

New Jersey Court of Errors and Appeals

BETWEEN

MARGARETHA SCHREIBER,
Complainant-Respondent,

and

CHARLES SCHREIBER,
Defendant,

WILLIAM M. SCHULTZ,
Appellant.

On Appeal
from Order
in Chancery.

10

20

Brief of Appellant.

This is an appeal from an order made by the Chancellor on February 23, 1915, (case p. 50) in a summary proceeding for the enforcement of the payment of the penalty of a ne exeat bond (case p. 51). By this order it is

“Ordered, Adjudged and Declared that the bond entered into by said William M. Schultz and the defendant, Charles Schreiber herein, to Carl H. Ruempler, Sheriff of the County of Hudson, bearing date the twenty-sixth day of March, nineteen hundred and two, be and the same is hereby forfeited. 30

And it is further Ordered that the said William Schultz pay to the Clerk of this court the sum of one thousand (\$1,000)

40

dollars (being the penal sum mentioned in the said bond) within ten days from the service upon him or his solicitor herein, of a certified copy of this Order, said fund to be applied to the credit of the above-entitled cause as this court may hereafter order and direct.

10 Respectfully advised,

E. R. WALKER, C.
EUGENE STEVENSON, V. C.”

The following is a brief chronology of the cause prior to the commencement of the summary proceedings against the appellant, William M. Schultz, as the surety on the ne exeat bond.

October 28, 1901

20 Bill of Complaint and Affidavit for ne exeat filed (case pp. 6-8)

October 28, 1901

Order of ne exeat republica filed (case p. 8)

October 29, 1901

Writ of ne exeat tested (case p. 8)

November 30, 1901

Answer and Cross Bill filed (case p. 9)

February 15, 1902

30 Replication and answer to Cross Bill filed (case p. 10)

March 28, 1902

Order for substitution of bail filed (case p. 10)

November 10, 1902

Petition for alimony pendente lite filed (case p. 12)

November 10, 1902

Order for alimony pendente lite filed (case p. 12)

January 13, 1903

Order of reference to Hon. Henry C. Pitney, Vice-Chancellor (case p. 13)

No further steps or proceedings appear to have been taken in the cause according to the records and files in the office of the Clerk of the Court of Chancery, until the order substituting Charles Wm. Kappes as Solicitor for complainant, in place and stead of J. Emil Walscheid on January 2, 1914. (case p. 13) 10

The following is a brief chronology of the proceedings to enforce the ne exeat bond.

June 16, 1914

Petition and affidavit of Margaretha Schreiber filed (case pp. 14-19) 20

June 16, 1914

Order on above petition directing Charles Schreiber to show cause on June 22nd, why he should not be adjudged guilty of contempt of court (case pp. 21-22)

June 29, 1914

Order to show cause reciting previous order to show cause of June 16, 1914, and that it appeared that complainant did not make proper service of said order and directing that a copy of this order be served on Charles Schreiber personally, or upon James A. Gordon, Esquire, as solicitor, within two days from the date thereof. (case p. 24) 30

July 6, 1914

Order continuing hearing on return order to show cause to October 5, 1914. (case pp. 25-26)

October 5, 1914

Order that defendant, Schreiber, appear at Chancery Chambers, Jersey City, on October 19, to show cause why he should not be adjudged guilty of contempt for failure to pay complainant arrears of alimony and directing that a copy of this order be served on said Charles Schreiber personally, and upon James A. Gordon, his solicitor of record, and also upon John J. Fallon, Esquire, a solicitor of this court, not less than seven days before the return day of this order and in case said Charles Schreiber cannot be found in this state, that said copy be mailed to him at his last post-office address if the same, by due inquiry, can be ascertained;

Service of this order was acknowledged in the following manner:

“Due and timely service is hereby acknowledged of a copy of within order duly certified by solicitor of defendant, October tenth, nineteen hundred and fourteen.

JAMES A. GORDON,

Solicitor of Defendant in said suit, but not claiming any right to represent him in this proceeding.”

(case pp. 26-28)

At the time of the granting of the above-mentioned order to show cause, there was filed an affidavit by James A. Gordon, the solicitor of record for the defendant Schreiber, in which he stated, among other things

“That deponent has not seen or heard from the defendant since 1904, at which time the defendant resided in the Town of West Hoboken in this State. That there has been no proceedings taken in this suit since June 22, 1903, when the solicitor for the complainant served upon the deponent notice that on the 29th day of June, 1903, he would apply to the Honorable Henry C. Pitney, the Vice-Chancellor to whom the cause had been referred, to fix a time and place for hearing.” (case pp. 29-30) 10

October 19, 1914

There was filed an affidavit of service of the order to show cause dated October 5, 1914, upon John J. Fallon, solicitor, and affidavit of mailing the same to the defendant, Charles Schreiber, and also service of copy of said order upon William M. Schultz, the surety in the ne exeat bond. (case pp. 31-32) 20

There was also filed on said day affidavit of Charles Wm. Kappes as to inquiry made of J. Emil Walscheid, former solicitor of the complainant, as to the residence of the defendant Schreiber, and of one Henry Trost as to defendant's said residence, and that said Schreiber disappeared from his residence, No. 824 Malone Street, West Hoboken, New Jersey, in November, 1911, since which time he has not been heard from. (case pp. 33-34) 30

October 19, 1914

Order reciting that the order heretofore made on October 5, 1914, had not been properly served and order that the defendant Schreiber appear at Chancery Chambers in Jersey City on Monday,

November 9, 1914, and show cause why he should not be adjudged guilty for contempt for his failure to pay to the complainant the arrears of alimony now due and owing by him and ordering that a certified copy of this order be served on Schreiber personally, upon James A. Gordon, his solicitor of record, and upon John J. Fallon, a solicitor of this court, not less than ten days before the re-
 10 turn day of this order and in case said Schreiber cannot be found, that said order be mailed to him at his last known post-office address, if the same, by due inquiry, can be ascertained. (case pp. 35-36)

November 9, 1914

Affidavit of service of said order on James A. Gordon and John J. Fallon by leaving at their respective offices, and of mailing said order to the
 20 defendant, Charles Schreiber, by depositing a certified copy thereof addressed as follows: "Charles Schreiber, 824 Malone Street, West Hoboken, N. J." (case pp. 37-38)

November 9, 1914

Affidavit by Charles Wm. Kappes, solicitor, that he made due and diligent inquiry for the defendant or his whereabouts for the purpose of serving upon him personally, if he could be found, a copy of the order made October 19, 1914, and
 30 that deponent has specifically set forth the inquiry in his affidavit, filed on October 19, 1914, and that he has since called at the West Hoboken post-office inquiring as to the whereabouts of defendant, but was unable to obtain any information further than that already elicited as aforesaid. (case p. 39)

November 9, 1914

Order in which it is

“Ordered and Adjudged that the said defendant, Charles Schreiber, is guilty of contempt of this court, and it is further Ordered that the complainant herein have leave to proceed with the collection of the amount of the ne exeat bond given herein as she may be advised. 10

E. R. WALKER, C.

Respectfully advised,

EUGENE STEVENSON, V. C.”

(case p. 40)

November 17, 1914

Petition of Margaretha Schreiber praying

“that this Honorable Court grant to her an Order directing the said William M. Schultz to show cause why the said ne exeat bond should not be declared forfeited and that he be ordered to pay the amount thereof into this court; and that your petitioner may have such other or further relief as may be equitable and just.” (case pp. 41-43) 20

November 17, 1914

Order that William M. Schultz show cause on December 7, 1914, why the bond entered into by him and the defendant, Charles Schreiber, to Carl H. Reumpler, Sheriff, bearing date March 26, 1902, should not be declared and ordered forfeited and that he be ordered to pay the amount thereof, to wit, the sum of \$1,000, into this Honorable Court. (case p. 44) 30

The hearing and argument upon this order to show cause was continued by consent of counsel for the petitioner, Margaretha Schreiber, and the said William M. Schultz to January 4, 1915, when the matter was argued before Vice-Chancellor Stevenson and was determined by him on February 23, 1915.

10 February 23, 1915

On this day the order appealed from was advised by the Vice-Chancellor. (case p. 50)

POINT I.

The Chancellor Was Without Jurisdiction to Make the Order Appealed From.

20 The practice recognizes two forms of bond and the bond entered into by the respondent Schultz is neither. It is not in compliance with Rule 192 in that it was not taken by the Sheriff at the time of the arrest of the defendant, and the condition does not recite

30 "that the defendant shall cause his appearance to be entered in the suit, and continue such appearance by a solicitor of this Court, residing in the State"

as provided by Rule 192, and the condition of the bond is not of the form of bond taken by Sheriff previous to Rule 192, which condition provided

40 "that if the said _____ shall not depart or leave this State without the permission of said Court of Chancery, then this obligation to be void; otherwise to remain in full force and virtue."

