

## New Jersey Court of Errors and Appeals <sup>10</sup>

Between

WILLIAM SCHLEMM,  
Complainant-Respondent,

and

LOUISA M. SCHLEMM and  
STEPHEN WHITTLE,  
Defendants-Appellants.

On Bill, &c.  
On Appeal.

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### APPELLANTS' BRIEF.

This is an appeal from an injunctive order made herein on the 20th day of March, 1916, enjoining and restraining the defendant, Stephen Whittle, from proceeding with an action in the District Court of Hoboken, wherein the said Stephen Whittle is seeking to recover the sum of \$400 on articles of separation bearing date on the 22nd day of January, 1915, between the complainant, William Schlemm, and the defendant, Louis M. Schlemm, as husband and wife, and the defendant, Stephen Whittle, as trustee of and for the said Louisa M. Schlemm. 30

It appears from the proofs offered in the Court of Chancery that the complainant left his home and thereafter arranged with the defendant, Louisa M. Schlemm, over the telephone to have the articles of 40

separation drawn; that he went to his attorney and had them made out and then sent them to the defendant, Louisa M. Schlemm, to have them signed by her; that she submitted them to a lawyer and being told they were in legal form, signed them. After the agreement had been executed the complainant paid, under ~~them~~<sup>it</sup>, until about the 10th day of October, 1915, when he claims to have caught the defendant, Louisa M. Schlemm, with a man. He thereafter sued her for an absolute divorce on the ground of adultery.

10 Upon the filing of the bill herein an order to show cause why an injunction should not issue was made and served. The bill contains an allegation that before and at the time of the execution of the articles of agreement it was mutually agreed between the complainant and defendant, Louisa M. Schlemm, that the said Louisa M. Schlemm, while living separate and apart from the complainant under said articles of agreement, was to live a virtuous life and not to be guilty of any acts of adultery, and that a clause was to be inserted in said agreement that said agreement should cease, determine and be made void by the subsequent adultery of the said Louisa M. Schlemm, and that by the mistake and inadvertence of the complainant and of the defendant, Louisa M. Schlemm, no provision was inserted in said agreement providing as aforesaid. The bill was supported by the complainant's affidavit alone.

20 On the return of the order to show cause the defendant not only presented an answer denying the equity of said bill which was filed, but the affidavit of Louisa M. Schlemm denying that there was any such agreement or understanding between her and the complainant that any such clause as alleged by the complainant should be inserted in said bill, but

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also an affidavit of Annie Whittle, showing the circumstances under which said articles of agreement were executed. And notwithstanding the proofs offered on the part of the defendants, said injunctive order was advised.

### POINT I.

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**There was no legal proof offered in the Court below upon which the injunctive order can rest.**

As we understand the rule, the facts necessary to establish the grounds for an injunction "must be clearly stated and verified." In the case before the court no facts were stated, but simply conclusions of law.

The following conclusion is set forth, viz:

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"Before and at the time of the execution of the agreement hereinbefore referred to as Schedule "A" it was *mutually* agreed between, &c., that she the said Louisa M. Schlemm, while living separate and apart from me, &c., &c., was to live a virtuous life," &c.

This would not be competent evidence before a court. What the complaint mentions as a mutual agreement may not have been an agreement at all. There is no testimony as to what was said by the parties and there is therefore no proof upon which an injunction can stand.

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"The facts necessary to establish this contention should have been clearly stated and verified to authorize the Court to interfere by injunction."

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Brick vs. Burr, 47 Eq., 191.

Holdredge vs. Gwynne, 18 Eq., 26.

“The verification should extend to all the material facts upon which the right to an injunction rests.”

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Youngblood vs. Schamp, 15 Eq., 44.

“In order to justify the allowance of an injunction the affidavit upon which the application is made should disclose the material facts, which should be verified by the oath or affirmation of some person who has a knowledge of them, the common form of verification not being sufficient.”

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McMahon vs. Pneumatic Co., 96 Atl. Rep., 1000.

Schoenfeld vs. American Can Co., 55 Atl. Rep., 1044.

“But when relief is sought from deeds or other writings the mistake must be clearly proved.”

Bergen vs. Giberson, 26 Eq., 72.

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## POINT II.

**The answer fully denies all the facts on which the equity to sustain an injunction depends, and therefore it should be dissolved.**

On the return of the order to show cause made herein the defendants filed their answer denying the facts (if such they may be called) upon which

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the equity to sustain the injunction depends. They also presented and filed the affidavit of Louisa M. Schlemm, denying that there was any agreement whereby she was to lead a virtuous life. She also swears that there was never any agreement that there was to be a clause inserted into the separation agreement that in case of the commission of adultery by her the articles of agreement should cease, terminate and be void. She flatly denies under oath all the equity alleged in the bill, all of which facts are within her own knowledge. 10

Defendants also presented and filed the affidavit of Annie Whittle, which discloses the circumstances surrounding the execution of the articles of agreement which tend to contradict the allegations of the complainant.

Besides this, such a clause would be so foreign to such an agreement that it must have required courage to plead the allegations. 20

The complainant does not disclose when he discovered his inadvertence, but the proofs show he acted under the agreement, and paid his wife \$25 a week under it for almost a year.

“Where an answer fully denies the facts in the bill on which the equity to sustain an injunction depends, the injunction will be dissolved, provided the denial is upon the knowledge of the defendant, but not when the denial is of facts not within such knowledge, but on information only.” 30

Holdredge vs. Gwynne, 18 Eq., 27.

Fleischman vs. Young, 9 Eq., 620.

Niebert vs. Banghurst, 47 Eq., 201.

## POINT III.

**If there had been a mistake on the part of the complainant equity would not relieve him, as it must necessarily have been the result of pure carelessness.**

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“Relief will not be ordered in equity on the ground of mistake where the defendant’s liability is the result of pure carelessness.”

