cause before the Chancellor at the Chancery

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Chambers in the State House, in the City of Trenton, on Tuesday, the ninth day of May, 1916, at half past ten o'clock in the forenoon, why he should not be adjudged in contempt of this Court for failure to comply with the terms of said final decree and death with as law and justice may require.

And it is further ordered that true, but uncertified, copies of the petition and order herein be served on the defendant within three days from the date hereof. 10

E. R. WALKER,
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Respectfully advised
John H. Backes, V. C.

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**Final Decree Referred to in the Order to Show Cause
IN CHANCERY OF NEW JERSEY**

(Original Filed July 2, 1915)

	Between	
10	ADOLPHINE OSTERGAARD, Complainant,	} On Bill, Etc. Final Decree.
	and	
	SOREN CHRISTIAN OSTER- GAARD, Defendant.	

20 This cause coming on to be heard before the Chan-
cellor in the presence of Adrian Lyon of counsel with
the complainant, and of Peter A. Peterson of counsel
with the defendant, whereupon, and upon duly consid-
ering the bill of complainant and answer of defendant,
and the evidence offered to sustain the allegations
thereof, it now satisfactorily appears to the Chancellor
that the complainant and defendant were lawfully
30 married on the eighteenth day of June, nineteen hun-
dred and thirteen, and that the defendant, without any
justifiable cause, abandons the complainant, and sep-
arates himself from her, and refuses and neglects to
maintain and provide for her; and that the parties have
their matrimonial domicile in this State, and the de-
fendant was duly served with process within this State,
and in pursuance thereof appeared in the said cause;
it is thereupon, on this second day of July, in the year
of our Lord one thousand nine hundred and fifteen, by
his Honor, Edwin Robert Walker, Chancellor of the
40 State of New Jersey, ordered, adjudged and decreed,

and the said Chancellor, by virtue of the power and authority of this Court, and the Act of the Legislature in such case made and provided, doth order, adjudge and decree, that the defendant, Soren Christian Ostergaard, do pay to the complainant, Adolphine Ostergaard, the sum of Six Dollars (\$6.00) weekly, at the termination of each and every week from the date of this decree, for the support and maintenance of the complainant, and until the further order of the Court.

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And it is further ordered, adjudged and decreed, that the defendant do pay to the said complainant, or to her solicitor, the costs of this suit to be taxed, and a counsel fee of One Hundred Dollars (\$100.00), and that execution issue therefore according to the practice of the Court.

E. R. WALKER.

Respectfully advised,
John H. Backes.

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Remittitur on Affirmance

NEW JERSEY COURT OF ERRORS AND APPEALS

November Term, 1915

(Original Filed Feb. 23, 1916)

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Between

ADOLPHINE OSTERGAARD,
Respondent,

and

SOREN CHRISTIAN OSTER-
GAARD,
Appellant,

Remittitur on
Affirmance

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and

HANS KROGH,
Intervening as Defendant,

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This cause having been brought to a hearing on an appeal from the Court of Chancery at the present November term of this Court, and Peter A. Peterson, of counsel with the appellant, and Adrian Lyon, of counsel with the respondent, having been heard and the questions brought up by said appeal having been duly considered:

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It is on this twenty-first day of December, 1916, ordered, adjudged and decreed that the decree of the Court of Chancery made on the second day of July, 1915, which is appealed from by the appellant be and the same is hereby in all things affirmed, with costs in this Court and in the Court of Chancery to be paid by the appellant, and that the petition of appeal be dismissed.

And it is further ordered that the record be remitted to the Court of Chancery to proceed further thereon according to law and the practice of said Court.

On motion of

ADRIAN LYON
Solicitor for Respondent.

Endorsed: "Filed Jan. 28, 1916
Thomas F. Martin, Clerk."

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Complainant's Bill of Costs
IN CHANCERY OF NEW JERSEY

(Original filed February 25, 1916.)