Neither does the bond given comply with the order for substitution of bail made on March 24, 1902 (case p. 10) which ordered that the bond should be approved as to form and manner of execution by one of the Special Masters of this court. It does not appear that the bond appealed from was approved as directed by the order, and it is urged that until the order be strictly complied with, the bond is of no force and effect. 10

It is further urged that while the practice of the Court of Chancery permitted the taking of the bond in the form above referred to in use prior to the promulgation of Rule 192, and also provided by Rule 192 for the taking of a bond in lieu of the bond theretofore used, which rule further directed the form and the condition of said bond, there is no provision in the practice or rules for an order for the cancellation of the original bond of ne exeat entered into in a suit, and the substitution of another bond in lieu thereof, and that any such bond is, therefore, null and void and of no force and effect. 20

POINT II.

The Cause in Which Said Order Was Made Was Abandoned by the Respondent Prior to the Making of Said Order. 30

The only evidence before the court upon the return of the rule to show cause upon which the order herein appealed from was made, was the affidavit of the appellant herein, (case pp. 46-49) and the record of the proceedings in the case from which it appears that no steps or proceedings were taken in the cause from January 13, 1903, 40

when the order of reference was made, this being the last paper on file in the office of the Clerk in Chancery. Although it appears by the affidavit of James A. Gordon (case page 29) that on June 22, 1903, the complainant's solicitor served upon him notice that

10 “on the 29th day of June, 1903, he would apply to the Honorable Henry C. Pitney, the Vice-Chancellor to whom the cause had been referred, to fix a time and place for hearing.”

it does not appear from his affidavit, nor from any of the records of the court, that the complainant's solicitor ever did appear before the Honorable Henry C. Pitney, to fix a time and place for the hearing or that there was ever any hearing held in the cause. To quote again from 20 the affidavit of Mr. Gordon

“That the cause had slept so long that deponent had supposed it had been settled or abandoned, until he heard of the application to punish the defendant for contempt.”

It also appeared by the affidavit of William M. Schultz that he had been informed about two or 30 three years after he had entered into the bond that the suit had been settled between the parties out of court and that the suit was discontinued, and that James A. Gordon had procured said Schultz's release from said bond and that said Schultz had never heard anything about the suit until the month of September, 1913. Rule 27 of the Court of Chancery provides that

“Where a complainant omits to take a decree pro confesso (within four months) after the time when he is entitled to it against a defendant or defendants, he shall not thereafter move such decree until he has first taken and served an order on the defendant or defendants, if in this State, to file their answer or answers at such short day as the court may appoint.” 10

Rule 30 of the Court of Chancery provides

“If a suit be suffered to lie without (substantial) prosecution for one year, it shall be considered as abandoned, and the bill may be dismissed; (five days’ notice shall be given of a motion for that purpose, to complainant or his solicitor).”

In the case at bar, the suit was suffered to lie without substantial prosecution for eleven years, that is, from the date of the service upon the complainant’s solicitor Gordon of the notice to fix time and place for hearing June, 1903, to the date of the filing of the first petition in the summary proceeding for contempt and on the ne exeat bond by the substituted solicitor for the complainant in June, 1914. The statement made in Schultz’s affidavit that the suit had been settled between the parties out of court is not denied by any answering affidavit of the complainant, Margaretha Schreiber. If the statement were not true she would have denied it, and should have denied it. It does not seem reasonable that Schreiber continued to make the payment of \$6.50 per week for eleven years under the order for the payment of alimony pendent lite made in 1902. It is more reasonable to assume that the Schreibers got to-

gether and agreed to abandon the suit and cross-suit and that Schreiber would continue to pay to his wife \$6.50 per week for the support of her children. In the wife's bill of complaint she charged her husband with living in adultery with a woman in West Hoboken (case page 7) and in the husband's answer and cross-bill he charges that the decree of alimony in the New York Supreme Court was obtained by fraud and that the complainant, his wife, was then with child by another man, and that he did not have knowledge thereof until after said child was born. He also charges that his said wife since the making of the decree in the New York Supreme Court, committed adultery during all the months of the years 1895, 1896, 1897 and 1898. (case page 9) The statement of Schultz that he was informed by the husband, Schreiber, that the suit had been abandoned and that the parties had settled their differences out of court, seems true, as it is probable that neither the husband or wife cared to go to trial on the charges and counter-charges in the bill of complaint and cross-bill. It is possible and probable that both were guilty.

It is therefore urged that the failure of the respondent, Margaretha Schreiber, to deny the statement in Schultz's affidavit on the return of the order to show cause that the suit had been settled between the parties out of court, should be taken as an admission by her of the truth of said statement and to establish the contention of the appellant that the suit was abandoned.

POINT III.

The Bond is not in the Form Prescribed by Law and the Rules of the Court of Chancery, and is Void and of No Effect.

Under this point the court is respectfully referred to the contentions of the appellant's counsel made under Point I. 10

POINT IV.

The Negligence, Laches, and Delay of Respondent in Proceeding Against the Appellant upon the Bond is a Bar to her Right to Relief.

It is respectfully urged that the Court read the affidavit of William M. Schultz (case pages 46-49) which is uncontradicted. Among other things it is stated therein that he heard nothing about the suit or the bond until September, 1913, when he was informed that the defendant, Schreiber, was in arrears in the payment of alimony. He was further informed by Mr. Walscheid, then the solicitor of the complainant, Margaretha Schreiber, in the presence and hearing of said complainant, Margaretha Schreiber, that the case was not settled as deponent had been led to believe, and that it was not unusual for the defendant, Schreiber, to fail to pay any money to his wife for a considerable length of time and to make payment of sums of \$200.00 and \$300.00 at a time. 20 30

It is respectfully urged by the appellant that this was an admission made by the complainant of negligence and laches in the prosecution of her 40

rights, if any she had under said bond; that if the bond were in force or if the order for the payment of alimony pendente lite (case page 12) were in force and she were diligent in the prosecution of her rights thereunder, she should have taken proceedings on the first of the admitted occasions that the defendant Schreiber was in arrears—sometimes to the extent of \$200.00 and
 10 \$300.00 at a time.

The failure for a great length of time to assert a right is evidence of its abandonment. Lapse of time will prevent enforcement of an acknowledged right only because of presumption of abandonment.

16 Cyc. 160.

Negligence in the prosecution of a suit after
 20 its commencement may bar relief.

16 Cyc. 150.

It is respectfully submitted that the order appealed from is erroneous and should be vacated and set aside.

Respectfully submitted,

30 JOHN J. FALLON,
Solicitor for and of Counsel with Appellant.

New Jersey Court of Errors
and Appeals,

BETWEEN

MARGARETHA SCHREIBER,
Complainant-Respondent,

and

CHARLES SCHREIBER,
Defendant,

WILLIAM M. SCHULTZ,
Appellant.

On Appeal
from Order
in Chancery.

BRIEF OF RESPONDENT.

POINT 1.

**The Chancellor Had Jurisdiction to Make the
Order Appealed From.**

The bond upon which this proceeding is founded (which will be found on page 51 of the Case, but is not indexed) is not as stringent as the bond required by the practice and by Rule 192. The said bond is a valid and subsisting legal obligation and enforceable in this Court. The condition of the bond in question is that the defendant, Schreiber, shall at all times render himself amenable to the orders and process of this Court** and shall appear before said Court** when so required by the Order of said Court. For the breach of

this condition the forfeiture of said bond was ordered (Case, page 50). This Order is in full accord with the practice and procedure of the Court and is enforceable in the manner in which the same in the case at bar was enforced.

Wauters vs. Van Vorst, 28 N. J. Eq. 103.

Chancery will retain proceedings on a new exeat bond and enforce the liability of the obligors.

Elliott vs. Elliott, 36 Atl. 951.

Vide opinion of Stevenson, V. C., and cases there cited (Case, p. 53).

POINT 2.

This Cause Was Not Abandoned by the Respondent Prior to the Making of Said Order.

Payments by the defendant had been made at intervals and until as late as November, 1911, (a little over three years before the institution of this proceeding. Case, p. 15.)

Had the defendant or his surety considered the cause abandoned, his remedy under Rule 30 of this Court was to give Notice of Motion to dismiss. The appellant cannot avail himself of his own remissness to claim laches and defendant acquiesced in the alleged delay. There is nothing in the answering affidavits to indicate that defendant has suffered a loss of testimony or been so prejudiced by the alleged neglect that it would be unjust to now permit the respondent to enforce her rights.

Tynan vs. Warren, 53 N. J. Eq. 313.

Holzer vs. Thomas, 69 N. J. Eq. 515.

The lapse of twelve years between the last payment on a bond and the commencement of a suit for its recovery is not such a length of time as to justify the appellation of a *stale demand*.

Kinna vs. Smith, 3 N. J. Eq. p. 14.

POINT 3.

The Respondent Has Proceeded With Reasonable Promptness and is Free From Any Charge of Negligence, Laches or Delay.

The only testimony in the case bearing on the question of proceeding to enforce the ne exeat bond is found in the petition of respondent and the affidavit of Mr. Walseheid, her then solicitor. (Case, pp. 16-18.) It is quite apparent and requires no argument that in cases of this nature (separate maintenance) the complainant, usually a poor woman, relies upon the payments ordered made and until a discontinuance of payment, has no pressing need for further action. The testimony cited clearly shows that promptitude of action on the part of respondent and her Solicitor after the last payment made. The bond is today still in force and enforceable.

POINT 4.

