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**Notice of Appeal.**

Filed June 24, 1938.

IN CHANCERY OF NEW JERSEY

115/249.

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, &c.

The defendant Peter A. Adams hereby appeals from the interlocutory order made in the above entitled cause by the Chancellor and advised by Advisory Master Bernard L. Stafford on May 23, 1938, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes.

Dated, June 21, 1938.

EVANS, SMITH & EVANS,
Solicitors of Defendant.

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

JOHN MILTON,
Of Counsel with Defendant.

Service of a copy of the within Notice of Appeal hereby acknowledged this 21 day of June, 1938.

COLLINS & CORBIN,
Sol'rs. of Complainant.

## Petition of Appeal.

Filed July 11, 1938.

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | |
|---|---|
| MARIE P. ADAMS, Complainant-Appellee, vs. PETER A. ADAMS, Defendant-Appellant. | On Bill for Maintenance. On Appeal from Chancery. |

*To the Honorable the Court of Errors and Appeals in the Last Resort in all causes:*

The petition of Peter A. Adams, the defendant-appellant in the above entitled cause, respectfully shows that:

Petitioner finds himself aggrieved by an interlocutory order made in the Court of Chancery by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, on the advice of the Honorable Bernard L. Stafford, Advisory Master, bearing date May 23rd, 1938, in a cause above entitled, to wit, an action brought by the complainant-appellee against your petitioner for separate maintenance, in this respect, to wit, that the said order adjudges that your petitioner, Peter A. Adams, his agents, servants, attorneys, solicitors and assigns be and they are thereby enjoined from selling, pledging, assigning, encumbering, transferring or disposing of any and all of his property or assets, and further that the said order adjudges that all of the property or assets of your petitioner be delivered by him to Edward J. O'Byrne,

Esq., to be by him held as custodial receiver until the further order and direction of the court.

And petitioner appeals from the order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

1. The Court of Chancery had no power to order the appointment of a receiver of the goods and assets of the petitioner and enjoin the petitioner from selling or assigning his goods and assets.

2. The court should not have ordered the appointment of a receiver and enjoined the petitioner from selling or assigning his goods and assets, as the complainant-appellee could have been equally protected by an order directing the petitioner to give reasonable security for his compliance with the order of the court touching alimony pendente lite, as in the statute in such case made and provided.

3. There was not sufficient evidence presented to the Court warranting the appointment of a receiver and the issuing of an injunction.

4. The court improperly admitted affidavits made by the petitioner in a previous maintenance proceeding between the complainant-appellee and petitioner as a basis for the appointment of a receiver and the issuance of the injunction.

5. The order of May 23rd, 1938, is improper as entered and will work oppression on petitioner.

Your petitioner therefore prays that the said order of the Chancellor may be reversed, set aside and for nothing holden, and that the record may be remitted to the Court of Chancery with direction to dismiss the petition filed by the said complainant-appellee against your petitioner on which the said order was based, and that your petitioner

may have such other relief in the premises as to this court shall seem proper.

EVANS, SMITH & EVANS,
Solicitors for and of Counsel
with Defendant-Appellant.
JOHN MILTON,
Of Counsel.

Due and legal service of a copy of the Petition of Appeal in the above entitled cause is hereby acknowledged this 9th day of July, 1938.

COLLINS & CORBIN,
Solicitors of Complainant-Appellee.

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**Order.**

Filed May 23, 1938.

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, &c.

This matter being opened to the Court by Edward A. Markley, Esquire, of counsel with the complainant, and in the presence of William W. Evans, Esquire, of counsel with the defendant; and it appearing that due notice of this applica-