Voorhees vs. Murphy, 26 Eq., 434.

“Such carelessness will not be regarded in equity as mistake.”

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Ibid.

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“It is also clearly established that the mere fact that one party to an agreement has, through inadvertence, failed to notice a stipulation contained therein, which was not induced by any fraud or misrepresentation on behalf of the other contracting parties, is no ground for the reformation of the contract by striking out, or materially altering the clause imposing the liability. As was said by the Court of Appeals in the case of Moran vs. McLarty, 75 N. Y., 29:

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“The plaintiff’s testimony does not contradict the instrument, as it only shows his intention. He states that he only read it over partially, but, with full opportunity to examine its contents, he failed to observe the guaranty which was contained in the same, and, after this, he voluntarily signed and executed the assignment. It was his own fault and negligence that he did not notice the guaranty,

and for this the defendant, or her attorney who transacted the business on her behalf, were not responsible. A careful attention on the part of the plaintiff at the time would have avoided the difficulty, and relieved him from liability. For the inadvertence of the plaintiff in not examining the assignment, and not giving such attention as was required, the defendant should not suffer, as a fair presumption may be indulged that neither she nor her attorney had any intention to leave out the guaranty. There was no mutual mistake, and the plaintiff cannot maintain the action." 10

Consolidated Electric Co. vs. Atlantic Trust Co., 48 N. Y. Supp., 1083, at page 1086; affirmed in 161 N. Y., 605.

There being no evidence that the defendant, Louisa M. Schlemm, ever said anything to the complainant about the clause set out in the bill, the bill and affidavit being devoid of all legal proof of facts and the equities of the bill having been denied by the answer and affidavit, there is nothing for the injunction to rest upon. If it were the intention of the complainant to insert such a clause, the proof does not show that he ever spoke about it to the defendants. 20

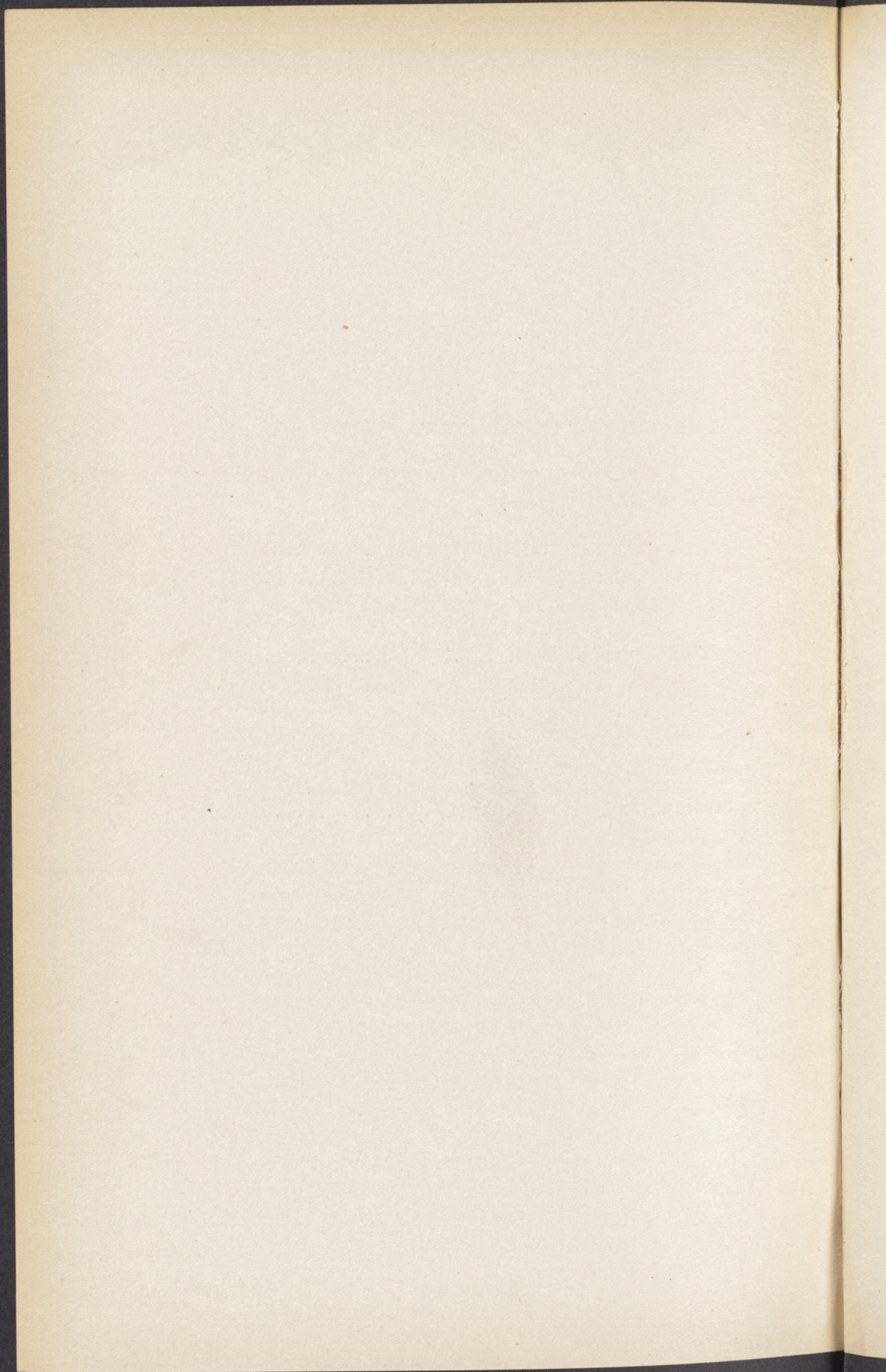
We most respectfully submit that the injunction should be dissolved. 30

WELLER & LICHTENSTEIN,  
Solicitors for Defendant-Appellants.