The Order Made is Agreeable to Equity and the Same Should be Affirmed.

Respectfully submitted,

CHARLES WM. KAPPES,
Solicitor for and of Counsel with Respondent.

The lapse of twelve years between the last pay-
ment on a bond and the commencement of a suit
for recovery is not such a bar of time as to
preclude the application of a rule demand...

POINT 3

The Respondent has proceeded with Reason-
able Prudence and a Fair From Any Charge
of Negligence, Failure or Delay...
The only testimony in the case bearing on the
question of proceeding to enforce the next bond
is found in the petition of respondent and the affi-
davit of Mr. W. J. [Name], her then doctor. (Case
pp. 10-12) It is quite apparent and undisputed
that in issue of this matter (separate
in [Name]) the complaint, usually a poor
woman relies upon the payment ordered made
and until a discontinuance of payment has no
further need for further action. The testimony
clearly shows that [Name] or her action on
the part of respondent and her doctor after the
last payment made. The bond is today still in
force and effect.

POINT 4

The Order made is Accessible to Equity and
the same should be Affirmed.

CHARLES W. KATZES

Respondent's Counsel with Respondent

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NOTICE OF APPEAL.

(Filed March 8, 1915.)

In Chancery of New Jersey

Between

MARGARETHA SCHREIBER,
Petitioner,

and

CHARLES SCHREIBER,
Defendant.

On Bill, &c.
On Order to
Show Cause.
Notice of
Appeal.

10

William M. Schultz hereby appeals from an order made in the above entitled cause on the twenty-third day of February, nineteen hundred and fifteen, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

20

JOHN J. FALLON.
*Solicitor for and of Counsel
with William M. Schultz.*

Dated March 5th, 1915.

30

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

JOHN J. FALLON.
Of Counsel with William M. Schultz.

40

Petition of Appeal.

sum mentioned in said bond), within ten days from the service upon him, or his solicitor, of a certified copy of said order, said fund to be applied to the credit of the above entitled cause as said Court of Chancery might thereafter order and direct.

And your petitioner humbly appeals from the whole and every part of said order of the Chancellor, upon the ground that the same is erroneous, for that: 10

1. The said Chancellor was without jurisdiction to make said order.

2. The cause in which said order was made was abandoned by the respondent prior to the making of said order.

3. The respondent had a complete and adequate remedy at law. 20

4. The said bond is not in the form prescribed by law and the rules of the Court of Chancery, and is void and of no effect.

5. The negligence, laches, and delay of respondent in proceeding against the appellant upon said bond is a bar to her right to relief.

6. The said order is void at law and is not agreeable to equity. 30

Your petitioner therefore prays that the said order of the said Chancellor may be 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.

JOHN J. FALLON.

*Solicitor for and of Counsel
with William Schultz, Ap-
pellant.*

ANSWER TO PETITION OF APPEAL.

(Filed June 16, 1915.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	Between MARGARETHA SCHREIBER, <i>Complainant-Respondent,</i> and CHARLES SCHREIBER, <i>Defendant.</i> WILLIAM M. SCHULTZ, <i>Appellant.</i>	} On Appeal } from Order in } Chancery. } Answer to } Petition of } Appeal.
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20 The answer of the above named respondent to the petition of appeal of the above named appellant.

30 This respondent, not acknowledging all or any of the matters which in the said Petition of Appeal are contained to be true, for answer thereto, nevertheless says and admits that an Order was made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said Petition, as is therein stated; as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said Order is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

CHARLES WM. KAPPES.
*Solicitor for and of Counsel with
 Respondent.*

Answer to Petition of Appeal.

(Endorsed)

Due and timely service is hereby acknowledged of the within Answer to the Petition of Appeal, and it is hereby consented that the same may be filed as within time.

Dated June 12, 1915.

10

JOHN J. FALLON.

Solicitor for Appellant.

**ABRIDGMENT OF CHANCERY
PROCEEDINGS.**

The following is an abridgment of the proceedings in the Court of Chancery up to the date of the proceedings to punish the defendant for contempt and to direct William M. Schultz, the surety on the ne exeat bond, to pay the penal sum thereof into this Court.

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30

40

**BILL OF COMPLAINT AND AFFIDAVIT FOR
NE EXEAT.**

(Filed October 28, 1901.)

10 This is a bill for maintenance and alleges that
the parties, complainant and defendant, were mar-
ried on June 12th, 1888, and that there were five
children born of their marriage, the last child
being Martha Schreiber, who was born in the
month of February, 1894. That in the summer
of 1893 defendant deserted her and her children
and has since refused to live with her or make
any provision for her or her children. That in
1893 she commenced an action in the Supreme
Court of New York, a court of competent juris-
20 diction, to obtain a judgment of separation from
her husband and for separate support for her-
self and her children, and that the defendant
was personally served and appeared and de-
fended the same, and that such proceedings were
had that on January 19th, 1894, a judgment was
rendered in said cause in favor of the complain-
ant and against defendant, whereby it was de-
creed that complainant and her husband be
separated from bed and board forever and di-
30 rected defendant to pay unto her ten dollars per
week for support and maintenance of herself and
children. That after said judgment defendant
paid complainant ten dollars per week for seven
weeks, then ceased payments, when she caused
his arrest and while under arrest he again agreed
to support her in accordance with terms of said
judgment, and did so for a further period of three
weeks when he again failed and was again ar-
40 rested, and again promised while under arrest
to comply with said order, and again paid to
complainant said weekly sum for two weeks, when

Bill of Complaint and Affidavit for Ne Exeat.

he again failed, and was again arrested and again promised to pay, and did pay for a further period of four weeks. That thereafter when she again sought to have him arrested she could not ascertain his whereabouts and lost all trace of him until some time in the year 1900.

That defendant is indebted to complainant in the sum of three thousand eight hundred and seventy dollars arrears of alimony under said order. 10

That in 1900 she ascertained that her husband resided in Hudson County, New Jersey, and located him in July at Savoye street, West Hoboken, residing with another woman held out as his wife, and ascertained that there were two children of said woman known in the community by his name. 20

That complainant has been informed and believes that since her husband left Brooklyn in 1894 he has resided in West Hoboken with said woman as his wife and that she has born to him two children, and charges that since he has come to the State of New Jersey he has deliberately separated himself from complainant and failed absolutely to make any provision for the maintenance and support of herself and children, and by reason of said premises has abandoned complainant and separated himself from her without justifiable cause. 30

The prayer of the bill is that defendant may be ordered and decreed to perform the duties imposed upon him by the judgment in the New York Supreme Court, and the usual prayer for support and maintenance under the statute, and a prayer for writ of ne exeat. 40

Bill of Complaint and Affidavit for Ne Exeat.

There is annexed to the bill full verification by the complainant.

There is also annexed to the bill an exemplified copy of the judgment in the New York Supreme Court.

10

J. EMIL WALSCHEID,
Solicitor for Complainant.

ORDER OF NE EXEAT REPUBLICA.

(Dated October 28, 1901.)
(Filed October 28, 1901.)

20 This order is in the usual form and directs that the writ be endorsed in the sum of one thousand dollars in words of length and figures.

WRIT OF NE EXEAT REPUBLICA.

(Tested October 29, 1901.)

Writ is in the usual form and directed to the Sheriff of the County of Hudson and bears the following return:

30

“October 31, 1901. I certify and return that I have caused the within named Charles Schreiber personally to come before me, and he has found bail in the sum of one thousand dollars according to the command of the within writ.

CARL H. RUEMPLER,
Sheriff.

By J. J. HEAVEY,
Under Sheriff.

40

ANSWER AND CROSS BILL.

(Filed November 30, 1901.)

This answer admits the marriage and that there were four children born of the marriage between the parties, but denies the paternity of the child Martha Schreiber mentioned in the complaint born February 22, 1894, and says that he did not cohabit with complainant or have intercourse with her since December, 1892. 10

Admits the decree of New York Supreme Court and the order for alimony thereunder, but alleges that decree was obtained by fraud, as complainant was then with child by another man, and that he did not have knowledge thereof until after said child was born.

That in 1894 defendant moved to Town of Union, Hudson County, and has continually resided there since, and that complainant has always known of his whereabouts, and that he frequently visited Brooklyn in her neighborhood. 20

Denies that he lived with woman mentioned in complaint as her husband or had child by her or any illicit intercourse with her.

Defendant says complainant forfeited right to enforce the decree in New York because since the making of the decree she has committed adultery during all the months of the years 1895, 1896, 1897 and 1898. 30

The facts of adultery are further set up in the answer by way of cross bill with the usual prayer for dissolution of the marriage.

JAMES A. GORDON,
Solicitor for Defendant.

**REPLICATION AND ANSWER TO CROSS
BILL.**

(Filed February 15, 1912.)

Joins issue at defendant's answer and denies allegation of adultery in cross bill.

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ORDER FOR SUBSTITUTION OF BAIL.

(Dated March 24, 1902.)

(Filed March 28, 1902.)

Between

MARGARETHA SCHREIBER,
Complainant,

20

and

CHARLES SCHREIBER,
Defendant.

On Bill, Etc.
Order for
Substitution
of Bail.