	Between	
10	ADOLPHINE OSTERGAARD, Complainant,	}
	and	
	SOREN C. OSTERGAARD, Et. Als., Defendant.	
		Compl't Costs

		S.& C.	Ch.	Clk.	Als.
20	Ret. fee for sol.	2.00			
	Drawg. and eng. bill 13 fol.....	3.90			
	Filg. do. and enter'g action .....			.16	
	Drawg. eng. and seal'g subpa... .40		.30	.08	
	Filg. do. and sheriff's fees .....			.06	3.12
	Copy of answer			1.50	
	Drawg. eng. and filg. replication .30			.06	
	Drawg. and filg. notice .....	.40		.06	
30	Drawg. takg. and filg. proof serv. .40			.06	.12
	Motion for order ref.	1.50	.50		
	Drawg. eng. and filg. order 2 fol. and copy .....	.60		.16	
	Drawg. and filg. desig. ....	.40		.06	
	Motion for order re-reference... 1.50		.50		
	Drawg. eng. and filg. order 3 fol. .60			.06	
	Drawg. and filg. notice .....	.40		.06	
	Drawg. takg. and filg. proof serv. .40			.06	.12
	Drawg. and filg. desig. ....	.40		.06	
40	Motion for dec. ....	.80		.16	

COMPLAINANT'S BILL OF COSTS

11

Argument upon final hearing, etc.	4.00	.25
Chancellor on dec.	1.75	
Drawg. eng. and filg. dec. 7 fol. and copy	3.50	.41
Enrolling proceedings 75 fol. ...		3.75
Drawg. and eng. costs	1.50	
Taxg. and filg. costs and copy...		.70

 \$23.00 3.05 7.71 3.36

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3.05

7.71

3.36

 \$37.12

Taxed at \$37.12
 February 25, 1916.

ROBERT H. McADAMS,
 Clerk.

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Costs of Respondent on Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

November Term, 1915.

(Original filed February 10, 1916.)

10 ADOLPHINE OSTERGAARD,
Respondent,

SOREN CHRISTIAN OSTER-
GAARD,
Appellant,

and

20 HANS KROGH,
Intervening as Defendant.

On Appeal from
Chancery.
**Costs of
Respondent**

June Term, 1915.

		A. & C.	Clk.
	Ret. fee and entg. appearance	\$4.00	\$0.12
	Drawg. and eng. ans. to pet. and filg. 4 fol	1.20	.32
	Term fee	1.60	
	Vac. and November Term, 1915		
30	Attending on motion of hearing	1.50	
	Term fee	1.60	
	Motion for decree of affirmance and re- mittitur	1.50	.20
	Drawing and eng. decree, entg. and copy, recdg. remittitur, filing and seal, 4 fol..	1.20	2.36
	Argument fee on final hearing, S. & C....	6.00	
	Term fee	1.60	
40	Filing check list and receipt for papers to Chancery .....		.24

COSTS OF RESPONDENT ON APPEAL 13

Drawing and eng. costs, taxing, filing and copy	2.26	
	<hr/>	<hr/>
	\$20.20	\$5.50
	5.50	
	<hr/>	
	\$25.70	

I tax this bill of costs at Twenty-five Dollars and
seventy cents. 10

THOMAS F. MARTIN,
Clerk.

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Proof of Service on Defendant, Soren Christian
Ostergaard

IN CHANCERY OF NEW JERSEY

(Original filed April 7, 1916.)

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Between

ADOLPHINE OSTERGAARD,
Complainant,

and

SOREN CHRISTIAN OSTER-
GAARD,
Defendant.

On Bill, Etc.
Proof of Service.

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STATE OF NEW JERSEY, } ss:
COUNTY OF MIDDLESEX. }

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William H. Hoffner, of full age, being duly sworn according to law, on his oath deposes and says that on the first day of April, 1916, he served a copy of the final decree entered in the above cause on July 2, 1915, a copy of the remittitur on affirmance from the New Jersey Court of Errors and Appeals, filed January 28, 1916, a copy of the complainant's costs in the Court of Chancery, and a copy of the costs of the respondent in the said Court of Errors and Appeals, on Soren Christian Ostergaard by delivering the same to him personally on the first day of April, 1916.

WILLIAM H. HOFFNER.

Subscribed and sworn to before me this
1st day of April, A. D., 1916.

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CHARLES M. MAC WILLIAM,
Attorney at Law.

**Proof of Service of Petition and Order to Show Cause
on Defendant, Soren Christian Ostergaard**

IN CHANCERY OF NEW JERSEY

(Original filed May 10, 1916.)

Between
ADOLPHINE OSTERGAARD, Complainant,
and
SOREN CHRISTIAN OSTER- GAARD, Defendant.

10

On Bill, Etc
Proof of Service.

STATE OF NEW JERSEY,	} ss:
COUNTY OF MIDDLESEX.	