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## In Chancery of New Jersey.

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

The complainant, William Schlemm, of the Town  
of West Hoboken, in the County of Hudson and  
State of New Jersey, respectfully shows that :

1. On or about the 2nd day of April, A. D.,  
1914, he filed a petition in this honorable court  
against Louisa M. Schlemm, his wife, on the ground  
of adultery. 20

2. The said Louisa M. Schlemm was thereupon,  
on the 6th day of April, A. D. 1914, cited to answer  
the said petition and the said Louisa M. Schlemm  
did file answer to said petition on or about the 9th  
day of April, 1914; denying, among other things,  
the allegations of adultery in said petition con-  
tained. 30

3. Immediately upon the filing of said petition  
for divorce, complainant separated himself from  
the said Louisa M. Schlemm and thereafter did not  
again cohabit with her until the *2nd day of August*,  
1914.

4. On August 2nd, 1914, complainant condoned  
the act of adultery complained of in the petition for  
divorce hereinbefore referred to, and renewed 40

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matrimonial cohabitation with the said Louisa M. Schlemm and treated her with conjugal kindness until the 22nd day of January, 1915. *On the 22nd day of January, 1915, complainant* and his said wife did agree thereafter to live separate and apart from each other and did then and there execute a written agreement, a copy of which is hereto attached marked Schedule A, and is hereby made a part hereof. In and by the agreement aforesaid, one Stephen Whittle was nominated as trustee of the said Louisa M. Schlemm and as such trustee joined in the execution of said agreement.

5. Since the 22nd day of January, 1915, complainant and said Louisa M. Schlemm lived separate and apart from each other.

6. On the 24th day of October, A. D. 1915, the said Louisa M. Schlemm committed adultery with one William Schmidt at No. 470 Park Avenue, in the Township of Weehawken, County of Hudson and State of New Jersey.

7. On October 29th, A. D. 1915, complainant filed in this honorable court, a *second* petition for divorce against his said wife, Louisa M. Schlemm, praying divorce on account of the adultery committed by the said Louisa M. Schlemm on the 24th day of October, 1915, with said William Schmidt at No. 470 Park Avenue, in the Township of Weehawken, County of Hudson and State of New Jersey. The said Louisa M. Schlemm was cited to answer said petition and did answer the same and in said answer did *deny* the act of adultery complained of by the complainant in the said second petition for divorce. Attached to and forming part of said answer was a cross-petition exhibited by

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the said Louisa M. Schlemm against the complainant, *charging various acts of adultery against the complainant*; said answer and cross-petition concluding with a prayer for such further and other relief as may be just.

8. Complainant has filed answer to said cross-petition, denying the truth of the facts therein contained. Said cause is now at issue and has been referred to Hon. Maximilian T. Rosenberg, one of the Advisory Masters of this Honorable Court, to hear and determine the same and to advise the Chancellor what decree to make therein; and the said Advisory Master has fixed the 9th day of March, A. D., 1916, for hearing said cause. 10

9. *The said Louisa M. Schlemm has not applied for alimony pendente lite, nor for counsel fees in said cause thus referred to the said Advisory Master, and the complainant has paid nothing to the said Louisa M. Schlemm since the 2nd day of November, A. D., 1915, by way of alimony pendente lite or in any other way contributed to her support.* 20

10. On the 26th day of February, 1916, Stephen Whittle aforesaid caused to be issued out of the District Court of the City of Hoboken a summons directed to the complainant in an action on contract in which he claimed damages of \$400.00. Said summons, together with a state of demand thereunto attached, *was duly served* upon the complainant. 30

11. In and by the state of demand attached to said summons the said Stephen Whittle claims that in and by the said articles of agreement complainant agreed to pay unto the said Louisa M. Schlemm 40

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the sum of \$25.00 during each and every week for and towards her support; that he has not paid said weekly sum of \$25.00 per week from November 2nd, 1915, and that under the said articles of agreement the complainant owes to the said Stephen Whittle as trustee of the said Louisa M. Schlemm \$25.00  
10 for each week, beginning November 9th, 1915, and ending February 22nd, 1916, amounting to the sum of \$400.00.

12. *Before and at the time of the execution of the agreement hereinbefore referred to as Schedule "A" it was mutually agreed between the complainant and defendant, Louisa M. Schlemm, that the said Louisa M. Schlemm while living separate and apart from complainant under said articles of agreement was to live a virtuous life and was not to be guilty of any acts of adultery. And it was further then and there agreed between complainant and said defendant, Louisa M. Schlemm, that a clause was to be inserted in said agreement providing that said agreement should cease, determine and be made void by the subsequent adultery of the said Louisa M. Schlemm.*  
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13. By the mistake and inadvertence of the complainant and of the defendant, Louisa M. Schlemm, no provision was inserted in said agreement providing that the agreement aforesaid should cease, terminate and be void in the event of any act of adultery being thereafter committed by the said Louisa M. Schlemm.  
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14. Said cause is now pending in said Hoboken District Court undetermined and ready to be tried.

15. Complainant is informed and verily believes that he will not be allowed to prove in said Hoboken  
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*Bill of Complaint.*

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District Court by way of defense to said action, the acts of adultery complained of by him in the second petition for divorce hereinbefore referred to; although in equity and justice the commission of said acts of adultery should terminate the right of the said Louisa M. Schlemm to receive any moneys for support from this complainant under the agreement aforesaid. 10

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

1. That Louisa M. Schlemm and Stephen Whittle, who are the defendants in this suit, may answer this bill of complaint without oath and each statement therein made.

