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in said action and on or about the 18th day of February, 1921, complainant duly recovered a judgment or decree therein, which was duly given by the said Court, whereby it was adjudged, among other things, that the complainant be divorced from the said defendant, Abraham Kos-

#30

AMELIA KOSSOWER vs. ABRAHAM KOSSOWER, et. al.

Abraham Levitan for Appellant.

Thomas F. Meaney for Respondent.

Argued February 7, 1928 by Abraham Levitan and Israel Perskin of the New York bar, for appellant and Thomas F. Meaney for respondent.

Case #30 on the February 1928 term.

Additional cases inadvertently omitted to cite to the court.

Groves v. Countant, 31 Eq. 763-779.

Shimer v. Morris Canal and Banking Co., 27 Eq. 365.

Feigenspan v. Nizolek, 71 Eq. 382.

BILL OF COMPLAINT.

Filed May 18, 1927.

In Chancery of New Jersey

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

Complainant, Amelia Kossower, of the Borough of Brooklyn, County of Kings, City and State of New York, respectfully shows:

1. That prior to the times hereinafter mentioned, complainant and defendant were husband and wife.

2. On or about the 10th day of August, 1919, complainant duly commenced an action for divorce on the grounds of adultery against the defendant in the Supreme Court of the State of New York, in and for the County of New York.

3. That the said Supreme Court of the State of New York was then and still is a court of competent jurisdiction, duly created by the laws of the State of New York and as such court had jurisdiction of cause.

4. That the said action was commenced by the personal service of process upon the defendant within the said State of New York.

5. That proceedings were thereupon duly had in said action and on or about the 18th day of February, 1921, complainant duly recovered a judgment or decree therein, which was duly given by the said Court, whereby it was adjudged, among other things, that the complainant be divorced from the said defendant, Abraham Kos-

sower; that it was further duly adjudged and directed in and by the said judgment or decree that the defendant pay to the complainant the sum of $75.00 each and every week in advance, commencing on the 28th day of February, 1921, as alimony, together with the sum of $142.43 for costs and disbursements and the sum of $250.00 counsel fee, a certified copy of which judgment or decree was duly served upon the defendant personally within the State of New York and a copy of which judgment is hereunto annexed, made a part hereof and marked "Exhibit A."

6. That shortly after the making and entry of the judgment or decree, as aforesaid, the defendant fraudulently and with intent to defeat the operation of the judgment or decree of the State of New York and for the purpose of nullifying the said judgment or decree and to prevent the complainant from the enforcement thereof, removed from the jurisdiction of the State of New York to the State of New Jersey and is now a bona fide resident of the State of New Jersey, residing in Jersey City, Hudson County.

7. That there is now due and payable to the complainant from the defendant under such judgment the said sum of $142.43 for costs and disbursements and the sum of $250.00 counsel fee, making a total sum of $392.43, and the sum of $7,950 besides interest, accrued alimony, no part of which has been paid.

8. That the defendant has absconded from the jurisdiction of the State of New York, has not given any security for the payment of the said alimony and has left no property in the State of New York out of which said judgment or decree might be satisfied and that the complainant is

without adequate remedy in the courts of the State of New York.

9. That said judgment still remains in full force and effect and wholly unsatisfied and there now remains and is at present due to the complainant from the said defendant thereon the full amount as hereinbefore stated and that in addition thereto there is continuously accruing and will accrue in the future the additional sum of $75.00 each and every week during the life of this complainant, who is about 47 years of age.

10. Complainant is credibly informed and believes it to be true that said defendant Abraham Kossower has large sums of money on deposit in various banks and banking institutions, the names of which, and the exact amounts of which deposits are unknown to the complainant.

11. Complainant is credibly informed and believes it to be true that the said defendant Abraham Kossower also has debts owing him by various persons for large amounts, but complainant has been unable to ascertain the names of such persons or the exact amount of said debts.

12. Complainant is credibly informed and believes it to be true that the said defendant Abraham Kossower has equitable interests and choses in action, which might and should be applied to the payment of said judgment rendered in the New York court, under the full faith and credit clause, as provided for in Article 4, section 1 of the Constitution of the United States of America.

13. Complainant is credibly informed and believes it to be true that the said defendant Abra-

ham Kossower has other valid debts due him and also various equitable interests.

14. Complainant is credibly informed and believes it to be true, and therefore specifically charges, that the defendant's present wife, Leah K. Kossower, whom he married since complainant obtained her decree of divorce in New York and with whom he is cohabiting in Jersey City, Hudson County, New Jersey, holds in trust for the defendant, Abraham Kossower, choses in action and other property rights, either tangible or intangible, in various forms, as the trustee for the defendant. That the defendant, Abraham Kossower, conducts a large real estate business in Jersey City, as well as a mortgage and chattel loan business under various corporate names, all of which assets of the respective corporations are his personal funds but are being held in the name of Leah K. Kossower for the benefit of Abraham Kossower and for the express purpose of defrauding this complainant and preventing her from collecting the money due her under the decree and judgment of the Supreme Court of the State of New York, hereinbefore referred to and mentioned as Exhibit A.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Abraham Kossower and Leah K. Kossower who are the defendants to this suit may answer this bill of complaint, and each statement therein made.

2. That this Court may order the defendants Abraham Kossower and Leah K. Kossower to make discovery of all property, or things in action belonging to said defendant Abraham Kossower

and of any property, money or things in action due him, or held in trust for him, except such property as is now reserved by law.

3. That this Court may make an order restraining the defendants from disposing of any or all of his assets or choses in action or any other property rights, either tangible or intangible, real or personal, or those held in trust for Abraham Kossower, in any shape or form whatsoever.

4. That this Court may make an order compelling the defendant Abraham Kossower to carry out the terms of the New York judgment, as shown in Exhibit "A" of the bill of complaint under the full faith and credit clause as provided for in Article 4, section 1 of the United States Constitution, or in the event of the failure of the defendant to carry out the provisions of the New York judgment that he be held in contempt of this Honorable Court.