30 The parties consenting hereto: It is on this twenty-fourth day of March, nineteen hundred and two, on motion of James A. Gordon, of counsel with the defendant, Ordered, that upon the filing with the Sheriff of the County of Hudson a bond unto said Sheriff, in the sum of one thousand dollars, duly executed by the defendant and William M. Schultz of West Hoboken, in the County of Hudson and State of New Jersey, approved as to form and manner of execution by one of the Special Masters of this court, conditioned that the said defendant shall at all times render himself amenable to the orders and process of

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Order for Substitution of Bail.

this court pending this suit, and to such process as shall be issued to compel the performance of the final decree herein, and shall appear before this court, or any officer thereof, when so required by the order of this court; then, upon filing said bond, the bond heretofore entered into by said defendant and George B. Bergkamp to said Sheriff in this suit be cancelled. 10

Respectfully advised,

H. C. PITNEY, V. C. W. J. MAGIE, C.

We consent to the foregoing order.

J. EMIL WALSCHEID,
Solicitor of Complainant.

JAMES A. GORDON,
Solicitor for Defendant. 20

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**PETITION FOR ALIMONY PENDENTE
LITE.**

(Filed November 10, 1902.)

ORDER FOR ALIMONY PENDENTE LITE.

(Filed November 10, 1902.)

10 Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

} On Bill for
} Divorce.
} Order for
} Alimony
} Pendente Lite.

20 This matter being opened to the Court by J.
Emil Walscheid of counsel with the above com-
plainant and in the presence of James A. Gordon
of counsel with the said defendant, and the pe-
tition of said complainant and the affidavit taken
for purpose of this application having been read
and the arguments of respective counsel having
been heard and considered, and it appearing to
the Chancellor that the prayer of said petition
should be granted, it is on this third day of No-
30 vember, A. D. nineteen hundred and two, on mo-
tion of J. Emil Walscheid, Esq., of counsel with
said complainant, ORDERED, that the said
Charles Schreiber pay to the said Margaretha
Schreiber the sum of six and one-half dollars
every week at the beginning of each and every
week from the date of this order for her main-
tenance and support and the maintenance and
support of her children, until the further order
of this court in these premises, and also that he

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Petition for Alimony Pendente Lite.
Order for Alimony Pendente Lite.

pay to her solicitor and counsel the sum of twenty-five dollars as a counsel fee for the prosecution of said bill of complaint and for defending the cross bill filed to said bill of complaint above mentioned, together with the costs of this order to be taxed. 10

Respectfully advised,

W. G. MAGIE, C.

EUGENE STEVENSON, V. C.

ORDER OF REFERENCE.

(Dated January 13, 1903.) 20
 (Filed January 13, 1903.)

On motion of J. Emil Walscheid ordered that cause be referred to Hon. Henry C. Pitney, V. C. This order is consented to by defendant's solicitor.

No further steps or proceedigs appear to have been taken in said cause according to the records and files in the office of the Clerk of the Court of Chancery until the order for substitution next herein set forth. 30

ORDER FOR SUBSTITUTION.

(Dated January 2, 1914.)

(Filed January 6, 1914.)

Order substituting Charles Wm. Kappes, as solicitor for complainant in place and stead of J. Emil Walscheid.

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The following are copies of the petitions, affidavits and orders in the contempt proceedings and to enforce the collection of the penalty:

PETITION AND AFFIDAVIT.

(Filed June 16, 1914.)

IN CHANCERY OF NEW JERSEY.

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Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

On Bill, Etc.
Petition.

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

The petition of Margaretha Schreiber respectfully shows:

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

2. That on the twenty-ninth day of October, nineteen hundred and one, there issued out of

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Petition and Affidavit.

and under the seal of this Honorable Court, a Writ of ne exeat republica under which the defendant was required to give bond in the sum of one thousand (\$1,000) dollars. That thereafter and on or about the twenty-sixth day of March, nineteen hundred and two, this defendant and one William M. Schultz entered into a Bond to Carl H. Ruempler, Sheriff of the County of Hudson, in the sum of one thousand (\$1,000) dollars, with the condition that said defendant Charles Schreiber shall at all times render himself amenable to the order and process of this court pending such suit, to wit, the above entitled suit, which was in due form of law, executed and delivered. 10

3. By a certain order made and filed in this cause, on the third day of November, nineteen hundred and two, it was ordered that the said defendant, Charles Schreiber, pay to the said complainant, Margaretha Schreiber, the sum of six dollars and fifty cents (\$6.50) every week for her maintenance and support and the maintenance and support of her children until the further order of this court in the premises, which order remains in full force and effect, not having been in any wise modified. 20 30

4. A certified copy of said order was thereafter served personally upon the said defendant and a written demand for the payment of alimony made, and the said defendant did thereafter pay the said alimony so awarded and continued to pay the same until the eleventh day of November, nineteen hundred and eleven.

Petition and Affidavit.

5. The said defendant, Charles Schreiber, notwithstanding the terms and directions of said order, has hitherto refused and neglected and still refuses and neglects to make the payments required by the said order, and there is now due and owing to your petitioner for arrears of alimony from the date of said decree to the making of this petition, the sum of eight hundred and sixty-four (\$864) dollars and fifty (50c) cents.

6. That petitioner does not know the present whereabouts of the said defendant. That petitioner through her former counsel, J. Emil Walscheid, Esquire, heretofore and on May sixth, nineteen hundred and twelve, and at various other times since said date, has made demand in writing on William M. Schultz, one of the obligors in the said bond mentioned, for the payment of the alimony, then up to such time due and owing under the order above set forth and all of the said alimony still remains in arrears and unpaid.

Your petitioner prays that the said defendant, Charles Schreiber and the said William M. Schultz may be adjudged in contempt of this Honorable Court for their contumacy in refusing and neglecting to perform the terms and directions of the aforementioned order and in failing to perform the conditions of the said bond in the particulars before stated, and that they be punished accordingly and that your petitioner may have such other relief as may be equitable and just.

And your petitioner will ever pray, etc.

MARGARETHA SCHREIBER,
Petitioner.

CHARLES WM. KAPPES,
Of Counsel with Petitioner.

Petition and Affidavit.

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

Margaretha Schreiber, the above named petitioner, being duly sworn according to law upon her oath deposes and says:

1. I have read the foregoing petition and know the contents thereof and the same is true to the best of my knowledge, information and belief. 10

2. Particularly is it true that the defendant, Charles Schreiber, has refused and neglected to make the payments required by the order mentioned in my said petition and that the said William M. Schultz has refused and neglected to make the said payments according to the condition of the bond in my said petition mentioned, and that there is now due to me the several sums therein mentioned for arrears of alimony. 20

MARGARETHA SCHREIBER.

Sworn and subscribed to before me, this 3rd day of June, nineteen hundred and fourteen.

FRANCIS A. WERTHMAN,
Notary Public,

30

Oneida Co., N. Y.
 (County Clerk's certificate attached.)

Affidavit of J. Emil Walscheid

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

Affidavit.
On Bill, Etc.

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

20 J. Emil Walscheid, of full age, being duly sworn according to law upon his oath deposes and says:

1. I was the solicitor of the complainant in the above entitled cause and had the active management of the same up to the making of the present application.

30 2. On or about November third, nineteen hundred and two, I caused to be entered in this cause an Order requiring the defendant to pay to the said complainant support and maintenance for herself and children until the further order of this court, at the rate of six dollars and fifty cents per week, which order, taken in open court after oral examination of witnesses in the presence of defendant and his counsel, remains in full force and effect, not having been in anywise modified.

3. The defendant, at irregular intervals complied with the terms of said order by paying to me, as complainant's solicitor, the moneys so

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Affidavit of J. Emil Walscheid.

ordered as above until November eleventh, nineteen hundred and eleven, since which date the defendant has not paid anything under said order. All the payments which have been made thereunder were made to me as aforesaid.

4. Since the said eleventh day of November, 10
nineteen hundred and eleven, I have made frequent requests and demands on the defendant by letter, to comply with the terms of said Order and pay the arrearages of moneys for maintenance due, but the defendant has failed and neglected to pay the same or any part thereof.

EMIL WALSCHEID.

Subscribed and sworn to before
me this fifteenth day of June, nine- 20
teen hundred and fourteen.

HENRY VOGLER,
Master in Chancery of New Jersey.

Affidavit of Nicholas S. Schloeder.

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

10 Nicholas S. Schloeder, of full age, being duly sworn according to law on his oath says, that he is a clerk in the office of Charles Wm. Kappes, solicitor of the complainant herein. That on the seventeenth day of June, nineteen hundred and fourteen, he served a true and certified copy of the within order to show cause and also a copy of the petition and affidavit thereto annexed upon John J. Fallon, Esq., solicitor of the defendant herein, by delivering to and leaving the same with a person of lawful age then in charge of the office of said John J. Fallon, in the Hudson Trust Building, 51 Newark street, Hoboken, New Jersey, the
 20 said John J. Fallon being absent at the time.

NICHOLAS S. SCHLOEDER.

Sworn and subscribed to before me this eighteenth day of June, nineteen hundred and fourteen.

ADOLPH J. H. PETERS,
Attorney-at-Law,
State of N. J.