2. That an order for injunction and an injunction, if necessary may issue out of this honorable Court directed to the said Louisa M. Schlemm and the said Stephen Whittle, forever enjoining them and each of them from prosecuting the said action at law now pending in the Hoboken District Court in which the said Stephen Whittle is plaintiff and this complainant is defendant. 20

3. That a decree may be made cancelling the said agreement. 30

4. That said agreement may be surrendered up to this complainant for cancellation, or that

5. Said agreement may be referred by inserting therein a provision providing that said agreement shall cease, terminate and be void upon the commission of any act of adultery by the said Louisa M. Schlemm.

6. That this complainant may have such other and further relief as may be equitable and just. 40

*Bill of Complaint.*

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

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J. EMIL WALSCHEID,  
Solicitor and of Counsel with Complainant.

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## SCHEDULE A.

This indenture, made this 22nd day of January, in the year 1915;

Between William Schlemm, of the Town of West Hoboken in the County of Hudson and State of New Jersey, party of the first part;

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And Louisa M. Schlemm, his wife, party of the second part;

And Stephen Whittle, of West Hoboken in the County of Hudson and State of New Jersey, as trustee of and for the said Louisa M. Schlemm, wife of William Schlemm, party of the third part;

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Whereas divers disputes and difficulties exist between the said party of the first part and his said wife, for which reason they have consented and agreed and hereby do consent and agree to separate and part from each other during their natural life;

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Wherefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises, and in pursuance thereof, does hereby covenant, promise and agree to and with the said trustee and also to and with his said wife, that it shall and may be lawful for her, his said wife, at all times hereafter, to live separate and apart from him, and that he shall and will allow and permit her to reside and be in such place and places and

*Bill of Complaint.*

in such family and families and with such relations, friends and other persons, and to follow and carry on such trade or business as she may from time to time chose or think fit; that he shall not or will not, at any time, sue, or suffer her to be sued for living separate and apart from him, or compel her to live with him; nor sue, molest, disturb or trouble any other persons whomsoever for receiving, entertaining or harboring her; that he will not, without her consent, visit her, or annoyingly enter her house or place where she shall dwell, reside or be, or send or cause to be sent any letter or message to her; nor shall or will any time hereafter claim or demand any of her money, jewels, plate, clothing, household goods, furniture or stock-in-trade, which she may remove with her from the dwelling house No. 374 West Street, Town of West Hoboken aforesaid, or which she shall or may at any time hereafter have, buy or procure, or which shall be devised or given to her or that she may otherwise acquire and that she shall and may enjoy and absolutely dispose of the same as if she were a femme sole and unmarried. 10  
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And the party of the first part further agrees that he shall and will well and truly pay or cause to be paid over towards the support and maintenance of his said wife and their said child, Maria Louisa Schlemm, the sum of Twenty-five (\$25.00) Dollars each week, which the said party of the second part does hereby agree to take in full satisfaction for her support and maintenance and all alimony whatsoever, and also in full satisfaction for the support and maintenance of her said child. 30

And the party of the first part hereby agrees that the party of the second part shall have the custody and control of the person of Maria Louisa Schlemm, their child, which the party of the second 40

*Bill of Complaint.*

part agrees to support and maintain out of the sum of money to be paid to her as aforesaid.

10 And the said trustee, in consideration of the sum of One (\$1.00) Dollar, to him duly paid, does covenant and agree to and with the said party of the first part to indemnify and bear him harmless of and from all debts of his said wife, contracted, or that may hereafter be contracted by her or on her account; and if the said party of the first part shall be compelled to pay such debt or debts, the said trustee hereby agrees to repay the same on demand, to the said party of the first part, with all damage and loss that he may sustain thereby.

20 In witness whereof, the parties hereto have hereunto set their hands and affixed their seals the day and year first above written.

WILLIAM SCHLEMM (Seal)  
LOUISE M. SCHLEMM (Seal)  
STEPHEN WHITTLE (Seal)

Signed, sealed and delivered  
in the presence of:

ANNIE E. WHITTLE.

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

William Schlemm, of full age, being first duly sworn, on his oath deposes and says:

I am the complainant named in the foregoing bill of complaint. I have read the same, know the contents thereof, and the matters and things therein stated are true.

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*Bill of Complaint.*

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On or about the 2nd day of April, 1914, I filed a petition in this honorable court against Louisa M. Schlemm, my wife, on the ground of adultery.

The said Louisa M. Schlemm was thereupon, on the 6th day of April, A. D. 1914, cited to answer the said petition and the said Louisa M. Schlemm did file answer to said petition on or about the 9th day of April, 1914, denying, among other things, the allegations of adultery in said petition contained. 10

Immediately upon the filing of said petition for divorce I separated myself from the said Louisa M. Schlemm and thereafter did not again cohabit with her until the 2nd day of August, 1914.

On August 2nd, 1914, I condoned the act of adultery complained of in the petition for divorce hereinbefore referred to, and renewed matrimonial cohabitation with the said Louisa M. Schlemm and treated her with conjugal kindness until the 22nd day of January, 1915. On the 22nd day of January, 1915, we agreed thereafter to live separate and apart from each other and did then and there execute a written agreement, a copy of which attached to the foregoing bill of complaint and marked Schedule "A." In and by said agreement aforesaid one Stephen Whittle was nominated as trustee of the said Louisa M. Schlemm and as such trustee joined in the execution of said agreement. 20 30

Since the 22nd day of January, 1915, we lived separate and apart from each other.

On the 24th day of October, A. D. 1915, the said Louisa M. Schlemm committed adultery with one William Schmidt at No. 470 Park Avenue, in the Township of Weehawken, County of Hudson and State of New Jersey.