20

William Hoffner, of the City of Perth Amboy, in said County, being duly sworn according to law, on his oath deposes and says that on the second day of May, 1916, he served a copy of the petition and order made on the first day of May, 1916, in the above entitled cause on Soren Christian Ostergaard, the defendant herein, by delivering the same to him personally.

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WILLIAM H. HOFFNER.

Subscribed and sworn to before me this
third day of May, 1916.

CHAS. M. MAC WILLIAM,
Attorney at Law.

40

Affidavit of Complainant, Adolphine Ostergaard

IN CHANCERY OF NEW JERSEY

(Original filed May 23, 1916.)

10	<p style="text-align: center;">Between</p> <p>ADOLPHINE OSTERGAARD, Complainant,</p> <p style="text-align: center;">and</p> <p>SOREN CHRISTIAN OSTER- GAARD, Defendant.</p>	<p>On Bill, Etc. On Application to Adjudge De- fendant in Con- tempt, Etc. Proof.</p>
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20 STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX. } ss:

30 Adolphine Ostergaard, of the Township of Wood-
bridge in said County, being duly sworn according to
law, on her oath deposes and says that she is the com-
plainant in the above entitled cause; that a decree was
entered therein on the second day of July, 1915, re-
quiring the defendant to pay to her the sum of Six
dollars per week for her support and maintenance be-
side court costs and counsel fee; that no part of said
allowance or of said costs or counsel fee has been paid
to her; and that said allowance for forty-six weeks at
six dollars per week, amounting to the sum of Two
hundred and seventy-six dollars (\$276.00) is due on
this date, beside said costs and counsel fee.

ADOLPHINE OSTERGAARD.

Subscribed and sworn to before me this
23rd day of May, A. D., 1916.

40 DANIEL A. SPAIR,
Notary Public of N. J.

Affidavit of Adrian Lyon, Solicitor for Complainant

IN CHANCERY OF NEW JERSEY

(Original filed May 23, 1916.)

<p style="text-align: center;">Between</p> <p>ADOLPHINE OSTERGAARD, Complainant,</p> <p style="text-align: center;">and</p> <p>SOREN CHRISTIAN OSTER- GAARD, Defendant.</p>	<p>On Application to Adjudge De- fendant in Con- tempt, Etc. Proof.</p>	<p>10</p>
<p>STATE OF NEW JERSEY, } COUNTY OF MIDDLESEX. }</p>	<p>ss:</p>	<p>20</p>

Adrian Lyon, of the City of Perth Amboy, in said County, being duly sworn according to law, on his oath deposes and says that he is the solicitor for the complainant in the above entitled cause; that the final decree entered herein on the second day of July, 1915, adjudged that the defendant pay to the complainant the sum of six dollars weekly and in addition the costs of the suit and a counsel fee of one hundred dollars; that said costs have been taxed at the sum of thirty-seven dollars and twelve cents (\$37.12); that a copy of said taxed bill of costs has been served on the said defendant, as appears by proof of service filed with the papers in this cause; that no part of said taxed costs or counsel fee has been paid to deponent and that the full amount thereof of one hun-

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dred and thirty-seven dollars and twelve cents
(\$137.12) is still due and unpaid.

ADRIAN LYON.

Subscribed and sworn to before me this
23rd day of May, A. D. 1916.

DANIEL A. SPAIR,
Notary Public of N. J.

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Order of Reference

IN CHANCERY OF NEW JERSEY

(Original filed May 9, 1916.)

Between	
ADOLPHINE OSTERGAARD, Complainant,	} On Application to Adjudge Defendant in Contempt, Etc. Order of Reference to Vice Chancellor. 10
and	
SOREN CHRISTIAN OSTERGAARD, Defendant.	

This matter being opened to the Court by Adrian Lyon, Solicitor and of Counsel with the Complainant, and Peter A. Peterson, Solicitor and of Counsel with the Defendant; and it appearing that due notice of this application has been given; 20

It is thereupon, on this ninth day of May, Nineteen hundred and sixteen, ORDERED that the above stated matter be referred to Hon. John H. Backes, one of the Vice Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein. 30

E. R. WALKER, C.

Order of Continuance
IN CHANCERY OF NEW JERSEY

(Original filed May 9, 1916.)

	Between	
10	ADOLPHINE OSTERGAARD, Complainant,	On Bill, Etc. On Application to Adjudge De- fendant in Con- tempt, Etc.
	and	
	SOREN CHRISTIAN OSTER- GAARD, Defendant.	