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ORDER TO SHOW CAUSE.

(Filed June 16, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Petitioner,

and

CHARLES SCHREIBER,
Defendant.

On Bill, Etc.
Order to
Show Cause.

10

Upon opening this matter to the Court by Charles Wm. Kappes, of counsel with the petitioner, and upon reading the affidavit of J. Emil Walscheid setting forth that the Order made in this cause, on the third day of November, nineteen hundred and two, was taken in open court in the presence of the said defendant and his counsel, and upon reading and filing the petition and affidavit of Margaretha Schreiber, the said petitioner, setting forth that the said Charles Schreiber has refused and neglected and still refuses and neglects to make the said several payments required by said Order and praying that he be adjudged in contempt for his contumacy in the particulars aforesaid and punished accordingly, now on motion aforesaid,

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It is, on this 16th day of June, nineteen hundred and fourteen, ORDERED, that the said Charles Schreiber should show cause before the Chancellor at the Chancery Chambers, number 75 Montgomery street, in the City of Jersey City, New Jersey, on Monday, the 22nd day of June,

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Order to Show Cause.

nineteen hundred and fourteen, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why he should not be adjudged guilty of contempt of this court in the premises and punished accordingly, and

10 It is Ordered that a copy of this Order which may be certified by the solicitor of complainant together with a copy of the petition and affidavits thereto annexed on which this order is founded, be served on the said Charles Schreiber personally or upon his solicitor, within one day from the date of this Order.

Respectfully advised,

VIVIAN M. LEWIS,
Vice-Chancellor.

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ORDER TO SHOW CAUSE.

(Filed June 29, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
*Defendant.*Order to
Show Cause. 10
On Bill, Etc.

Upon opening this matter to the Court by Charles Wm. Kappes, counsel of the complainant, and upon reading the petition of the complainant and the affidavit of J. Emil Walscheid thereto annexed and the Order to show cause granted thereon on the sixteenth day of June, nineteen hundred and fourteen, and it appearing that the complainant did not make proper service of the said Order to show cause as therein provided, now on motion aforesaid 20

It is, on this twenty-ninth day of June, nineteen hundred and fourteen, ORDERED, that the said Charles Schreiber, the defendant herein, should show cause before the Chancellor at the Chancery Chambers, Number 75 Montgomery street, in the City of Jersey City, New Jersey, on Monday, the sixth day of July, nineteen hundred and fourteen, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why he should not be adjudged guilty of contempt of this court in the premises and punished accordingly, and 30

It is Ordered that a copy of this Order to show cause which may be certified by the solicitor of 40

Order to Show Cause.

complainant be served on the said Charles Schreiber personally or upon James A. Gordon, Esquire, his solicitor, within two days from the date of this Order.

E. R. WALKER, C.

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Respectfully advised,

VIVIAN M. LEWIS,
Vice-Chancellor.

Due, timely and legal service of a certified copy of the within order to show cause is hereby acknowledged this thirtieth day of June, nineteen hundred and fourteen.

JAMES A. GORDON,
Solicitor of Defendant.

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ORDER OF CONTINUANCE.

(Dated July 6, 1914.)
 (Filed October 21, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

On Bill, Etc. 10
 Order of
 Continuance.

Upon opening this matter to the Court by Charles Wm. Kappes, Counsel of the complainant, and it appearing that an Order directing the defendant herein to show cause why he should not be punished for contempt was made herein on the twenty-ninth day of June, nineteen hundred and fourteen, returnable in this court on the sixth day of July, nineteen hundred and fourteen, and the hearing on the same having been continued by consent of Counsel for the complainant and James A. Gordon, Esquire, of Counsel with the defendant, and upon the consent of the said James A. Gordon, solicitor of defendant, hereto annexed,

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It is, on this sixth day of July, nineteen hundred and fourteen, Ordered that the hearing upon the said Order to show cause be, and the same hereby is continued to the fifth day of October, nineteen hundred and fourteen, at the same time and place.

E. R. WALKER, C.

Respectfully advised,
 EUGENE STEVENSON, V. C.

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Order of Continuance.

I hereby consent to the making and entry of
the foregoing Order.

JAMES A. GORDON,
Counsel of Defendant.

Dated July 6th, 1914.

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ORDER TO SHOW CAUSE.**(Filed October 5, 1914.)**

IN CHANCERY OF NEW JERSEY.

Between

20

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
*Defendant.*On Bill, Etc.
Order.

30

Upon opening this matter to the court by
Charles Wm. Kappes, of counsel with the com-
plainant, and upon reading the petition of the
complainant verified June third, nineteen hun-
dred and fourteen, and the affidavit of J. Emil
Walscheid thereto annexed, which were filed
herein on the sixteenth day of June, nineteen hun-
dred and fourteen, and upon reading the Order
bearing date June twenty-ninth, nineteen hun-
dred and fourteen, requiring the defendant to
show cause why he should not be adjudged guilty
of contempt, which Order was duly filed June

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Order to Show Cause.

twenty-ninth, nineteen hundred and fourteen, and upon reading and filing the proof of service of said Order as by its terms required, annexed to the same, and the above entitled matter having been continued to the fifth day of October, A. D. nineteen hundred and fourteen, and upon hearing Charles Wm. Kappes, of Counsel with complainant, in support of the application and James A. Gordon, solicitor of the defendant appearing and being heard, and having filed an affidavit of the said James A. Gordon, dated September twenty-first, nineteen hundred and fourteen, 10

It is, on this fifth day of October, nineteen hundred and fourteen, Ordered, that the said defendant, Charles Schreiber, be and appear before this Honorable Court at Chancery Chambers, to be held at No. 75 Montgomery street, in the City of Jersey City, New Jersey, on Monday, the nineteenth day of October, nineteen hundred and fourteen, at ten o'clock in the forenoon, and there to remain and show cause why he should not be adjudged guilty for contempt for his failure to pay the complainant herein the arrears of alimony now due and owing by him herein; and 20

It is Ordered that a copy of this Order which may be certified by the solicitor of complainant, be served on the said Charles Schreiber personally and upon James A. Gordon, his solicitor of record, and also upon John J. Fallon, Esquire, a solicitor of this court, not less than seven days before the return day of this Order, and in case the said Charles Schreiber cannot be found in 30

Order to Show Cause.

this State that said copy be mailed to him at his last post office address if the same by due inquiry can be ascertained.

E. R. WALKER, C.

Respectfully advised,

10 EUGENE STEVENSON, V. C.

Due and timely service is hereby acknowledged of a copy of within order duly certified by solicitor of defendant, October tenth, nineteen hundred and fourteen.

JAMES A. GORDON,
*Solicitor of Defendant in said
suit, but not claiming any
right to represent him in
this proceeding.*

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AFFIDAVIT OF JAMES A. GORDON.

(Filed October 5, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
*Defendant.*On Bill for
Divorce.

10

New Jersey, ss.

James A. Gordon being duly sworn, upon his oath saith: That he was the solicitor for the defendant in this suit for divorce. That deponent has not seen or heard from the defendant since 1904, at which time the defendant resided in the Town of West Hoboken in this State. That there has been no proceedings taken in this suit since June 22, 1903, when the solicitor for the complainant served upon the deponent notice that on the 29th day of June, 1903, he would apply to the Honorable Henry S. Pitney, the Vice Chancellor to whom the cause had been referred, to fix a time and place for hearing. That the cause had slept so long that deponent had supposed it had been settled or abandoned, until he heard of the application to punish the defendant for contempt. That since deponent heard of the application to punish defendant for contempt, he has endeavored to locate the defendant by inquiry of every one he thought might be able to give information as to defendant's whereabouts; but

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Affidavit of James A. Gordon.

has been unable to get any information or to get
any communication to or from him whatever,
and is unable to state whether the defendant is
living or not. Deponent has been informed that
the defendant disappeared from West Hoboken
some years ago, but where he went the deponent
10 has been unable to ascertain, and deponent has
no authority to represent defendant in this con-
tempt proceeding.

JAMES A. GORDON,

Sworn and subscribed to before me
this 21st day of September, 1914.

DOUGLAS D. T. STORY,
20 *Master in Chancery of New Jersey.*

PROOF OF INQUIRY AND SERVICE.

(Filed October 19, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

Affidavit.

10

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

Fred J. Lane of full age being duly sworn according to law upon his oath deposes and says: 20
I am a clerk in the office of Charles Wm. Kappes, solicitor of the complainant herein. I served a copy of the Order made herein on the fifth day of October, nineteen hundred and fourteen, duly certified by the solicitor of the complainant, upon John J. Fallon, Esquire, by delivering to and leaving the same with the person in charge of the office of said John J. Fallon, in the Hudson Trust Company Building, No. 51 Newark street, in the City of Hoboken, Hudson County, aforesaid. 30

I also served the same upon Charles Schreiber, the defendant herein, by depositing a true copy thereof, duly certified by the solicitor of complainant, enclosed in a sealed envelope of complainant's solicitor with postage thereon prepaid, addressed as follows: "Charles Schreiber, 824 Malone street, West Hoboken, N. J.," and depositing the same in the Weehawken post office

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Proof of Inquiry and Service.

in the said County of Hudson on the day aforesaid.