On October 29th, A. D. 1915, I filed in this honorable court a second petition for divorce against 40

*Bill of Complaint.*

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my said wife, Louisa M. Schlemm, praying divorce on account of the adultery committed by the said Louisa M. Schlemm on the 24th day of October, 1915, with said William Schmidt at No. 470 Park Avenue, in the Township of Weehawken, County of Hudson and State of New Jersey. The said  
10 Louisa M. Schlemm was cited to answer said petition and did answer the same and in said answer did deny the act of adultery complained of by the complainant in the said second petition for divorce. Attached to and forming part of said answer was a cross-petition exhibited by the said Louisa M. Schlemm against me, charging various acts of adultery against me; said answer and cross-petition concluding with a prayer for such further and  
20 other relief as may be just.

I filed answer to said cross-petition denying the truth of the facts therein contained. Said cause is now at issue and has been referred to Hon. Maximilian T. Rosenberg, one of the Advisory Masters of this honorable court, to hear and determine the same and to advise the Chancellor what decree to make therein; and the said Advisory Master has fixed the 9th day of March, A. D. 1916 for hearing said cause.

The said Louisa M. Schlemm has not applied  
30 for alimony pendente lite, nor for counsel fees in said cause thus referred to the said Advisory Master, and I have paid nothing to the said Louisa M. Schlemm since the 2nd day of November A. D., 1915, by way of alimony pendente lite or in any other way contributed to her support.

On the 26th day of February, 1916, Stephen Whittle aforesaid caused to be issued out of the District Court of the City of Hoboken a summons directed to me in an action on contract in which  
40 he claimed damages of \$400.00. Said summons,

*Bill of Complaint.*

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together with a state of demand thereunto attached, was duly served upon me.

In and by the state of demand attached to said summons the said Stephen Whittle claims that in and by the said articles of agreement I agreed to pay unto the said Louisa M. Schlemm the sum of \$25.00 during each and every week for and towards her support; that I have not paid said weekly sum of \$25.00 per week from November 2nd, 1915, and that under the said articles of agreement I owe to the said Stephen Whittle as trustee of the said Louisa M. Schlemm \$25.00 for each week, beginning November 9th, 1915, and ending February 22nd, 1916, amounting to the sum of \$400.00.

Before and at the time of the execution of the agreement hereinbefore referred to as Schedule "A" it was mutually agreed between the defendant, Louisa M. Schlemm, and myself that the said Louisa M. Schlemm while living separate and apart from me under said articles of agreement was to live a virtuous life and was not to be guilty of any acts of adultery. And it was further then and there agreed between us that a clause was to be inserted in said agreement providing that said agreement should cease, determine and be made void by the subsequent adultery of the said Louisa M. Schlemm.

By the mistake and inadvertence of myself and of the defendant, Louisa M. Schlemm, no provision was inserted in said agreement providing that the agreement aforesaid should cease, terminate and be void in the event of any act of adultery being thereafter committed by the said Louisa M. Schlemm.

Said cause is now pending in said Hoboken District Court undetermined and ready to be tried.

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*Order to Show Cause.*

10 I am informed and verily believe that I will not be allowed to prove in said Hoboken District Court by way of defence to said action, the acts of adultery complained of by me in the second petition for divorce hereinbefore referred to; although in equity and justice the commission of said acts of adultery should terminate the right of the said Louisa M. Schlemm to receive any moneys for support from me under the agreement aforesaid.

WILLIAM SCHLEMM.

Sworn and subscribed to before me  
this first day of March A. D., 1916.

20 HENRY VOGLER,  
Master in Chancery of New Jersey.

**Order to Show Cause.**

IN CHANCERY OF NEW JERSEY.

30	Between, WILLIAM SCHLEMM, Complainant,  and  STEPHEN WHITTLE and LOUISA M. SCHLEMM, Defendants.	}	On Bill, etc.
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40 Upon reading and filing the bill of complaint in this cause and the affidavit thereto annexed, and on motion of J. Emil Walscheid, of counsel with

*Order to Show Cause.*

the complaint, it is, on this 2nd day of March A. D., 1916, ordered that the defendants, Stephen Whittle and Louisa M. Schlemm, show cause before the Chancellor at Chancery Chambers in the City of Jersey City on the 13th day of March A. D., 1916, at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard in the premises, why an order of injunction should not issue against them, their respective attorneys, solicitors, agents and representatives, restraining them and each of them from prosecuting a certain action at law instituted in the name of the said Stephen Whittle against the complainant, William Schlemm, on the 26th day of February A. D., 1916, and now pending in the District Court of the City of Hoboken in the County of Hudson until the determination of this suit or until the further order of this court.

And it is further ordered that the said defendants, their agents, attorneys, solicitors and representatives in the meantime and until the further order of this court do desist and refrain from the further prosecution of said action at law now pending in the Hoboken District Court as aforesaid.

And it is further ordered that a copy of this order and of the affidavit thereto annexed, which need be certified only by counsel of complainant, be served upon the defendant, Stephen Whittle, and upon the defendant, Louisa M. Schlemm, within three days from the date of this order.

Respectfully advised,

EDWIN ROBERT WALKER.

C.

VIVIAN M. LEWIS,  
V. C.

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**Answer.**

IN CHANCERY OF NEW JERSEY.