20 This matter being opened to the Court by Adrian Lyon, Solicitor and of Counsel with Complainant, and Peter A. Peterson, Solicitor and of Counsel with the defendant;

30 It is on this ninth day of May nineteen hundred and sixteen hereby ordered that the hearing in the said matter be continued to Tuesday, the twenty-third day of May, nineteen hundred and sixteen, at half past ten o'clock in the forenoon, at the Chancery Chambers in the State House in the City of Trenton.

E. R. WALKER, C.

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

Affidavit of Defendant, Soren Christian Ostergaard

IN CHANCERY OF NEW JERSEY

(Original filed May 9, 1916.)

<p style="text-align: center;">Between</p> <p>ADOLPHINE OSTERGAARD, Complainant,</p> <p style="text-align: center;">and</p> <p>SOREN CHRISTIAN OSTERGAARD, Defendant.</p>	<p>On Bill, Etc. Affidavit</p>	<p>10</p>
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<p>STATE OF NEW JERSEY, COUNTY OF MIDDLESEX.</p>	}	<p>ss:</p>	<p>20</p>
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Soren Christian Ostergaard, of full age, being duly sworn according to law, upon his oath deposes and says that he is the defendant in the above entitled cause; that he has been informed by counsel that on the 2nd day of December, 1915, the New Jersey Court of Errors and Appeals affirm the decree made in the above entitled cause, from which decree an appeal was taken by this deponent to the New Jersey Court of Errors and Appeals. 30

The deponent further says that not until on or about the 1st day of April, 1916, he was served with a copy of said final decree; a copy of the remittitur on affirmance from said Court of Errors and Appeals; a copy of the Complainant's taxed costs in the Court of Chancery of New Jersey; and a copy of the taxed bill of costs of the respondent in said Court of Errors and Appeals. 40

The deponent further says that he has never received any demand for any specific sum due with costs taxed on said final decree in this cause; that the deponent has never been served with any other papers in this cause in relation to said decree save and except the papers heretofore mentioned.

10 The deponent further says that he is willing to comply with said decree entered in this cause, but is unable to do so because of lack of funds; that this deponent has had no cash on hand or bank deposit since the 2nd day of July, 1915, when the trial in the above entitled cause took place.

The deponent further says that since and shortly before the trial took place in the above entitled cause, he has incurred considerable debts, some of which are hereinafter more particularly set forth, to wit:

MONEYS RECEIVED.

20	Moneys earned by this deponent since the first day of July, 1915, to April 30th, 1916	\$620.00
	Rents received on house belonging to this deponent and said complainant in Metuchen since the 1st day of July, 1915, at the rate of \$17.50 a month	175.00
	Moneys borrowed by this deponent from his father, I. C. Ostergaard	410.00
	<hr/>	
30	Total received	\$1,205.00

MONEYS PAID.

	Paid to Peter A. Peterson and Edward S. Black, including all expense on Appeal, etc.	\$654.28
	Paid for board, room and washing since the 1st day of July, 1915, at the rate of \$8.00 a week	344.00
40	Paid for clothing and incidentals (as nearly as this deponent can ascertain from the 1st day of July, 1915, to April 30th, 1916) . . .	72.00

Paid to Bricklayers' Union of Perth Amboy, since the 1st day of July, 1915	30.85	
Paid interest on mortgage of \$2,400.00 cover- ing property in Metuchen aforesaid, at the rate of 6 per cent. per annum, since the 1st day of July, 1915	144.00	
Paid, since the 1st day of July, 1915, taxes and water rent on property in Metuchen afore- said	70.00	
To traveling expenses for witnesses, etc., in going to Trenton on the trial in the above entitled cause	55.00	10
Paid William Hilker, photographer	10.00	
Due William Hilker, photographer	12.00	

Total amount paid and to be paid\$1,390.13

Deponent further says that he has not been work-
ing steady since the 1st day of July, 1915, owing to
the fact that he was not a Union man; his father being
unable to obtain material from supply dealers because
he employed non-union men; therefore this deponent
joined said Union. 20

Deponent further says that he is indebted to his
father, I. C. Ostergaard, in the sum of \$410.00
And to the said William Hilker 12.00

Deponent further says that as soon as he is able he
will comply with the said final decree entered in above
cause. That deponent has received no income from any
other source, save and except what is herein set forth. 30
SOREN CHRISTIAN OSTERGAARD.