5. That this Court may make an order directing the said defendants Abraham Kossower and Leah K. Kossower to appear and make discovery on oath, concerning his property and things in action before a Master of this court, to be designated in such order at a time and place in such order to be specified.

6. That the amount of the costs, counsel fee and accrued alimony unpaid and due under the aforesaid judgment or decree be adjudged and determined.

7. That the defendant Abraham Kossower be adjudged to pay to the complainant the amount of such costs, counsel fee and the amount of such accrued alimony adjudged to be in arrears.

8. That the defendant Abraham Kossower be adjudged to pay to the complainant future alimony at the rate of $75.00 per week, commencing with the 23rd day of May, 1927.

9. That the defendant Abraham Kossower be required to give security for the payment of such future alimony under the direction of this Honorable Court.

10. That the defendants, Abraham Kossower and Leah K. Kossower, may be restrained from collecting any rents, issues of any lands, or receiving any income heretofore accrued or hereafter accruing to the defendant Abraham Kossower or to any other person or persons whatever is the benefit of the said Abraham Kossower, except to such receiver as may be appointed by this Court for that purpose; and that the said defendants, Abraham Kossower and Leah K. Kossower, may be restrained and enjoined from collecting or attempting to collect any rents, issues and profits from any lands and premises or any principal, interest, dividends or profits heretofore accrued or hereafter accruing from any personal property, choses in action and rights, whether tangible or intangible, until the further order of this Court.

11. That this Court may appoint a receiver *pendente lite* of all property and things in action belonging or due to or held in trust for the said Abraham Kossower by the said defendant Leah K. Kossower, or by any other person; which receiver shall have authority to possess, receive and in his own name, as such receiver, sue for said property or things in action, and shall in all respects be subject to the authority of this Court, in accordance with the practice of this Court, and

shall and may dispose of said property and things in action in conformity with the final decree of this Court, pursuant to the statute in such case made and provided.

12. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

LEVITAN & LEVITAN,
Solicitors for Complainant.

ABRAHAM LEVITAN,
Of Counsel.

Exhibit A.

At a Special Term, Part III of the Supreme Court of the State of New York, held in and for the County of New York, at the Court House in the Borough of Manhattan, City of New York on the 18th day of February, 1921.

Present
Hon. Vernon M. Davis
Justice.

AMELIA KOSSOWER, *Plaintiff,* *against* ABRAHAM KOSSOWER, *Defendant.*	*Interlocutory Judgment of Divorce.*

The above entitled action having been brought on by plaintiff for a judgment of divorce in favor of the plaintiff and against the defendant dis-

solving the marriage heretofore existing between the parties hereto upon the ground of the adultery of the defendant at the time or times, and place or places set forth in the complaint herein, the defendant having been duly served with a summons and verified complaint in this action; and the defendant having appeared and answered the complaint and the case having been duly brought on for trial at a Special Term, Part III of this Court before Hon. Vernon M. Davis, one of the Justices of this Court on the 1st, 3rd and 4th days of November, 1920 upon the issues joined by the parties to this action and action having been duly tried and the allegations of the parties heard and the Court being thereupon fully advised in the premises and having made findings of fact and conclusions of law deciding among other things that the plaintiff was entitled to a judgment against the defendant dissolving the marriage heretofore existing between the parties hereto pursuant to the statute, because of the adultery of the defendant,

Now, on motion of Slade & Slade, attorneys for the plaintiff, it is

ORDERED, ADJUDGED AND DECREED that the plaintiff is entitled to a judgment dissolving the bonds of matrimony heretofore existing between the plaintiff and the defendant and freeing the plaintiff from the obligations thereof and permitting the plaintiff to remarry and forbidding the defendant remarrying any other person during the lifetime of the plaintiff except by express permission of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have the custody of the infant children the issue of said marriage, to wit, Sophie Kossower, Gertrude Kossower, Elizabeth Kossower and Robert Kossower.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay to the plaintiff the sum of $75.00 each and every week in advance commencing on the 28th day of February, 1921 for the support and maintenance of herself and the issue of said marriage, and that the plaintiff recover $142.43 the costs and disbursements of this action to be taxed and inserted herein by the Clerk.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment is interlocutory but shall become a final judgment as of course three months from the entry and filing thereof unless for sufficient cause the Court in the meantime shall have otherwise ordered.

Upon this judgment becoming a final judgment, the said marriage shall be dissolved and the plaintiff shall thereby be divorced from the defendant, and it shall be lawful for the plaintiff to marry again the same as if the defendant, was dead, but it shall not be lawful for the defendant to marry any person other than the plaintiff during the lifetime of the plaintiff except by express permission of the Court.

Enter

V. M. D.
Justice of Supreme Court,

W. F. Schneider
Clerk.

CERTIFICATE OF COUNTY CLERK
COUNTY CLERK'S OFFICE

I hereby certify that the decree and interlocutory judgment of divorce in favor of Amelia Kossower in an action brought in the Supreme Court by Amelia Kossower, plaintiff, against Abraham Kossower, defendant, was entered in this office on the 14th day of July, 1921 and that no order has been filed in this action since the entry of the interlocutory judgment.

Dated New York, October 15, 1921.

W. F. SCHNEIDER,
Clerk.

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MG

NOTICE OF MOTION TO STRIKE OUT COMPLAINT.

Filed June 13, 1927.

IN CHANCERY OF NEW JERSEY.