tion has been given to Evans, Smith & Evans, Esquires, solicitors of the defendant, by serving a notice of motion, petition, and supporting affidavits on April 16, 1938; and it further appearing that there was a previous application by way of petition and supporting affidavits on March 2, 1937, at which time an order to show cause was granted by this Court, and thereafter argued on March 19, 1937, at which time this Court dismissed the said order to show cause with leave for the complainant to apply for the same relief at a later date; and it further appearing that the Court considered this matter on April 22, 1938, at which time the Court heard argument of counsel and granted permission to the complainant and the defendant to file additional affidavits, and for the purpose of permitting said affidavits to be filed, the Court continued the said hearing until May 6, 1938, at which time the complainant and defendant filed their additional affidavits, and the Court heard argument of counsel and granted permission to the solicitors of the respective parties to submit memorandums, which memorandums were submitted; and it further appearing that on May 20, 1938, the Court, having considered the proofs and the record and further argument of counsel, and good cause having been shown by the record and the petition and affidavits filed in this cause why the complainant is entitled to relief in the premises;

It is, on this 23rd day of May, 1938, ORDERED that until the further order of this Court the defendant, Peter A. Adams, his agents, servants, attorneys, solicitors, and assigns, be and they are hereby enjoined and restrained from selling, pledging, assigning, encumbering, transferring or disposing of any and all of the property or assets,

real or personal, choses in action, tangible or intangible, choate or inchoate, goods, chattels, moneys, effects, rights and credits, wherever situate, which the said defendant, Peter A. Adams, now owns, holds, possesses, controls or over which he in any capacity or in any way exercises dominion; and

It is FURTHER ORDERED that all of the property or assets, real or personal, choses in action, tangible or intangible, choate or inchoate, goods, chattels, moneys, effects, rights and credits, which the said defendant, Peter A. Adams, now owns, holds, possesses, controls or over which he in any capacity or in any way exercises dominion, be forthwith delivered by him to Edward J. O'Byrne, Esquire, to be by him held as custodial receiver until the further order and direction of the Court in the premises; and

It is FURTHER ORDERED that the said receiver give bond to the Chancellor in the sum of Ten Thousand Dollars conditioned for the faithful performance of his duties, which bond shall be approved as to form and sufficiency of surety by any Master of this Court.

LUTHER A. CAMPBELL,
*C.*

Respectfully advised,
BERNARD L. STAFFORD,
*A. M.*

**Notice of Motion for Writ of Ne Exeat Republica, Writ of Injunction Re Appointment of Receiver, and Payment of Taxes.**

Served April 16, 1938.

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
On Bill, &c.

To: EVANS, SMITH & EVANS, ESQUIRES,
Solicitors of Defendant
5 Colt Street
Paterson, N. J.

Sirs:

Please Take Notice that on the twenty-second day of April, 1938, at the hour of ten o'clock in the forenoon, at the Chancery Chambers, Administration Building, in the City of Paterson, County of Passaic, and State of New Jersey, the complainant, Marie P. Adams, by her solicitors, Collins & Corbin, Esquires, will apply to the Honorable Advisory Master Bernard L. Stafford, for an order that the defendant, Peter A. Adams, be restrained and enjoined according to the prayer of the attached petition; that the defendant, Peter A. Adams, should be compelled to give reasonable security to abide the decree so that the jurisdiction of this Court will not be evaded; that the de-

fendant, Peter A. Adams, his counsel, attorneys, solicitors, agents, servants, employees, and especially his brother Adam A. Adams, should be restrained and enjoined from selling or making any tranfer of any property, choses in action, assets, or things belonging to the defendant, Peter A. Adams; that a receiver be appointed to take possession and manage the choses in action, assets, property, and things of the said defendant, Peter A. Adams, in the State of New Jersey, to abide the decree, so that the jurisdiction of this Court will not be evaded; that a writ of ne exeat republica should be issued out of this Court to restrain the defendant so that the jurisdiction of this Court will not be evaded; and that in view of the fact that the complainant's home will be put up for sale on May 12, 1938, because of non-payment of taxes, the defendant should pay the said taxes; and

Take Further Notice that annexed hereto and served upon you herewith are true copies of the petition and affidavits upon which said application will be made.

Dated: April 16, 1938.

Respectfully,

COLLINS & CORBIN,
Solicitors of Complainant.

**Petition for Writ of Ne Exeat, Etc.**

Served April 16, 1938.

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, &c.