Sworn and subscribed to before me this
8th day of May, 1916.

HAROLD M. BEEKMAN,
Attorney at Law,
New Jersey.

Affidavit of Defendant, Soren Christian Ostergaard

IN CHANCERY OF NEW JERSEY

(Original filed May 9, 1916.)

	Between .	
10	ADOLPHINE OSTERGAARD, Complainant,	} On Bill, Etc. Affidavit.
	and	
	SOREN CHRISTIAN OSTERGAARD, Defendant.	

20 STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX. } ss:

30 Soren Christian Ostergaard, of full age, being duly sworn according to law, upon his oath deposes and says that he is the defendant in the above entitled cause; that he has been served with no other papers in relation to the final decree made in this cause, save and except a copy of said final decree; a copy of the remittitur on affirmance from the Court of Errors and Appeals of New Jersey; a copy of the complainant's taxed bill of costs in this Court; and a copy of the bill of costs of the respondent in the said Court of Errors and Appeals which is mentioned in the petition of the complainant filed in this cause to enforce said decree.

Deponent further says that he has never been served with any other notice or demand for any specific sum due the complainant in the above entitled cause.

40 SOREN CHRISTIAN OSTERGAARD.

Sworn and subscribed to before me this
8th day of May, 1916.

HAROLD M. BEEKMAN,
Attorney at Law,
New Jersey.

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Affidavit of Peter A. Peterson

IN CHANCERY OF NEW JERSEY

(Original filed May 9, 1916.)

	Between	
10	ADOLPHINE OSTERGAARD, Complainant,	} On Bill, Etc. On Proceedings for Contempt. Affidavit.
	and	
	SOREN CHRISTIAN OSTER- GAARD, Defendant.	

20 STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX } ss:

30 Peter A. Peterson, being duly sworn according to law, upon his oath deposes and says that he is the solicitor for and of counsel with the above named defendant; that he has read the petition of Adolphine Ostergaard, the complainant in above cause, which was filed in this Court on the 3rd day of May, 1916; that this deponent, during the month of August of 1915, caused to be deposited the sum of \$100.00 with the clerk of the Court of Chancery of New Jersey to cover the complainant's costs in the Court of Errors and Appeals, in a cause in which the said Adolphine Ostergaard was Respondent and the said Soren Christian Ostergaard Appellant; which is all mentioned in said petition of said Adolphine Ostergaard; that the costs of said Respondent on affirmance of said decree of the Court of Chancery mentioned in said petition of said

40 Adolphine Ostergaard were taxed at the sum of \$25.70,

which sum has since and before the 25th day of February, 1916, been paid by the clerk of this court to Adrian Lyon, the Solicitor for the above named Adolphine Ostergaard; said \$25.70 having been deducted from said \$100.00 deposited by this deponent as aforesaid.

PETER A. PETERSON.

Sworn and subscribed to before me this
8th day of May, 1916.

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HAROLD M. BEEKMAN,
Attorney at Law,
New Jersey.

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Order for Warrant of Arrest

IN CHANCERY OF NEW JERSEY

(Original filed May 23, 1916.)

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Between

ADOLPHINE OSTERGAARD,
Complainant,

and

SOREN CHRISTIAN OSTER-
GAARD,
Defendant.

On Bill, Etc.
Order.

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This matter being opened to the court by Adrian Lyon, of counsel with the petitioner, and it appearing that a final decree was entered in this cause on the second day of July, 1915, requiring the defendant to pay to the complainant the sum of \$6.00 per week and costs and counsel fee; and that upon an appeal therefrom to the Court of Errors and Appeals of this State the same was affirmed, the petition dismissed, and the record remitted to this Court to be dealt with according to the law and practice of this Court; and that a certified copy of said final decree and remittitur and taxed costs was duly served upon the said defendant; and that he has failed and refused to comply with the said final decree and to make payments as therein required; and that there is due on this date to the said complainant for said allowance as ordered by said decree the sum of \$276.00 and for costs the sum of \$37.12 and for counsel fee the sum of \$100.00, making

40 a total of \$413.12;

And due notice of this application having been given to the said defendant, and no sufficient cause being shown or appearing to the contrary:

It is on this 23rd day of May, 1916, hereby ORDERED that the said defendant be and he is hereby adjudged in contempt of this court for failure to comply with the said final decree so entered on the second day of July, 1915, and to pay said sum of \$413.12 due on this date for said allowance, costs and counsel fee. 10

And it is further ordered that by reason of the contempt aforesaid said Soren Christian Overgaard be committed to the County Jail of the County of Middlesex, there to remain, charged with the contempt mentioned in this order, until he shall pay said sum of \$413.12, and that a warrant issue for that purpose.