10	Between, WILLIAM SCHLEMM, Complainant, and STEPHEN WHITTLE and LOUISA M. SCHLEMM, Defendants.	}	On Bill, &c.
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20 The answer of Stephen Whittle and Louisa M. Schlemm, defendants, to the bill of complaint of William Schlemm, complainant, viz.:

1. These defendants admit paragraph 1 of the bill of complaint.
2. These defendants admit paragraph 2 of the bill of complaint.
3. These defendants admit paragraph 3 of the bill of complaint.
- 30 4. These defendants deny that on August 2, 1914, the complainant condoned the act of adultery complained of in the petition for divorce hereinabove referred to and say that there was no act of adultery to condone; but they admit that he thereafter renewed matrimonial cohabitation with the said Louise M. Schlemm; they deny, however, that he treated her with conjugal kindness until January 22, 1915, but say that during that time he
- 40 abused her by calling her vile, filthy and indecent

names; that he assaulted her by striking her on the chest with his clenched fist until her body was black and blue; that he compelled her to go to a midwife and have an abortion committed upon herself, and thereafter on or about the 18th day of January, 1915, he deserted the defendant, Louise M. Schlemm. They admit, however, that on or about the 22nd day of January, 1915, complainant and his wife did agree thereafter to live separate and apart from each other and did execute a written agreement, a copy of which is annexed to the bill of complaint and marked Schedule "A." They also admit that Stephen Whittle was nominated as trustee of the said Louise M. Schlemm, and joined in the execution of said agreement. 10

5. These defendants admit paragraph 5 of the bill of complaint. 20

6. These defendants deny that on the 24th day of October, 1915, Louise M. Schlemm committed adultery with one William Schmidt at No. 470 Park Avenue, in the Township of Weehawken, New Jersey.

7. These defendants admit paragraph 7 of the bill of complaint. 30

8. These defendants admit paragraph 8 of the bill of complaint.

9. These defendants admit paragraph 9 of the bill of complaint; but say that the last money paid, namely, \$50, was to settle an action that had been commenced in the District Court of the City of Hoboken, on the articles of separation herein-above referred to. 40

*Answer.*

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10. These defendants admit paragraph 10 of the bill of complaint.

11. These defendants admit paragraph 11 of the bill of complaint.

10 12. These defendants deny that before and at the time of the execution of the agreement in said bill referred to as Schedule "A," it was mutually agreed between the complainant and the defendant, Louise M. Schlemm, that the said Louise M. Schlemm while living separate and apart from the complainant under said articles of agreement, was to live a virtuous life and was not to be guilty of any acts of adultery and say that such allegation is a mere invention on the part of the complainant.  
20 They further deny it was ever then and there agreed between the complaint and the defendant, Louise M. Schlemm, that a clause was to be inserted in said agreement providing that said agreement should cease, determine and be made void by the subsequent adultery of the said Louise M. Schlemm, and say that is a mere invention on the part of the complainant.

30 13. These defendants deny that it was by the mistake and inadvertence of the complainant and the defendant, Louise M. Schlemm, that no provision was inserted in the said agreement providing that the agreement aforesaid should cease, determine and be void in the event of any act of adultery being thereafter committed by the said Louise M. Schlemm.

40 14. These defendants admit paragraph 14 of the bill of complaint.

15. These defendants deny that the complainant is informed and verily believes that he will not be allowed to prove in said Hoboken District Court, by way of defence to said action, the acts of adultery complained of by him in his second petition for divorce hereinabove referred to, and say that if he were allowed to prove the same it would be absolutely irrelevant and immaterial matter; they also deny that in equity and justice the commission of any act of adultery on the part of the defendant, Louise M. Schlemm, if she had committed such act, would terminate the right of the said Louise M. Schlemm to receive any money for support from the complainant under said articles of agreement, but say that under the law of the State of New Jersey the commission of adultery by a wife after the signing of articles of separation has no bearing whatever upon said articles of separation. 10 20

These defendants, therefore, pray that the bill of complaint herein be dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

WELLER & LICHTENSTEIN,  
Solicitors for Defendants. 30



*Affidavit of Louisa M. Schlemm.*

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remaining out of the house almost every night until four or five o'clock in the morning, and that at one time he remained away from home for two days and two nights; she further says that on or about the 25th day of November, 1914, deponent chided the complainant for remaining away from the home so much and requested him not to go out of the house that night whereupon he flew into a great rage and threw a cup of coffee which he had been drinking from on the table and broke it, and told deponent that if she did not like it she knew where the carpenter had left the door; that deponent then threw her cup of coffee on the table, whereupon he assaulted her by choking her, slapping her across the neck with his flat hand and striking her on the breast with his clenched fist with such severity that her breast afterward became discolored. 10  
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Deponent further says that on the 9th day of December, 1914, she was nearly five months pregnant and the complainant threw \$10 on the table and said to her, "Here damn you, go and empty your gut"; that he then told her to go to a certain mid-wife; that deponent cried and told him she did not wish to go but he told her to do so, and she thereafter on or about the 12th day of December, 1915, had a miscarriage, from which she became very ill for a few days. 30

Deponent further says that on or about the 20th day of December, 1914, at about ten o'clock at night after deponent had retired, he requested her to sign articles of separation with him, but she refused to do so; that he then proposed to deponent that she should rent a furnished room in New York City, and said that he would remain where he was and keep the child with him where deponent might visit her and take her out as often as she 40

*Affidavit of Louisa M. Schlemm.*

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pleased; that deponent refused to do so; that he then got out of bed and told deponent that he was going to leave the house and get a drink; that she tried to dissuade him from going and tried to hold him back, whereupon he grabbed hold of her and threw her on the floor and left the house.