Between AMELIA KOSSOWER, *Complainant,* *and* ABRAHAM KOSSOWER and LEAH K. KOSSOWER, *Defendants.*	*On Bill, Etc.* *Notice of Motion to Strike Out.*

To the complainant, Amelia Kossower:

TAKE NOTICE, that on Monday, the 13th day of June, 1927, at the hour of 10 o'clock in the forenoon (daylight savings time) or as soon thereafter as counsel can be heard, at the Chancery Chambers, 1 Exchange Place, in the City of Jersey City, we shall apply to the Chancellor for an order striking out the bill of complaint filed by you in the above-entitled cause for the following reasons:

1. The said bill of complaint discloses no cause of action in that

(a) The complainant seeks to establish a judgment against the defendant, Abraham Kossower, and at the same time seek a discovery of the goods, chattels and other property of the defendant, Abraham Kossower, yet the complainant has not yet obtained a judgment or other lien in this State against the said Abraham Kossower.

(b) The complainant prays that this Court order the defendants, Abraham Kossower and Leah K. Kossower, to make discovery of all property or things in action belonging to the defendant, Abraham Kossower, but the bill of complaint does not disclose that the complainant has obtained a judgment in this State against the defendant, Abraham Kossower, or other lien in this State upon the goods, chattels, or other property of the defendant, Abraham Kossower.

(c) The complainant prays that an order be made restraining the defendants from disposing of any and all of their assets or other property rights, yet the complainant does not show that she has obtained a judgment in this State against the defendant, Abraham Kossower, or any other lien in this State upon the goods, chattels, or other property of the defendant, Abraham Kossower.

(d) The said complainant has a full and complete remedy in the courts of law of this State to obtain a valid judgment against the defendant, Abraham Kossower.

MEANEY & LIFLAND,
Solicitors of Defendants, Abraham Kossower and Leah K. Kossower.

MEMORANDUM OF OPINION.

Filed July 7, 1927.

(Not to be published in any report.)
June 27, 1927.

IN CHANCERY OF NEW JERSEY.

64-214.

Between

AMELIA KOSSOWER,
Complainant,

and

ARBAHAM KOSSOWER, *et al.*,
Defendants.

On Bill, &c.
On Motion to Strike Bill.
Memorandum.

Messrs. Meaney & Lifland for the motion.
Messrs. Levitan & Levitan contra.

FIELDER, *V.-C.*

The complainant alleges that she was the wife of the defendant, Abraham Kossower, and that she obtained a decree of absolute divorce against him in the Supreme Court of New York, by which decree he was ordered to pay her $75.00 each week as alimony, together with costs and a counsel fee, which decree or judgment is still in force; that large arrears of alimony and the costs and counsel fee remain unpaid; that with intent to prevent complainant from enforcing the terms of said decree, said defendant has moved from the jurisdiction of the New York court and is now a resident of this State; that he has married the defendant, Leah K. Kossower, who holds real and personal property in trust

for him with intent to defraud complainant and to prevent her from collecting the money due her under said decree. Complainant prays that the defendants make discovery of all property belonging to the defendant, Abraham Kossower; that they be restrained from disposing of such property; that the defendant, Abraham Kossower, be compelled to carry out the terms of the New York decree failing which he be held in contempt of this Court; that the defendant, Abraham Kossower, be decreed to pay the complainant the arrears of alimony, costs and counsel fee and to pay complainant the future alimony at the rate of $75 each week and that a receiver be appointed to take over the property of the defendant, Abraham Kossower.

The defendants move to strike out the bill on the ground that the complainant has not obtained a judgment or other lien in this State under her foreign decree and that she has a complete remedy at law against the defendant, Abraham Kossower, for the amount of alimony due and to grow due under said decree.

As to obtaining a judgment for the arrears of alimony, costs and counsel fee and the weekly installments to fall due hereafter, the complainant has an adequate remedy at law against the defendant, Abraham Kossower. Under the decree of the New York court she is no longer his wife and she may maintain a suit at law against him in her own name (Bullock *v.* Bullock, 52 N. J. Equity, 561; Van Orden *v.* Van Orden, 58 N. J. Equity, 545; Bennett *v.* Bennett, 63 N. J. Equity, 306; Freund *v.* Freund, 71 N. J. Equity, 524; affirmed 72 N. J. Equity, 943; Bullock *v.* Bullock, 57 N. J. Law, 508; Bolton *v.* Bolton, 86 N. J. Law, 622.)

As to the prayer that the defendant, Abraham Kossower, be decreed to pay complainant future alimony at the rate fixed by the New York decree, her claim is vexatious and unnecessary, in that, if she is entitled to future installments under the New York decree, she is fully protected, because she may sue her former husband at law as the debt accrues. The case made out by the bill differs from Freund *v.* Freund *(supra)* and Tehsman *v.* Tehsman, 93 N. J. Equity 76, affirmed 94 N. J. Equity 422, in that those suits were brought under Section 26 of our Divorce Act, on the ground that the decrees for divorce therein were from bed and board; that the parties were still husband and wife and that the husband had abandoned his wife and refused to support her. In the instant case the complainant does not, apparently, base her claim to maintenance on the provisions of our act and since the parties are no longer husband and wife, the right of the complainant to demand alimony from her former husband is not by reason of an existing matrimonial status but arises out of and is determined and fixed by the New York decree. All that the courts of this State can do to aid the complainant to obtain future alimony is to enforce that decree. All that the courts of this State can do to aid the complainant to obtain future alimony is to enforce that decree (and not enter a new decree) under the full faith and credit clause of the constitution.

The other equitable relief prayed for, namely, discovery, restraint and the appointment of a receiver, is collateral to the main relief sought, which is the determination of whether the defendant, Abraham Kossower, owes complainant any money under the New York decree and until that

question is determined in favor of the complainant by a proper court and it is thus ascertained that she has a right to a lien on property belonging to her former husband, she has no standing in this court to challenge an alleged concealment of assets by him.

The motion to strike out the bill will be granted.

AMENDED NOTICE OF APPEAL.

Filed September 1, 1927.

IN CHANCERY OF NEW JERSEY.

64-214.

Between

AMELIA KOSSOWER,
Complainant,

and

ABRAHAM KOSSOWER, *et al.*,
Defendants.

On Bill, Etc.

Notice of Appeal.