E. R. WALKER, C. 20

Respectfully advised
John H. Bakes

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Notice of Appeal

IN CHANCERY OF NEW JERSEY

(Original Filed May 23, 1916)

	Between	
10	ADOLPHINE OSTERGAARD, Complainant,	On Bill, Etc. On Proceedings for Contempt, Etc. Notice of Appeal.
	and	
	SOREN CHRISTIAN OSTER- GAARD, Defendant.	

20 The defendant, Soren Christian Ostergaard, hereby appeals from the Order for Commitment made in this Court in the above stated cause on the 23rd day of May, Nineteen Hundred and Sixteen, and from the whole and every part of such order to the Court of Errors and Appeals in the last resort in all cases.

PETER A. PETERSON,
Solicitor for defendant,
Soren Christian Ostergaard.

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PETER A. PETERSON, of Counsel.

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

PETER A. PETERSON,
Of Counsel with defendant,
Soren Christian Ostergaard.

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Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

(Original Filed June 6, 1916)

<p style="text-align: center;">Between</p> <p>ADOLPHINE OSTERGAARD, Respondent,</p> <p style="text-align: center;">and</p> <p>SOREN CHRISTIAN OSTER- GAARD, Appellant.</p>	<p>On Bill, Etc. Petition of Appeal</p>	<p>10</p>
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To the Honorable the Court of Errors and Appeals in
the last Resorts in all Causes: 20

The petition of Soren Christian Ostergaard, the Appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an Order made in the Court of Chancery by his Honor E. R. Walker, Chancellor of New Jersey, bearing date the 23rd day of May, 1916, wherein the above named Adolphine Ostergaard was petitioner, and your petitioner, the said Soren Christian Ostergaard, was defendant, in this respect, to wit: that the said Order adjudges your petitioner in Contempt of the said Court of Chancery for his failure to comply with the final Decree made in the Court of Chancery by his Honor E. R. Walker, Chancellor of New Jersey, bearing date the 2nd day of July, 1915, by which said last mentioned Decree it was among other things ordered and decreed that your petitioner do pay to the said Adolphine Ostergaard the sum of Six (\$6.00) Dollars per 30 40

week, at the termination of each and every week from the date of said Decree for the support and maintenance of the said Adolphine Ostergaard, and until the further order of the said Court of Chancery; and in addition thereto your petitioner was also to pay to the said Adolphine Ostergaard, or her solicitor, the costs of said suit to be taxed, in the suit in which said decree was made, and also a counsel fee of \$100.00; the sum of \$413.12 being due on said final decree on the date of said Order for said allowance, Costs and Counsel fee.

And your petitioner further shows that said Order made in the Court of Chancery by his Honor, E. R. Walker, Chancellor of New Jersey, bearing date the 23rd day of May, 1916, further orders that by reason of the said contempt your petitioner be committed to the County jail of the County of Middlesex, there to remain, charged with the contempt mentioned in said Order, until he shall pay the sum of \$413.12, and that a warrant issue for that purpose.

And your petitioner humbly appeals from the whole and every part of said order of the said Chancellor which orders as aforesaid, upon the ground that same is erroneous, for that the evidence shows, that no demand for any specific sum of money due was made by the said Adolphine Ostergaard, or her attorney, of your petitioner before the said Order of said Chancellor was made; for that the evidence further shows that no demand for any sum of money due was made by the said Adolphine Ostergaard, or her attorney, of your petitioner before said Order was made; for that the evidence further shows that said Order controvenes the United States Constitution and deprives your petitioner of his Constitutional rights.

And your petitioner, Soren Christian Ostergaard, further shows that the evidence shows that your peti-

tioner is not guilty of Contempt of Court; for that the evidence further shows, that your petitioner has never refused and neglected to comply with the said Decree made in the Court of Chancery, by his Honor E. R. Walker, on the 2nd day of July, 1915; for that the evidence futher shows that your petitioner has been wholly unable to comply with said Decree made in the Court of Chancery aforesaid.

Your petitioner therefore prays that the said Order of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet. 10

SOREN CHRISTIAN OSTERGAARD,
Appellant.