10 I also served a similar certified copy of said Order upon William M. Schultze, the surety on the ne exeat bond given in the above entitled matter, by delivering to and leaving the same with said William M. Schultze at his office, No. 256 Summit avenue, Town of West Hoboken, County aforesaid, on the thirteenth day of October, nineteen hundred and fourteen.

FRED J. LANE.

Sworn and subscribed to before me
this nineteenth day of October,
nineteen hundred and fourteen.

20

OTTO VENINO, JR.,
Attorney-at-Law of New Jersey.

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Affidavit of Charles Wm. Kappes.

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

Affidavit.

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

Charles Wm. Kappes being duly sworn according to law upon his oath deposes and says, that he is the solicitor of the complainant herein; that deponent made due and diligent inquiry for the defendant or his whereabouts for the purpose of serving upon him personally if he could be found, a certified copy of the Order duly made in this cause on the fifth day of October, nineteen hundred and fourteen. 20

Specifying the inquiry deponent says, that he was informed by J. Emil Walscheid, the former solicitor of the complainant herein, that the said defendant, Charles Schreiber, was a resident of the Town of West Hoboken, Hudson County aforesaid, and residing at No. 824 Malone street, until about the month of November, nineteen hundred and eleven, in which month the last payment of alimony in this cause was made to him by said defendant. That very shortly thereafter upon the said payments having ceased, the said Walscheid caused inquiries to be made for the where- 30
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Affidavit of Charles Wm. Kappes.

abouts of said defendant and could not learn the same.

10 That said Walscheid further informed deponent that said Charles Schreiber had been in the building business and that he had been doing business during the time that he was busily engaged in his occupation, with one Henry Trost, a dealer in contractors' supplies and building materials in Hoboken. That thereupon deponent made inquiry of said Henry Trost in Hoboken and was informed by him that he well knew the defendant, Charles Schreiber, for many years while the said Schreiber lived in West Hoboken, this County, and did considerable business with said Schreiber; that said Schreiber disappeared from his residence and from the vicinity where he was accustomed to be, about the month of November, nineteen hundred and eleven, since which time the said Trost had not heard directly or indirectly of said Charles Schreiber and had no idea where he now is.

CHARLES WM. KAPPES.

30 Sworn and subscribed to before me this nineteenth day of October, nineteen hundred and fourteen.

OTTO VENINO, JR.,
Attorney-at-Law of New Jersey.

ORDER TO SHOW CAUSE.

(Filed October 21, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
*Defendant.*On Bill, Etc.
Order.

10

Upon opening this matter to the court by Charles Wm. Kappes, Solicitor of complainant, and upon reading the Order heretofore made herein on the fifth day of October, nineteen hundred and fourteen, and duly filed and the matter coming on to be heard this nineteenth day of October, 1914, and it appearing that proper service thereof as by its terms provided was not made,

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It is, on this nineteenth day of October, nineteen hundred and fourteen, Ordered that the said defendant, Charles Schreiber be and appear before this Honorable Court at Chancery Chambers, to be held at No. 75 Montgomery street, in the City of Jersey City, New Jersey, on Monday, the ninth day of November, nineteen hundred and fourteen, at ten o'clock in the forenoon, and there to remain and show cause why he should not be adjudged guilty of contempt for his failure to pay the complainant herein the arrears of alimony now due and owing by him herein, and

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Order to Show Cause.

10 It is Ordered that a certified copy of this Order be served on the said Charles Schreiber personally and upon James A. Gordon, his solicitor of record, and also upon John J. Fallon, Esquire, a solicitor of this court, not less than ten days before the return day of this Order, and in case the said Charles Schreiber cannot be found in this State that said copy be mailed to him at his last known post office address if the same by due inquiry can be ascertained.

E. R. WALKER, C.

Respectfully advised,

EUGENE STEVENSON, V. C.

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A true copy.

ROBERT H. McADAMS,
Clerk.

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PROOF OF INQUIRY AND OF SERVICE.

(Filed November 9, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

} Affidavit.

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

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Fred J. Lane of full age being duly sworn according to law upon his oath deposes and says: I am a clerk in the office of Charles Wm. Kappes, solicitor of the complainant herein. I served a copy of the Order duly made in the above entitled cause and filed in the office of the Clerk of the above entitled court on the twenty-first day of October, duly certified by the Clerk of the above entitled Court, on James A. Gordon, Esquire, by delivering to and leaving the same with the clerk in charge of his office, No. 586 Newark avenue, in the City of Jersey City, Hudson County, New Jersey, on the twenty-ninth day of October, A. D. nineteen hundred and fourteen, and upon John J. Fallon, Esquire, by delivering to and leaving a similar certified copy of said Order with the person in charge of the office of the said John J. Fallon, in the Hudson Trust Building, 51

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Proof of Inquiry and Service.

Newark street, in the City of Hoboken, County aforesaid, on the same day.

10 I also served the same upon Charles Schreiber, the defendant herein, by depositing a similarly certified copy thereof enclosed in a sealed envelope of complainant's solicitor, with postage thereon prepaid, addressed as follows: "Charles Schreiber, 824 Malone street, West Hoboken, N. J."

FRED J. LANE.

Sworn and subscribed to before me
this ninth day of November, nine-
teen hundred and fourteen.

WARNE SMYTH,
20 *Master in Chancery of New Jersey.*

Affidavit of Charles Wm. Kappes.

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

} Affidavit.

10

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

Charles Wm. Kappes being duly sworn according to law upon his oath deposes and says, that he is the solicitor of the complainant herein; that deponent made due ad diligent inquiry for the defendant or his whereabouts for the purpose of serving upon him personally if he could be found, a certified copy of the Order duly made in this cause on the nineteenth day of October, nineteen hundred and fourteen, and filed on the twenty-first day of October, nineteen hundred and fourteen.

20

Deponent has specifically set forth the inquiry made in this cause in his affidavit made and filed herein on October nineteenth, with the same result as therein set forth and further says that he has since called at the West Hoboken post office inquiring as to the whereabouts of said defendant, but was unable to obtain any information further than that already elicited as aforesaid.

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CHARLES WM. KAPPES.

Sworn and subscribed to before me
this ninth day of November, nineteen hundred and fourteen.

HARRY LOEB,

Master in Chancery of New Jersey.

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ORDER OF CONTEMPT.

(Filed November 12, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

10 MARGARETHA SCHREIBER,
Complainant,
 and
 CHARLES SCHREIBER,
Defendant.

On Bill, Etc.
 Order.

20 Upon opening this matter to the court by Charles Wm. Kappes, solicitor of complainant, and upon reading and filing the proofs of service upon the said defendant and upon James A. Gordon, his solicitor of record, and upon John J. Fallon, Esquire, of a copy of the Order of this court filed herein on the twenty-first day of October, nineteen hundred and fourteen, in the manner provided for service in such Order, and the said defendant, Charles Schreiber, having failed to appear as required by the terms of said Order and no solicitor or counsel appearing for him,

30 It is on this ninth day of November, nineteen hundred and fourteen, Ordered and Adjudged that the said defendant, Charles Schreiber, is guilty of contempt of this court, and it is further Ordered that the complainant herein have leave to proceed with the collection of the amount of the ne exeat bond given herein as she may be advised.

E. R. WALKER, C.

Respectfully advised,
 EUGENE STEVENSON, V. C.

PETITION TO FORFEIT NE EXEAT BOND.
(Filed November 17, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Complainant,

and

CHARLES SCHREIBER,
Defendant.

Petition for 10
 Order to
 Show Cause.

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

The petition of Margaretha Schreiber respect- 20
 fully shows:

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

2. That on the twenty-ninth day of October,
 nineteen hundred and one, there issued out of and
 under the seal of this Honorable Court, a Writ
 of ne exeat republica under which the defendant
 was required to give bond in the sum of one 30
 thousand (\$1,000) dollars. That thereafter and
 on or about the twenty-sixth day of March, nine-
 teen hundred and two, this defendant and one
 William M. Schultz entered into a bond to Carl
 H. Ruempler, Sheriff of the County of Hudson,
 in the sum of one thousand (\$1,000) dollars, with
 the condition that said defendant Charles
 Schreiber shall at all time render himself amen-
 able to the order and process of this court pend-

Petition to Forfeit Ne Exeat Bond.

ing such suit, to wit, the above entitled suit, which was in due form of law, executed and delivered.

10 3. That this Honorable Court did, by an Order dated the nineteenth day of October, nineteen hundred and fourteen, order the said defendant herein, Charles Schreiber, to be and appear before this Honorable Court at Chancery Chambers to be held at No. 75 Montgomery street, in the City of Jersey City, New Jersey, on Monday, the ninth day of November, nineteen hundred and fourteen, at ten o'clock in the forenoon, and there to remain and show cause why he should not be adjudged guilty of contempt for his failure to pay the complainant herein the arrears of alimony due and owing by him herein.

20 4. A certified copy of said Order was thereafter duly served as by the terms of the said Order provided as will more fully appear by the Proofs of Service and Inquiry duly filed herein on the ninth day of November, nineteen hundred and fourteen.