The complainant, Amelia Kossower, hereby appeals from the final decree made in the above-entitled cause on the 27th day of June, 1927, by his Honor Edwin Robert Walker on the advice of Vice-Chancellor James F. Fielder, and from the whole and every part thereto, to the Court of Errors and Appeals of the last resort in all causes.

Dated, July 28, 1927.

LEVITAN & LEVITAN,
Solicitors for Complainant.

ABRAHAM LEVITAN,
Of Counsel.

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

ABRAHAM LEVITAN,
Of Counsel with Complainant.

PETITION OF APPEAL.

Filed

Filed August 24, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

AMELIA KOSSOWER, *Complainant-Appellant,* *vs.* ABRAHAM KOSSOWER, *et al., Defendants-Respondents.*	*On Bill, etc.* *Petition of Appeal.*

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

The petition of Amelia Kossower, the complainant-appellant in the above-entitled cause, respectfully shows that:

Petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date June 27, 1927, in a certain cause in said Court of Chancery wherein the said Amelia Kossower was complainant, in this respect to wit: that the said final decree adjudges that the complainant has no standing in this Court as she has an adequate remedy in the courts of law and also that the final decree adjudges that the complainant is not entitled to any equitable relief prayed for, namely, discovery, restraint and the appointment of a receiver; instead of decreeing that this complainant has a right of action in this Court, and that she is entitled to the relief prayed for in her bill of complaint.

And petitioner appeals from the final decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that the complainant is entitled to the relief prayed for in her bill of complaint.

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

LEVITAN & LEVITAN,
Solicitors for Complainant-Appellant.

ABRAHAM LEVITAN,
Of Counsel.

ANSWER TO PETITION OF APPEAL.

Filed Sept. 15, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

AMELIA KOSSOWER, *Complainant-Appellant,* *vs.* ABRAHAM KOSSOWER and LEAH K. KOSSOWER, *Defendants-Respondents.*	*On Appeal from the Court of Chancery.* *Answer to Petition of Appeal.*

The answer of Abraham Kossower and Leah K. Kossower, the above-named defendants-respondents, to the petition of appeal of Amelia Kossower, the above-named complainant-appellant.

These defendants-respondents not admitting the truth of any or all of the matters in the petition of appeal contained for answer thereto, nevertheless, admit that a decree was, on June 27, 1927, made and entered in the Court of Chancery of New Jersey in the above-entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these defendants-respondents beg leave to refer thereto when the same shall be produced.

These defendants-respondents are advised and believe that the said decree is agreeable to equity; and they pray that the same may be confirmed

with costs to be taxed in favor of said defendants-respondents.

MEANEY & LIFLAND,
Solicitors for Defendants-Respondents.

THOMAS F. MEANEY,
Of Counsel.

Service of three copies of the within brief is hereby acknowledged as of this

Levitan, Levitan & Auerbach
attorneys for Complainant-Appellant.

New Jersey Court of Errors and Appeals

Between:

AMELIA KOSSOWER,
Complainant-Appellant,

and

ABRAHAM KOSSOWER and LEAH K. KOSSOWER,
Defendants-Respondents.

On Appeal from Court of Chancery.

RESPONDENT'S BRIEF.

Facts.

This is an appeal from an order of the Court of Chancery dismissing the bill of complaint filed by the complainant herein.

Complainant filed her bill alleging that she is the former wife of the defendant, Abraham Kossower; that she had obtained a decree of divorce against him in the Supreme Court of the State of New York; that pursuant to the decree, it was adjudged that the defendant pay to the complainant the sum of $75.00 per week, as alimony, together with costs and counsel fees. It is further alleged that the decree of the New York Court is still in force; that at the commencement of this action, there was due to the complainant the sum of $7,950.00 as accrued alimony besides costs and counsel fees; that the defendant, Abraham Kossower, has moved from the jurisdiction of the New York Court and is now a resident of this State; that he has married the defendant, Leah

K. Kossower; that the defendant, Leah K. Kossower, holds various real and personal property in trust for him. Complainant in her bill prays that the defendants make discovery of all property belonging to the defendant, Abraham Kossower; that an order issue restraining the defendants from disposing of the property of the defendant, Abraham Kossower; that this court make an order compelling the defendant, Abraham Kossower, to carry out the terms of the New York judgment, failing which he be held in contempt of this court; that the defendant, Abraham Kossower, be decreed to pay complainant the arrears of alimony, costs and counsel fees and that he pay to complainant the future alimony at the rate of $75.00 per week and that a receiver be appointed to take over the property of the defendant, Abraham Kossower.

The defendants moved to strike out the bill of complaint on the ground that the Court of Chancery was without jurisdiction to entertain the action because the complainant had not obtained a judgment or other lien in this state under her foreign decree and that she has a complete and adequate remedy at law against the defendant, Abraham Kossower, for the amount of alimony due and to become due under the said decree.

Vice Chancellor Fielder granted the motion of defendants and dismissed the bill after argument by counsel, filing an opinion setting forth therein the facts and the law applicable. (State of Case page 13). Complainant appeals from the order striking out the bill.

ARGUMENT

POINT I.

The Court of Chancery was without jurisdiction to entertain the bill of complaint.

It is admitted that the bill of complaint filed herein contained an allegation of fraud, that it seeks the discovery of hidden assets and trust funds; that it seeks to impress a trust upon property in the hands of defendant, Abraham Kossower's wife; that it seeks to enjoin and restrain the defendants and that it seeks the appointment of a receiver; this relief, however, is incidental to the main relief sought; to wit; a judgment against the defendant in the Court of Chancery of this State upon a judgment obtained in the State of New York.