PETER A. PETERSON,
Solicitor for Appellant. 20

PETER A. PETERSON,
Of Counsel with Appellant.

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Answer to Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

(Original Filed June 19, 1916)

	Between	
10	ADOLPHINE OSTERGAARD, Respondent,	} On Bill, Etc. Answer to Petition of Appeal
	and	
	SOREN CHRISTIAN OSTER- GAARD, Appellant.	

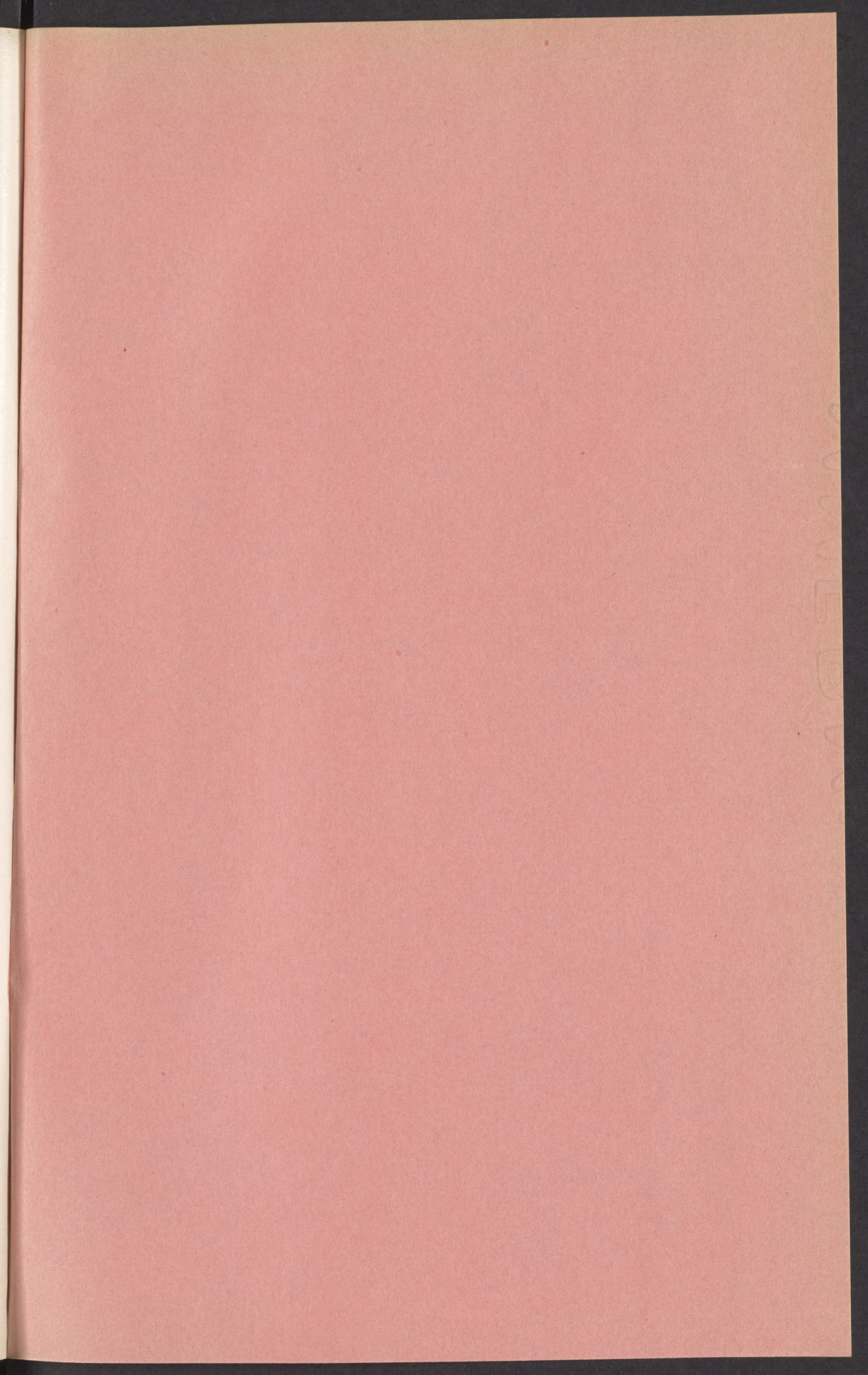
20 The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which is the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that an order was, on the twenty-third day of May, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said order is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

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ADRIAN LYON,
Solicitor and Counsel with Complainant.

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