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Deponent further says that on or about the 10th day of January, 1915, while she and the complainant still resided at No. 374 West Street, in said Town of West Hoboken, she was going from her mother's home to her own home at about eleven o'clock at night, and had their child with her; that when they passed the saloon of one Multini at the corner of Spring and Stevens Street, West Hoboken, deponent saw complainant's automobile standing in front of said saloon; that deponent's daughter looked into the saloon and told deponent that the complainant was there drinking; that the complainant then called to this deponent and asked her to come into said saloon where he introduced her to a man named Heins; that he then asked deponent to sit down and have a glass of wine, which she did; that the complainant then said to the said Mr. Heins "I am only living with this woman for the sake of the child; she is all I have to live for"; that deponent then started to go home and the said Heins and said Multini asked deponent to stay; that the complainant then jumped up and called this deponent a "son-of-a-bitch," a "whore," and every vile name that he could think of; that deponent grabbed a wine bottle and struck a beer glass with it, and the complainant then ran across the street and entered a saloon kept by a man named Gessner; that deponent went across the street to said saloon and asked the complainant to come home with her; that he was at that time drinking at the bar with two other men and he

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*Affidavit of Louisa M. Schlemm.*

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grabbed the three glasses that they were drinking from and threw them at deponent, but missed her; that deponent then told the said Gessner that he ought to have better sense than to keep the complainant there; that he was a young man and that the said Gessner could see that he was drunk, whereupon the said Gessner shut the door in deponent's face and she broke the glass in the door with her umbrella; that she then went to her home at 374 West Street, aforesaid, but did not retire; that at about three o'clock in the morning of the next day the complainant came to the house; that deponent was in fear of him, and knowing that he loved their child she told her to go to the door; that said child opened the door and this deponent heard the complainant say to her "Tell mama I will be back in about fifteen minutes"; that thereafter deponent heard the complainant rummaging on the floor below and later saw him going away from the building with his clothing in a bag, since which time they have never lived together; that thereafter he never returned to the house, but on or about the 20th day of January, 1915, telephoned to deponent and asked her to have articles of separation drawn and said that she should go to her lawyer and have them drawn and they would execute them; that deponent told him that she would have nothing to do with drawing articles of separation; that if he wanted articles of separation he should have them drawn himself; and that thereafter on the 21st day of January the defendant sent her one carbon copy of articles of separation by one of his working men, who asked deponent to sign said paper; that deponent refused and told him that she would not sign unless all the papers were before her; that deponent then sent a child down to get

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*Affidavit of Louisa M. Schlemm.*

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10 the original and other carbon copy; that the child returned with them and deponent signed all three of said papers in the presence of one Anna Whittle who was at her house when the first carbon copy was sent there; that they then went across the street to the home of the said Anna Whittle and had her husband, Stephen Whittle, sign as trustee; that the said Anna Whittle then took said papers to the complainant and he gave her \$65 for deponent.

20 Deponent further says that when she signed said articles of separation she had not seen the complainant since the 10th day of January, 1915; that he said nothing to her about her living a virtuous life thereafter, nor did he promise deponent that he would lead a virtuous life.

Deponent further says, however, that before she signed said articles of separation she took them to a lawyer and had him look over them; that the said lawyer told her that said papers were all right, but that he did not think that she was allowed enough money, but deponent said that she was satisfied with the sum mentioned therein, namely, \$25 a week, and signed them as above set forth.

30 Deponent further says it is not true that at the time of the execution of the said articles of separation it was mutually agreed between her and complainant that while living separate and apart from the complainant under said articles of separation she was to live a virtuous life, and was not to be guilty of any act of adultery; and she further says it was not then and there agreed between them that a clause was to be inserted in said agreement providing that said agreement should cease, determine and be made void by the subsequent  
40 adultery of the said Louisa M. Schlemm, but she

*Affidavit of Louisa M. Schlemm.*

says that the only talk she had with the complainant at that time was over the telephone, and that it was not by any mistake or inadvertence of the complainant and this deponent that such clause was not put into said agreement; she further says that at the time complainant called her up on the 'phone and told her that one of his men was going to bring these articles of separation down to her to sign, he said to her "Louise, I know you can't help but sign them because they are all in your own favor." 10

Deponent further says that the defendant paid her under said articles of separation regularly up to the 24th day of October, 1915, when he only owed her two weekly payments thereunder.

Deponent further says that after said articles of separation had been executed she moved to No. 320 Park Avenue, Weehawken, N. J., thereafter to 486 Park Avenue, and thereafter to 470 Park Avenue in said Township of Weehawken; that during that time the complainant, William Schlemm, visited deponent on four different occasions, but on none of these occasions did he make any complaint about said articles of separation, nor did he tell deponent that he had intended to put anything in said articles of separation excepting what was in them when she took advice about signing them and when she did sign them. 20 30

LOUISE M. SCHLEMM.

Sworn and subscribed to before me this  
7th day of March, A. D. 1916.

RICHARD W. GUTHEIL,  
Notary Public,  
of New Jersey.

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*Affidavit of Louisa M. Schlemm.*

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

10 Annie Whittle, of full age, being duly sworn according to law, upon her oath deposes and says: That she was present at the home of the defendant, Louise M. Schlemm, on the 21st day of January, 1915, when the first carbon copy of the articles of separation was sent there, and was there when the said Louise M. Schlemm sent a child to the office of the complainant, for the original and other carbon copy; that when the said child returned with them, said Louise M. Schlemm signed all three copies in the presence of deponent, who thereupon subscribed her name thereto as witness; that deponent and said Louise M. Schlemm then went to the home of deponent, and her husband, Stephen Whittle, signed said three copies of said articles of separation, as trustee; that deponent then took one of the carbon copies of said articles of separation to the complainant, William Schlemm, and he gave her an envelope which she gave to said Louise M. Schlemm as directed; that Mrs. Schlemm kept the original agreement, and her said husband kept the other carbon copy.

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ANNIE WHITTLE.

Sworn and subscribed to before me this  
 eighteenth day of March, A. D. 1916.

RICHARD W. GUTHEIL,  
 Notary Public,  
 of New Jersey.

**Order for Injunction.**

IN CHANCERY OF NEW JERSEY.

Between,

WILLIAM SCHLEMM,  
Complainant,

and

STEPHEN WHITTLE and LOUISA M.  
SCHLEMM,  
Defendants.

On Bill, etc.