It is respectfully contended by the defendants that the proper forum for relief to complainant is a law court in this State. (*Bullock* v. *Bullock,* 52 N. J. Equity, 561, *Van Order* vs. *Van Orden,* 58 N. J. Equity, 545; *Bennett* v. *Bennett,* 63 N. J. Equity, 306; *Freund* v. *Freund,* 71 N. J. Equity, 524; affirmed 72 N. J. Equity, 943, *Bullock* v. *Bullock,* 57 N. J. Law, 508, *Bolton* v. *Bolton,* 86 N. J. Law, 622) cited by Vice Chancellor Fielder in his opinion (page 14 State of Case). In the case sub judice the complainant had been granted a final decree of divorce in the State of New York, prior to the filing of her bill of complaint herein. Her status then towards the defendant, Abraham Kossower, was that of a total stranger.

The Courts of this State have repeatedly held that before a fraudulent conveyance will be set

aside or before a receiver will be appointed or before discovery and restraint of the assets of a defendant will be allowed, the complainant must have obtained a judgment or other lien in this state on the lands of the defendant, *Davis* v. *Dean,* et al, 26 N. J. Equity, 436; *Waite Co.* v. *Otto* 54 Atl. 425; *Haston* v. *Gastner* 31 N. J. Equity 687; *Bainbridge* v. *Allen,* 70 N. J. Equity 355.

In *Davis* v. *Dean,* et al, *supra,* the complainant, who had recovered judgment upon his debt against defendant in the Supreme Court of New York, filed a bill in chancery alleging that the defendant was indebted to him on the judgment, that with intent to defraud, he had conveyed certain lands to the defendant, Mrs. Garrison, and sought to subject the lands to the payment of the complainant's debt. The Chancellor held:

> "Though, before filing the bill, he had recovered judgment upon his debt against Dean, in the Supreme Court of New York, he has obtained no judgment in this State, nor has he any attachment or other lien upon the land. He cannot, therefore, maintain this suit. Swayze *v.* Swayze, 1 Stockt. 273; Young *v.* Frier, id 465; Green *v.* Tantum, 4 C. E. Green 105."

The Court of Chancery in the case of *Waite Co.* v. *Otto* reported in 54 Atl. Rep. 425, by Vice Chancellor Berry held:

> "Complainant recovered a judgment in New York against Peter Otto, one of the defendants, and files this bill to have conveyance made to the defendant, Gertrude Otto of lands in this state set aside as fraudulent against it, and to have its debt, established by the New York judgment, declared to be a lien upon the lands and satisfied by their sale. No judgment has been recovered in this State upon the New York judgment, and the bill is demurred to for that reason. It has always been the law of this state that the creditor of a living debtor, who seeks to set aside alleged fraudulent conveyances of land by his debtor, and to charge lands as held in trust for the debtor with the payment of his debt, must have a lien on the lands for the debt by judgment, attachment, or other lien. Davis *v.* Dean, 26 N. J. Equity 436, (Runyon Ch. 1875), also settles that a foreign judgment does not create such a lien."

It is submitted that the action of the learned Vice Chancellor was entirely in accord with the foregoing cases decided by our courts.

The leading case in this state on the law applicable to the case sub judice is the case of *Haston* v. *Castner,* 31 N. J. Equity 697, where Chief Justice Beasley held:

> "It cannot be denied that in this state, the general rule is entirely settled that, in order to enable a creditor to challenge, on the ground of fraud, a transfer of property made by his debtor, such creditor must have first obtained a judgment or some other lien upon the property. There is quite an array of decisions to this effect, and, upon an examination of these cases, it will be found that the reason given in them why the general creditor is excluded from such a course of relief is, that his debt, until entered of record is no charge or lien on the property alleged to have been illegally transferred."

The learned Vice Chancellor in his opinion cites *Bullock* v. *Bullock,* 57 N. J. Law 508, *Van Orden* v. *Van Orden,* 58 N. J. Equity 545, *Bennett* v. *Bennett,* 63 N. J. Equity 306, to establish the proposition that the complainant may maintain an action at law upon the decree for alimony made in New York. The Bennett case, *supra,* is directly de-

cisive of the case at bar. In that case the parties were divorced in North Dakota, that court directed the payment of certain sums of money by the defendant at stated intervals, complainant brought a bill in the Court of Chancery; the defendant demurred to the bill. The Court of Errors and Appeals reversing the Court of Chancery held that the remedy at law was adequate and that the Court of Chancery was without jurisdiction.

Counsel seek to distinguish the case at bar from the Bennett case, *supra,* arguing that in the instant case complainant not only seeks to specifically enforce the New York decree, but seeks additional relief as such, discovery, receiver, restraint, injunction, etc. The learned Vice Chancellor who heard the argument of counsel in his opinion answers this contention when he says:

> "The other equitable relief prayed for, namely, discovery, restraint and the appointment of a receiver, is collateral to the main relief sought, which is the determination of whether the defendant, Abraham Kossower, owes complainant any money under the New York decree and until that question is determined in favor of the complainant by a proper court and it is thus ascertained that she has a right to a lien on property belonging to her former husband, she has no standing in this court to challenge an alleged concealment of assets by him."

If complainants have no right to main relief in this court, they have no right to collateral or ancillary relief thereto.

POINT II.

The full faith and credit clause of the Federal Constitution does not apply to this case because the right of the complainant to maintain her action is not denied.

Counsel for appellant in their brief seek to apply the full faith and credit clause of the Federal Constitution in support of their position that the Court of Chancery had jurisdiction; their contention being that because the decree of divorce granted in New York was on the equity side of that court, the full faith and credit clause of the Federal Constitution imposes the obligation upon this State to enforce the judgment of the New York court in our Court of Chancery, in other words that we have not the right to determine the court in which this action should be litigated.

Certainly we are under an obligation under the full faith and credit clause to enforce the judgment of the New York court; the decisions in our state and the decisions of the United States Supreme Court have so held and counsel for the respondent does not contend otherwise; but that we must use the same mode in the execution of that right, which the New York court would use, is stretching the full faith and credit clause entirely too far; is an erroneous contention and has been expressly disapproved by the State and Federal courts. Counsel for appellant fails to distinguish between a substantive right and the enforcement of that right. The full faith and credit clause has reference to a right and has no application to the enforcement of that right.