30 5. That the said defendant, Charles Schreiber, failed to appear at the time and place mentioned in said Order and no solicitor or counsel appeared to represent him, and thereupon on said day an Order was advised and thereafter duly filed, adjudging said defendant, Charles Schreiber, guilty of contempt in the premises.

6. That by reason of the foregoing facts, the condition contained in the said ne exeat bond has been broken.

Your petitioner prays that this Honorable Court grant to her an Order directing the said William M. Schultz to show cause why the said

Petition to Forfeit Ne Exeat Bond.

ne exeat bond should not be declared forfeited and that he be ordered to pay the amount thereof into this court; and that your petitioner may have such other or further relief as may be equitable and just.

And your petitioner will ever pray.

MARGARETHA SCHREIBER, 10
Petitioner.

CHARLES WM. KAPPES,
Of Counsel with Petitioner.

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

Margaretha Schreiber, the above named petitioner, being duly sworn according to law upon her oath deposes and says: 20

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

2. Particularly is it true that an Order has been duly entered in the Court of Chancery of New Jersey adjudging the said defendant, Charles Schreiber, guilty of contempt by reason whereof there has been a breach of the conditions of the said ne exeat bond hereinabove set forth, all of which will more fully appear by the records of this court. 30

MARGARETHA SCHREIBER.

Sworn and subscribed to before me
this 12th day of November, nine-
teen hundred and fourteen.

FRANCIS A. WERTHMAN,
Notary Public, Oneida Co., N. Y.

(County Clerk's certificate attached.)

ORDER TO SHOW CAUSE.

(Filed November 17, 1914.)

IN CHANCERY OF NEW JERSEY.

	Between	}	On Bill, Etc. Order to Show Cause.
10	MARGARETHA SCHREIBER, <i>Complainant,</i>		
	and		
	CHARLES SCHREIBER, <i>Defendant.</i>		

20 Upon opening this matter to the court by Charles Wm. Kappes, of counsel with the petitioner, and upon reading and filing the petition and affidavit of said Margaretha Schreiber, the said petitioner-complainant, herein setting forth that there has been a breach of the conditions of the ne exeat bond heretofore given in this cause by the defendant, Charles Schreiber, and William M. Schultz, the surety therein named, now on motion aforesaid:

30 It is, on this seventeenth day of November, nineteen hundred and fourteen, Ordered that the said William M. Schultz show cause before the Chancellor at the Chancery Chambers, No. 75 Montgomery street, in the City of Jersey City, in the County of Hudson and State of New Jersey, on Monday, the seventh day of December, nineteen hundred and fourteen, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the bond entered into by him and the defendant, Charles Schreiber herein, to Carl H. Ruempler, Sheriff of the County

Order to Show Cause.

of Hudson, New Jersey, bearing date the twenty-sixth day of March, nineteen hundred and two, should not be declared and ordered forfeited and that he be ordered to pay the amount thereof, to wit, the sum of one thousand dollars, into this Honorable Court; and

It is Ordered that a certified copy of this Order together with a copy of the petition and affidavit thereto annexed on which this Order is founded, be served on the said William M. Schultz at least eight days before the return day of this Order. 10

E. R. WALKER, C.

Respectfully advised,

EUGENE STEVENSON, V. C.

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AFFIDAVIT OF WILLIAM M. SCHULTZ.

(Filed January 4, 1915.)

IN CHANCERY OF NEW JERSEY.

10	Between MARGARETHA SCHREIBER, <i>Petitioner,</i> and CHARLES SCHREIBER, <i>Defendant.</i>	}	On Bill, Etc. On Order to Show Cause. Affidavit of William M. Schultz.
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State of New Jersey, }
 County of Hudson. } ss.

20 William M. Schultz being duly sworn according to law on his oath says that he is the person named in the order to show cause made in the above entitled cause on November 17, 1914, copy whereof was served upon this deponent on November 24, 1914.

Deponent further says that he has read the copy of the petition of Margaretha Schreiber served upon this deponent with said order to show cause.

30 Deponent further says that as to the statements in said petition, this deponent has not sufficient knowledge thereof to form a belief and, therefore, leaves the said petition of Margaretha Schreiber to make such proof thereof as she may be advised.

Deponent further says that in the year nineteen hundred and two this deponent, at the request of Charles Schreiber, defendant in the above

Affidavit of William M. Schultz.

entitled suit, entered into a bond to the Sheriff of the County of Hudson; as to the condition to the said bond, this deponent begs leave to refer thereto for greater certainty.

Deponent further says that about two or three years thereafter, this deponent was informed by the said defendant, Charles Schreiber, that the suit pending in the Court of Chancery wherein Margaretha Schreiber was complainant and the said Charles Schreiber was defendant, was settled between the said parties out of court and that said suit was discontinued and that James A. Gordon, who was then the solicitor for the said Charles Schreiber, had procured this deponent's release from said bond. 10

Deponent further says that he never heard anything further about said suit or said bond until about the month of September, 1913; this deponent was informed by Mr. J. Emil Walscheid, Attorney and Counsellor-at-Law, whose office is located in the Town of Union, that the above named defendant, Charles Schreiber, was in arrears in the payment of alimony under an order made by the Court of Chancery in said cause; that shortly thereafter, this deponent called at the office of said J. Emil Walscheid and informed Mr. Walscheid that the defendant, Schreiber, had told this deponent many years prior thereto that said suit had long been settled between the parties, and that Mr. Walscheid thereupon stated to deponent that the case was not settled, and that Mr. Walscheid further stated to this deponent that it was not unusual for the defendant, Schreiber, to be in arrears in his payments to his wife for many months and to pay \$200 arrears 20 30 40

Affidavit of William M. Schultz.

or \$300 arrears at a time; that this deponent thereupon stated to Mr. Walscheid that he, this deponent, should have been notified of such defaults by the defendant, Schreiber, so that he, this deponent, could protect himself.

10 Deponent further says that at a subsequent interview held in the office of the said Mr. Walscheid between this deponent and the said Mr. Walscheid in the presence of the complainant, Margaretha Schreiber, it was again stated by Mr. Walscheid in the presence and hearing of the complainant, Mrs. Schreiber, that the case was not settled, as deponent had been led to believe, and that it was not unusual for the defendant, Schreiber, to fail
20 to pay any moneys to his wife for a considerable length of time and to make payments in sums of \$200 or \$300 at a time.

Deponent further says that since he was informed by the defendant, Schreiber, many years ago that the above entitled suit had been settled between the parties, and until about the month of September, 1913, this deponent believed that said case was settled and deponent relieved from any and all liability of said bond; that deponent never
30 received any notice, verbal or written, directly or indirectly, from either of the parties to said suit or their solicitors, or anyone in their behalf, that said suit was still pending and that any order therein was in force.

Deponent further says that he has since been informed by his solicitor, John J. Fallon, that an examination of the record of said suit discloses that there was filed in said suit an answer to the bill of complaint of complainant and cross bill by the defendant and a replication and answer
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Affidavit of William M. Schultz.

to said cross bill by the complainant, and that an order of reference was made on January 13, 1903, referring said cause to the Honorable Henry C. Pitney, one of the Vice-Chancellors, and that no further steps or proceedings were taken in said cause by either of the parties thereto or their solicitors from the date of the filing of said order of reference until January 2, 1914, when Charles William Kappes was substituted as solicitor of complainant in place and stead of J. Emil Walscheid. 10

Deponent further says that he begs leave to refer for greater certainty to the record and files of the above entitled cause.

WM. M. SCHULTZ.

Subscribed and sworn to before me
this second day of January, 1915. 20

MAURICE J. BREEN,
Master in Chancery of New Jersey.

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ORDER.

IN CHANCERY OF NEW JERSEY.

 Between

 MARGARETHA SCHREIBER,
Petitioner,

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and

 CHARLES SCHREIBER,
Defendant.

 On Bill, Etc.
 Order.

20 Upon opening this matter to the court by
 Charles Wm. Kappes, of counsel with petitioner,
 and upon reading and filing the Order duly en-
 25 tered herein on the seventeenth day of November,
 nineteen hundred and fourteen, directing William
 M. Schultz to show cause before this court on the
 seventh day of December, nineteen hundred and
 fourteen, why the bond entered into by him and
 the defendant, Charles Schreiber herein, therein
 particularly described, should not be declared
 and ordered forfeited, &c., and upon reading and
 filing the affidavit of the said William M. Schultz
 verified January second, nineteen hundred and
 30 fifteen, and hearing upon this matter having been
 continued by consent of counsel to the fourth
 day of January, nineteen hundred and fourteen,
 and upon hearing Charles Wm. Kappes, of coun-
 sel with petitioner, in support of said application,
 and John J. Fallon, Esquire, of counsel with the
 said William M. Schultz, in opposition thereto,
 It is, on this twenty-third day of February,
 nineteen hundred and fifteen, Ordered, Adjudged
 and Declared that the bond entered into by said

Order.

William M. Schultz and the defendant, Charles Schreiber herein, to Carl H. Ruempler, Sheriff of the County of Hudson, bearing date the twenty-sixth day of March, nineteen hundred and two, be and the same is hereby forfeited.