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This matter being opened to the Court, upon an order to show cause why an order of injunction should not issue against the defendants, Stephen Whittle and Louisa M. Schlemm, their respective attorneys, solicitors, agents and representatives, restraining them and each of them from prosecuting a certain action at law instituted in the name of said Stephen Whittle against the complainant, William Schlemm, on the twenty-sixth day of February, A. D. 1916, and now pending in the District Court of the City of Hoboken in the County of Hudson until the determination of this suit or until the further order of this Court, by J. Emil Walscheid of counsel with complainant, and in the presence of John I. Weller of counsel with defendants, and upon reading and filing the answer and answering affidavits of said defendants and hearing the argument of counsel.

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It is now on this twentieth day of March, A. D. 1916, ordered that the said defendants, Stephen Whittle and Louisa M. Schlemm, their respective attorneys, solicitors, agents and representatives be and they hereby are restrained from prosecuting said action at law instituted in the name of said Stephen Whittle against the complainant, William

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*Notice of Appeal.*

Schlemm, on the 26th day of February, A. D. 1916, and now pending in the District Court of the City of Hoboken in the County of Hudson until the determination of this suit on the further order of this Court.

10 EDWIN ROBERT WALKER,  
C.  
Respectfully advised,  
VIVIAN M. LEWIS,  
V. C.

**Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

20	Between, WILLIAM SCHLEMM, Complainant, and STEPHEN WHITTLE and LOUISA M. SCHLEMM, Defendants.	}	On Bill &c. On Appeal from Inter- locutory Order.
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30 The defendants hereby appeal from the interlocutory order made herein on the 20th day of March, 1916, and from the whole and every part thereof, to the Court of Errors and Appeals of the last resort in all causes.

Dated, April 28th, 1916.

WELLER & LICHTENSTEIN,  
Solicitors for Defendants.

JOHN I. WELLER,  
of Counsel.

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

JOHN I. WELLER,  
of Counsel with Defendants.

**Petition of Appeal.**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between,  
WILLIAM SCHLEMM,  
Complainant-Respondent,

and

STEPHEN WHITTLE and LOUISA M.  
SCHLEMM,  
Defendants-Appellants.

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On Bill &c.  
On Appeal.

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

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The petition of Stephen Whittle and Louisa M. Schlemm, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date on the 20th day of March, 1916, in a cause wherein the said William Schlemm was the complainant and the said Stephen Whittle and Louisa M. Schlemm were defendants, in this respect, to wit: That the said order adjudged "that the said defendants, Stephen Whittle and Louisa M. Schlemm, their respective attorneys, solicitors, agents and representatives be and they hereby are restrained from prosecuting said action at law instituted in the name of the said Stephen Whittle against the complainant, William Schlemm, on the 26th day of February, A. D. 1916, and now pending in the District Court of the City of Hoboken, in

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*Petition of Appeal.*

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the County of Hudson, until the determination of this suit or the further order of this Court.

10 And your petitioners humbly appeal from the whole and every part of said order of the chancellor which orders as aforesaid, upon the ground that the same is erroneous for that the said defendants should not have been restrained and enjoined from prosecuting said action at law in the District Court of the City of Hoboken upon the bill and affidavits presented and filed on behalf of the complainant in face of the affidavits presented and filed on behalf of the defendants, which show that said action in the District Court was for moneys that had accrued under a separation agreement, which was a contract under seal  
20 made by the complainant, William Schlemm, with the defendant, Louisa M. Schlemm, his wife, and Stephen Whittle as trustee; for that there was nothing in the bill and proofs presented and filed by the complainant to warrant the making of said order and for that the complainant had as complete a defence to said motion at law under said proofs as he can have in equity.

30 Your petitioners therefore pray that the said order of the said chancellor may be, for the reasons aforesaid, reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

And your petitioners will ever pray, etc.

WELLER & LICHTENSTEIN,  
Solicitors of Appellants.

JOHN I. WELLER,  
of Counsel.

**Affidavit of Service of Petition of  
Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p>Between,</p> <p style="text-align: center;">WILLIAM SCHLEMM, Complainant-Respondent,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">STEPHEN WHITTLE and LOUISA M. SCHLEMM, Defendants-Appellants.</p>	}	<p>10</p> <p>On Bill &amp;c. On Appeal.</p>
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<p>State of New Jersey, } County of Hudson, } ss.:</p>	}	<p>20</p>
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G. Earl Brugler, of full age, being duly sworn according to law, upon his oath deposes and says that he is a clerk in the office of Weller & Lichtenstein, solicitors for the above named appellants; that on Tuesday the 16th day of May, 1916, he served a copy of the petition of appeal filed in the above cause, on J. Emil Walscheid, Esq., solicitor for the respondent, by delivering the same to Henry 30  
Vogler, Esq., an attorney employed in his office, at No. 27 Bergenline Avenue, Union Hill, N. J., and informing him of the contents thereof.

G. EARL BRUGLER.

Sworn and subscribed to before me  
this 25th day of May, A. D., 1916.

<p style="text-align: center;">RICHARD W. GUTHEIL, Notary Public of New Jersey.</p>	<p>40</p>
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**Answer to Petition of Appeal.**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between,  
WILLIAM SCHLEMM,  
Complainant-Respondent,

and

STEPHEN WHITTLE and LOUISA M.  
SCHLEMM,  
Defendants-Appellants.

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On Bill, etc.,  
on Appeal.

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The answer of the above named respondent to the petition of appeal of the above named appellants shows that:

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1. 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 on the 20th day of March, 1916, made and entered in the Court of Chancery in that cause for that purpose mentioned in said petition as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

2. The respondent is advised and believes that the said order is agreeable to equity and he prays that the same be affirmed with costs to be adjudged to this respondent.

J. EMIL WALSCHEID,

Solicitor of and of Counsel with Respondent.

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