The case of *Lynde* v. *Lynde,* reported in 181 U. S. 183, 21 Supreme Court Reporter 555, is

directly in point, and is decisive of the supposed Federal question involved in the case at bar, the court holding:

> "By the Constitution and the Act of Congress requiring full faith and credit to be given to a judgment of the Court of another state that it has in the state where it was rendered, it was long ago declared by this court: "
>
> > 'The judgment is made a debt of record, not examinable upon its merits; but it does not carry with it, into another state, the efficacy of a judgment upon property or persons to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there, and can only be executed in the latter as its law may permit.' M'Elmoyle *v.* Cohen, 13 Pet. 312, 325, 10 L. ed. 177; Thompson *v.* Whitman, 18 Wall, 457, 463, 21 L. ed. 897, 899; Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265, 292, 32 L. ed. 239, 244, 8 Sup. Ct. Rep. 1370; Bullock *v.* Bullock, 51 N. J. Eq. 444, 27 Atl. 435, and 52 N. J. Eq. 561, 27 L. R. A. 213, 30 Atl. 676."

further holding:

> "Provisions for bond, sequestration, receiver, and injunction made in a decree for alimony, being in the nature of execution, and not of judgment, can have no extraterritorial operation. but the action of the courts of another state in these respects depends on the local statutes and practice of that state, and involves no Federal question."

The case of *Sestare* vs. *Sestare,* 218 U. S. 1, 30 Sup. Ct. Rep. 682, cited by appellant expressely quoted and approved the Lynde case, *supra,* holding:

> "Contenting ourselves in conclusion with saying that, as pointed out in Lynde *v.* Lynde,

> although mere modes of execution provided by the laws of a state in which a judgment is rendered are not, by operation of the full faith and credit clause, obligatory upon the courts of another state in which the judgment is sought to be enforced, nevertheless, if the judgment be an enforceable judgment in the State where rendered, the duty to give effect to it in another state clearly results from the full faith and credit clause, although the modes of procedure to enforce the collection may not be the same in both states."

In *Bennett v. Bennett* 63 N. J. Equity 307 our Court of Errors and Appeals held:

> "Article 4, section 1 of the constitution of the United States provides; 'Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.' This provision does not make the foreign decree or judgment a record to be enforced without further proceedings in the state to which it is taken, nor does it refer to the remedy or means of enforcing it, but only provides that the facts found in the foreign court upon which the judgment or decree was entered cannot be inquired into by the courts of the sister states."

It is respectfully submitted that under the authorities the full faith and credit clause does not refer to the remedy or mode of enforcing the judgment, it deals only with the right to a judgment; such a right is given to the complainant by affording her the right to sue in a court of law of this state and obtain a judgment therein.

POINT III.

The order of the Court of Chancery dismissing the bill of complaint herein should be affirmed.

Respectfully submitted,

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New Jersey Court of Errors and Appeals.

AMELIA KOSSOWER,
Complainant-Appellant,

vs.

ABRAHAM KOSSOWER, *et al.*,
Defendants-Respondents.

On Appeal From the Court of Chancery.

APPELLANT'S BRIEF.

Statement of Facts.

The facts in this case briefly are as follows:

This is an appeal from an order of the Court of Chancery, dismissing the bill of complaint for want of equity and jurisdiction. The pertinent facts briefly are as follows:

On the 18th day of February, 1921, a final decree for divorce on the ground of adultery was entered in the New York Supreme Court divorcing complainant and defendant, and allowing her $75.00 per week alimony, together with costs and counsel fees. Immediately after this final decree the defendant absconded from the jurisdiction of the State of New York and established a domicile and residence in the State of New Jersey, where he now resides, and secreted his assets by fraudulent transfers. In the meantime the alimony has accumulated and there was due thereon at the time of the institution of this suit, May 18, 1927, the total sum of approximately $8000.00. Execution and other proceedings were commenced in the

New York courts under the judgment, but nothing was collected thereon, owing to the absence of the defendant personally, as well as the removal and fraudulent transfer of all his property from the jurisdiction of the New York court.

After the removal of the defendant from the jurisdiction of the State of New York to New Jersey, he fraudulently conveyed and disposed of all his property to his present second wife, the co-defendant herein, for the purpose of defrauding the complainant and preventing her from collecting her judgment against him in this State.

On May 18, 1927, suit was commenced in the Court of Chancery of New Jersey on a bill of complaint alleging the aforesaid facts in detail. The bill prayed for a receiver, discovery, and a restraining order prohibiting the defendants from disposing of the property, as well as a decree in the Court of Chancery of New Jersey establishing the decree of New York *"in toto"*, that is, giving it all the force and effect incidental to an equitable decree obtained in this state.

A motion to strike out this bill of complaint was filed by the defendant, page 11 case, and after argument thereon, the learned Vice-Chancellor ordered the bill dismissed, in an opinion, page 13 case.

This is an appeal from that order.

POINT I.

The Court of Chancery erred in granting the motion to strike out the bill of complaint.

The motion to strike out the bill of complaint in this case was equivalent to a demurrer under the old practice. The motion therefore admitted all

the facts alleged in the bill of complaint. There certainly were sufficient allegations in the bill entitling complainant to equitable relief which was sought in the Court of Chancery on several equitable grounds:

First: There is an allegation of fraud, page 2 case, lines 15 to 25.

Second: The bill seeks the discovery of hidden assets and trust funds, paragraphs 10, 11, 12 and 13 of bill of complaint, lines 15 to 50, page 3 case.

Third: The bill of complaint also seeks to impress a trust upon the defendant's wife, who the bill alleges holds valuable assets, property and choses in action for the defendant. Paragraph 14 of bill, page 4 case.

Fourth: The bill prays for a restraint and a receiver, paragraph 3 of the prayer of the bill, page 5 case, and paragraph 11, page 6 case.