And it is further Ordered that the said William M. Schultz pay to the Clerk of this court the sum of one thousand (\$1,000) dollars (being the penal sum mentioned in the said bond) within ten days from the service upon him or his solicitor herein, of a certified copy of this Order, said fund to be applied to the credit of the above entitled cause as this court may hereafter order and direct.

E. R. WALKER, C.

Respectfully advised,

EUGENE STEVENSON, V. C.

Know all men by these presents that we, Charles Schreiber and William M. Schultz, of the Town of West Hoboken, in the County of Hudson and State of New Jersey, (are) held and firmly bound unto Carl H. Ruempler, Sheriff of the County of Hudson aforesaid, in the sum of one thousand dollars lawful money of the United States of America, to be paid to the said Carl H. Ruempler, Sheriff as aforesaid, or to his certain attorney or assigns to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents. Sealed with our seals and dated the twenty-sixth day of March in the year of Our Lord one thousand nine hundred and two.

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Order.

10 Now the condition of this obligation is such that
whereas the above bounden Charles Schreiber has
been arrested upon a writ of ne exeat issued out
of and under the seal of the Court of Chancery
of the State of New Jersey in a certain cause
therein depending wherein Margaretha Schreiber
is complainant and said Charles Schreiber is de-
fendant. Now therefore if said Charles Schreiber
shall at all times render himself amenable to the
orders and process of this court pending such
suit, and to such process as shall be issued to
compel the performance of the final decree
therein, and shall appear before said court or
any officer thereof when so required by the order
of said court, then this obligation to be void, oth-
20 erwise to remain in full force and virtue.

CHARLES SCHREIBER (Seal.)

WM. M. SCHULTZ (Seal.)

Recorded March 27, 1912, in Liber 3,
page 317 of Bonds to Sheriff.

MEMORANDUM OF CONCLUSIONS.

(November 16th, 1915.)

IN CHANCERY OF NEW JERSEY.

Between

MARGARETHA SCHREIBER,
Petitioner,

and

CHARLES SCHREIBER,
*Defendant.*Memorandum
of
Conclusions.

10

On petition for order directing surety upon a
ne exeat bond to pay the amount of the penalty
of the bond into court.

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Mr. Charles W. Kappes for petitioner.

*Mr. Maurice J. Breen for Mr. William L.
Schultz, surety.*

STEVENSON, V. C.

The question which I understand is to be pre-
sented to the Court of Errors and Appeals for
settlement, is whether the practice which has pre-
vailed in the Court of Chancery for many years,
of enforcing the payment of the penalty of a de-
faulted ne exeat bond from the surety in the
Court of Chancery, by a summary proceeding on
order to show cause served upon the surety, is
correct and lawful or not.

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The practice which has been followed in many
cases to my knowledge is based upon the opinion
of Chancellor Runyon in the case of *Wauters vs.*

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Memorandum of Conclusions.

10 *Van Voorst*, 28 N. J. Eq. 103, which perhaps may be considered as containing a dictum favoring the practice, and particularly the opinion of Vice-Chancellor Reed in *Elliott vs. Elliott*, 36 Atl. Rep. 951, which seems to be a direct authority sustaining the power of the Court of Chancery in the premises.

20 Of the two cases cited by Chancellor Runyon and Vice Chancellor Reed, *Musgrave vs. Mendex*, 1 Mer. 49, and *Utten vs. Utten*, Ib. 51, the former, the *Musgrave* case, is not directly in point because the surety on the bond against whom the order went was a party to the suit. The *Utten* case, however, decided by Lord Chancellor Eldon in 1815, seems to be a direct precedent establishing the power of the Court of Chancery in England to order the sureties on a ne exeat bond to pay the amount of the penalty into court. The order apparently went not only against the defendant, but his sureties as well. Even in the *Musgrave* case it must be observed that the liability of the surety who happened to be one of the defendants, which was summarily enforced, had nothing to do with the relief prayed for in the bill, but was wholly a collateral matter. The proceeding was

30 against *Mendex* not as codefendant but as an obligor on the ne exeat bond. The *Musgrave* and *Utten* cases are cited by Mr. Daniel as authorities for the proposition that, where the principal departs from the State without leave, "the Court, it seems, will order the sureties to pay the money into court within a certain time." 2. Dan. 1712.

The case of *Collinridge vs. Mount*, Dick. 688, decided by Lord Thurlow in 1787, when carefully

Memorandum of Conclusions.

examined has no bearing upon proceedings in the Court of Chancery to enforce a ne exeat bond.

The case of *Elliott vs. Elliott* was decided eighteen years ago and has been regarded as settling the law in the Court of Chancery, distinguishing between a ne exeat bond and a bond for maintenance or alimony, making the former enforceable against the sureties in the Court of Chancery, while the latter is left to be enforced in a court of law in accordance with the practice in the case of an injunction bond. In considering whether the distinction between these two bonds recognized now in the Court of Chancery is logical or not, regard must be had for Lord Halsbury's dictum that "the law is not always logical."

10

Inasmuch as the order in this case appealed from is based upon controlling precedents, which have been followed in the Court of Chancery without question for a generation, it does not seem necessary to enter upon an extensive investigation of the historical and logical basis of a rule of practice or procedure by which, until the Court of Errors and Appeals shall determine otherwise, the Court of Chancery is absolutely bound.* Only a few suggestions relating to the equitable fitness of the rule thus established will be made here— suggestions which have occurred to me during the course of years in which I have frequently advised orders of the same kind as the one brought in question.

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The slight reflection will show the radical difference between the object of an injunction bond and the object of a ne exeat bond. The injunction bond stands as surety for damages, positive in-

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Memorandum of Conclusions.

10 injuries to the property rights of the party enjoined, which may be caused by the writ of injunction. The writ of ne exeat is intended to keep the party against whom it goes personally amenable to the orders and process of the Court in the suit. There is absolutely nothing in an injunction bond which relates to the disposition of the person of the party who gives it. The party giving the injunction bond is the party who sues out the writ of injunction, while the party giving the ne exeat bond is the party against whom the writ of ne exeat is issued. All the authorities hold that the writ of ne exeat is "in the nature of equitable bail." *Mitchel vs. Bush*, 2 Paige, 206, 29 Cyox. 384.

20 In respect of its object the ne exeat bond is, I think, in some aspects more like the recognizance of special bail, "bail above" than the bail bond given to the sheriff, "bail below."

30 It must be conceded, however, that in one very important particular the surety on a ne exeat bond does not stand in the position of bail upon a recognizance. In the latter case the principal is delivered into the custody of his bail and his bail may seize him and surrender him. In the former case the principal is not delivered into the custody of the surety nor has the surety any right to seize him or to surrender him. In *re Wolf*, 3 N. Y. Leg. Ob. 383. The situation in this respect is more like that of the surety upon the bond to the sheriff—bail below. There was an instance a few years ago where in some way a surrender of the principal by the surety on a ne exeat bond was effected in the Court of Chan-

Memorandum of Conclusions.

cery, but I am unaware by what course of irregular procedure this thing was accomplished. The ne exeat bond simply insures a certain course of conduct by the defendant, the principal on the bond, with reference to the jurisdiction of the court over his person, and if this conduct is not pursued there is a breach and forfeiture and the principal and surety are alike liable on the bond. In order to assimilate the position of the parties on a ne exeat bond to that of bail at common law on a recognizance in respect of liability, the Legislature of New York in 1845 passed an act providing for the surrender of the principal on a ne exeat bond prescribing a course of procedure. The act is entitled "An Act relating to bail in the Court of Chancery and for other purposes," and if I recollect aright it covers all cases where a party is arrested in any suit or proceeding in the Court of Chancery.

It has seemed to me that the practice in respect of the enforcement of ne exeat bonds now brought in question, may perhaps be rested upon the idea that when a party as surety enters into this peculiar obligation on a ne exeat bond in the Court of Chancery, he makes himself a party to the suit for all purposes connected with the use to which the bond is put for the purposes of the suit. The surety may be deemed a party to the suit in analogy with the rule which makes the purchaser at a sheriff's sale under process from the Court of Chancery a party to the suit, for all purposes connected with securing the objects for which the process has been issued and the sale has been made.

Memorandum of Conclusions.

10 I think it is safe to say that the practice which has obtained of enforcing the obligation on a ne exeat bond against the surety by order to show cause in the Court of Chancery makes for justice and economy in the administration of equity and particularly in the administration of divorce law. In these divorce and alimony cases the amounts involved are frequently small and the parties interested are poor women. Full justice as far as possible ought to be accorded to them in the Court of Chancery.

20 In my opinion instead of limiting the jurisdiction of the Court of Chancery in cases like the one at bar, it would be far better by appropriate constitutional legislation to make all sureties who give bonds in any action or proceeding in the Court of Chancery, or in any other court, parties to the suit or proceeding so as to give the court in which the bond is given full power to procure its enforcement, not by an original suit in some other court, but by an appropriate proceeding in the cause in which the bond is given. It does not seem to me that there is any objection to this view arising from the fact that the proceeding to enforce the bond may be deemed "summary." An order to show cause in a case like this seems to correspond with a *scire facias* to enforce a recognizance.

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