Fifth: The bill seeks to enjoin the defendant from disposing of his assets *pendente lite,* paragraph 10 of the prayer of bill, page 6 case.

Sixth: The bill also seeks to enforce *"in toto"* a judgment obtained in the Court of Equity in a sister state, and prays for specific performance in this state in the Court of Equity of a judgment and decree obtained in a Court of Equity in the State of New York under Article 4, Section 1 of the Federal Constitution commonly known as the "full faith and credit clause". Paragraph four of the prayer of the bill, page 5 case, lines 12 to 22.

The reasons hereinabove set forth from one to five inclusive, state such elementary and funda-

mental principles of equity jurisdiction, that it needs no argument. The law has definitely been established in this respect.

It is a well-settled principle of law that a Court of Equity is the only court which has jurisdiction to appoint receivers, grant injunctions, and control and impress trusts.

A case similar to the one *sub judice* is *Van Orden* vs. *Van Orden,* decided by the Court of Appeals in 58 N. J. Equity, page 545. In this case, suit was brought in the Court of Chancery of New Jersey by a married woman against her husband to compel the payment of alimony, which had been awarded her in the State of New York under a decree of divorce *"a mensa et. thoro"*. The Court of Chancery entertained jurisdiction.

In the case of *Bennett* vs. *Bennett,* decided by the Court of Appeals, 63 N. J. Equity, page 306, complainant, the wife, sought relief against the defendant, the husband, in the Court of Chancery of New Jersey to enforce a decree obtained in North Dakota. Complainant wanted the Court of Chancery to specifically enforce so much of the decree of the North Dakota court as directed the payment of money. A demurrer was interposed to the bill, which was overruled by the Court of Equity, and on appeal this court reversed the Chancery Court. Upon casual examination, it would appear that the *Bennett* case is decisive of the instant case, but there is a material difference and a distinguishing feature between this case and the case of *Bennett* vs. *Bennett, ubi supra.* The only relief sought in the *Bennett* case was as Mr. Justice Voorhees, speaking for the Court of Appeals in 63 Equity, page 306 says:

> "The effort of the complainant in this cause was to procure the court of chancery to specifically enforce so much of the decree of

> the North Dakota court as directed the payment of money."

Thus the court was correct in its decision in the *Bennett* case, because there was an adequate remedy at law as the court says on page 308:

> "A decree for divorce with an allowance for alimony or support is as much a judgment as if it had been obtained in a common law court."

But the Court also says, citing *Public Works* v. *Columbia College,* 17 Wall. 521, on page 309:

> "It must be shown that legal means for the collection of debts have been exhausted before the Court of Chancery will interfere."
>
> "The general rule is that the Court of Chancery will not take jurisdiction of a cause where no fraud or special equities appear and there is an adequate and complete remedy at law. Agens *v.* Agens, 5 Dick Ch. Rep. 566; 1 Pom. Eq. Jur. 178."

In the instant case, complainant does not merely seek to specifically enforce the New York decree, but she also seeks discovery, a receiver, the impression of a trust, a restraint and an injunction; any one of which if true, entitle her to equitable relief. Their truth is admitted by the defendant, because of his motion to strike out the bill, and therefore the case *sub judice* materially differs from the Bennett case, because of the additional allegations in the bill of complaint, all of which were missing in the Bennett case. The complainant has no adequate remedy at law, and the fact that all legal means for the collection of the debt have been exhausted is also admitted by the motion, therefore the converse of the rule laid down by the Court in *Bennett* vs. *Bennett* is

present here, viz: a court of chancery will take jurisdiction of a cause where fraud or special equities appear and there is no adequate and complete remedy at law.

The Vice-Chancellor therefore clearly erred, in dismissing the bill of complaint on defendants' motion to strike it out.

POINT II.

The Court of Chancery is the only court which can decree a full and final determination of the issues raised in the bill, thereby avoiding a multiplicity of useless actions.

It is a well known principle of equity jurisprudence that the Court of Chancery will avoid multiplicity of actions, and having once obtained jurisdiction of the persons, or subject matter, it will by its final decree grant such substantial, just, equitable and complete relief as the exigencies of the case may require and merit, including all matters which may in anywise be pertinent and incidental to the issues involved, in other words the policy of the Court of Chancery is that once it acquires jurisdiction on any grounds, it will retain the cause and make a full and final determination of all matters therein involved.

The case *sub judice* is just that sort of action. For if a Court of Chancery were not to entertain the complainant's bill, thereby compelling her to resort to a Court of law, the complainant would of necessity be compelled, in order to effectuate the New York decree, to institute an action for each instalment of alimony, as when the same became due. After this action, it will then be necessary to resort to the Court of Equity for the purpose of setting aside the fraudulent transfers alleged in the bill as well as the impression of the trust and the other equitable reliefs herein set forth in Point I. All this procedure would naturally resort to a great deal of useless expense which complainant cannot meet, and needless and harassing litigation. For a court to permit such procedure under our modern practice, it is respectfully urged, would be ineffective, inequitable and perhaps vexatious.

POINT III.

The decree obtained in the equity part of the New York Supreme Court should be enforced "in toto" in the Court of Chancery under the full faith and credit clause of the Federal Constitution.

Article 4, section one, Constitution of the United States provides as follows:

> "Full faith and credit shall be given, in each state, to the public acts, records and judicial proceedings of every other state."

In the case of *Bullock* vs. *Bullock,* 51 Eq. page 444, the Court of Chancery held that under the full, faith and credit clause, one state will give faith and credit to a judgment or decree of a sister state, i. e. the courts of law will give full, faith and credit to judgments granted by the court of law or the Court of Equity of a sister state.

The reasoning of the learned Vice-Chancellor is exhaustive and convincing, and upon the theory enunciated in the Bullock case, it is respectfully

urged to go just one step further, i. e. appellant is seeking to have the Court of Equity recognized and give full faith and credit to a decree of a Court of Equity of a sister state. This latter contention seems to have been given more consideration in the case of *Moore* vs. *Moore,* 128 N. Y. Supp. 259, where the court held,

> "Where judgment has been rendered on a decree rendered in a foreign State for support, the equitable remedy of security and sequestration is applicable to the judgment, *since the action under the Statute is equitable* and only one action is required."
>
> The court further held "Sequestration being the proper remedy under such Statute, it may be enforced in the equitable action in which the judgment is rendered, and by an anticipatory order at the foot of the judgment."

This decision was affirmed by the Court of Appeals where it was held (208 N. Y. 97),

> "Plaintiff in 1892 recovered judgment of separation from defendant in the state of Pennsylvania of which both parties were then residents, in which she was awarded alimony. Defendant avoided compliance with the decree for its payment, and moved to this state; plaintiff brought this action upon the Pennsylvania decree and obtained judgment directing payment of the alimony and providing specifically that defendant execute a bond for its payment in the manner therein provided. Defendant having failed to pay the alimony or execute the bond, a receiver of his income, which is derived from a spendthrift trust, was appointed for the "uses and purposes specified." HELD that the judgment is within the provision of the Code of Civil Procedure section 1772 as amended in 1904, authorizing such an action, and that the appointment of the receiver was properly made."

Also in the case of *Williamson* vs. *Williamson,* 155 N. Y. Supp. page 423, the court held,

> "After that decision, Section 1772 of the Code was amended so as to provide that where a judgment rendered in another State upon the ground of adultery upon which an action has been brought in this State, and judgment rendered therein, requires the husband to provide for the education or maintenance of the children of the marriage or for the support of his wife, the Court may *in its discretion apply the same remedies for enforcement as to a judgment rendered in this State.*"

This question was brought before the Vice-Chancellor in the case *sub judice* directly under Paragraph 4 of the prayer of the bill of complaint page 5 case, lines 12 to 22, as follows:

> "4. That this Court may make an order compelling the defendant Abraham Kossower to carry out the terms of the New York judgment, as shown in Exhibit "A" of the bill of complaint under the full faith and credit clause as provided for in Article 4, section 1 of the United States Constitution, or in the event of the failure of the defendant to carry out the provisions of the New York judgment that he be held in contempt of this Honorable Court."

It will be observed that complainant seeks specific performance of the equity decree of the State of New York in the Court of Equity in New Jersey.

This question has never come before this court where other equitable remedies were sought, besides specific performance. It may well be urged that where a complainant seeks specific performance in an equity court for the payment of money, which remedy can be obtained in a law court, the

equity court refuses jurisdiction because of the adequate remedy provided at law. In the instant case however, the situation is materially different from any that have been brought before the courts under similar circumstances.

In the case of *Barber* vs. *Barber,* reported in 21 Howard, page 582, suit was brought on the common law side of the U. S. District Court in the Territory of Wisconsin to recover arrears of alimony, but the relief was denied "for the reason that the remedy for the recovery of overdue alimony was in a court of chancery, and not at law." A suit in equity was then brought to which a demurrer was urged for the reason "that the relief sought could only be had in the Court of Chancery for the state of New York, and that it did not appear that the complainants had exhausted the remedy which they had in New York." The proceedings culminated in a decree in favor of the complainant for the amount of alimony in arrears at the commencement of the suit, and the case was then brought to the U. S. Supreme Court and the questions were disposed of in a careful and elaborate opinion.

During the course of the opinion it was declared, among other things, that courts of equity possessed jurisdiction to interfere to prevent the decree of the court of another state from being defeated by fraud. Reference was also made to English decisions asserting the power of chancery to compel the payment of overdue alimony. Considering the nature and character of a decree of separation and for alimony, and the operation and effect upon such a decree as to past due installments of the full faith and credit clause, the Court said * * *:

> "The parties to a cause for divorce and for alimony are as much bound by a decree for both, which has been given by one of our state courts having jurisdiction of the subject-matter and over the parties, as the same parties would be if the decree had been given in the ecclesiastical courts of England. The decree in both is a judgment of record, and will be received as such by other courts. And such a judgment or decree, rendered in any state of the United States, the court having jurisdiction, will be carried into judgment in any other state, to have there the same binding force that it has in the state in which it was originally given."

This was cited and quoted with approval in the case of *Sistare* vs. *Sistare,* 218 U. S. 1, 30 Supreme Court reporter 682, particularly on page 684 B, 685 A, and 690 A, where the court says:

> "Contenting ourselves in conclusion with saying that, as pointed out in Lynde *v.* Lynde, although mere modes of execution provided by the laws of a state in which a judgment is rendered are not, by operation of the full faith and credit clause, obligatory upon the courts of another state in which the judgment is sought to be enforced, nevertheless, if the judgment be an enforceable judgment in the state where rendered, the duty to give effect to it in another state clearly results from the full faith and credit clause, although the modes of procedure to enforce the collection may not be the same in both states."

It would seem that there might be a difference in applying the full faith and credit clause where the remedies of two states are radically different. But the decree of the State of New York, which is the basis of this suit, specifically says, page 8 case, lines 22 to 28:

> "The plaintiff was entitled to a judgment against the defendant dissolving the marriage heretofore existing between the parties here-

to pursuant to the statute, because of the adultery of the defendant.''

Thus the decree of absolute divorce being rendered in the State of New York on the ground of adultery, and the State of New Jersey exercising similar power to grant a divorce on the ground of adultery and the remedies subsequent to the recovery of judgment, *i. e.,* contempt, etc., being similar in both states, it is respectfully urged that the full faith and credit clause of the Federal Constitution should be applied directly to the foreign decree and give it full faith and credit in the full sense and meaning of the words, *i. e.,* whatever remedies follow in the State of New York, the Chancery Court of New Jersey should recognize and follow *''in toto''*.

It is therefore respectfully urged that the decree dismissing the bill of complaint be reversed and the case remanded.

Respectfully Submitted,

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