*To His Honor, Luther A. Campbell, Chancellor of the State of New Jersey*:

The petition of Marie P. Adams, the above-named complainant, respectfully shows that:

1. She recently filed her amended bill, which contained a cause of action for maintenance against her husband, Peter A. Adams; a cause of action to annul the foreign decree for divorce obtained by her said husband; and a cause of action for arrearages due under the terms of an agreement. She alleges therein that her said husband did, without justifiable cause, separate himself from her between December 1, 1935, and June 6, 1936, and from June 20, 1936, up to the present time; that her said husband refuses and neglects to properly maintain and provide for her and the children of the marriage in her custody in accordance with the requirements of the statute, and since the separation the said husband refuses and neglects to provide support for her and the said children suitable to his income, means and ability

to support them, and that the amount provided by the husband for her and the children is not such as the nature of the case and the circumstances of the parties render suitable and proper in order to enable her and the said children to live in the same style in which they were accustomed to live when she and the husband were cohabiting; that the decree of divorce from the Court of First Instance, at Athens, Greece, copy of which is attached to the said amended bill and made a part thereof, was obtained by fraud and suppression of the truth; and that her husband be ordered an decreed to pay to her the sum of Two Thousand and One Dollars ($2001), which sum constitutes the arrearages due under the terms of the agreement made on April 25, 1935.

2. Process of subpoena has been served upon the defendant, and he has filed an amended answer to said amended bill.

3. Charges made in her bill against the defendant are true, as she is ready to maintain and prove. A case for relief has been made out. In paragraph 10 of the defense to the first cause of action, the defendant admits that he left the complainant, and in the second paragraph of defendant's affidavit filed in opposition to complainant's application for alimony, etc. pendente lite, the defendant also admits therein that he left the complainant. Therefore, one issue is that the maintenance should be suitable to defendant's income, means and ability to support the complainant and her children and as the nature of the case and the circumstances of the parties render suitable and proper in order to enable the complainant and the children to live in the same style in which they were accustomed to live when the defendant resided with them.

4. On February 11, 1938, notice of motion relative to an application that the complainant have an inspection and copy, or permission to take a copy, of any books, letters, papers, or documents in the defendant's possession, or under his control and power, wherein there were facts upon which the complainant's right to relief as to maintenance was based, was served upon the solicitors of the defendant. This motion was adjourned, by order, on the return day, to wit, February 18, 1938, upon the application of defendant's solicitors. Thereafter, the motion was continued, by order, to March 4, March 18, April 1, and to April 22, 1938, upon the application of defendant's solicitors. On April 1, 1938, William W. Evans, Esquire, solicitor for defendant, in applying for another adjournment of this motion, stated in open Court that arrangements were being made to have the records, as called for by this motion, available for inspection on the following Monday, to wit, April 4, 1938.

5. Since April 1, 1938, several endeavors have been made in behalf of the complainant to have the records available for inspection, as called for by the motion of February 18, 1938, and up to this time the several requests made in behalf of the complainant have not been complied with by the defendant.

6. Walter J. Hunziker, Receiver of Taxes and Assessments of the City of Paterson, has advised the complainant that taxes in the sum of Two Thousand Sixty-four Dollars and Ninety Cents ($2,064.90) are due on her premises in the City of Paterson, and that the said premises will be put up for sale on May 12, 1938. During the pendency of the above entitled cause before this Court the defendant paid the taxes for 1935 on complain-

ant's premises in a sum between Eight and Nine Hundred Dollars. The said sum was paid to Walter J. Hunziker on June 15, 1937, after the complainant's premises had been put up for sale and after defendant's solicitors had been advised to the latter effect.

7. On March 22, 1933, the defendant, in company with the complainant and the children of their marriage, left their home at 540 Fifteenth Avenue, in the City of Paterson, for a trip to Europe, and while on that trip the defendant deserted the complainant at Athens, Greece, for the purpose of establishing a residence at Athens, Greece, whereon to base an application for divorce from the complainant.

8. Toward the end of November, 1933, the complainant left Athens, Greece, for the United States, arriving in the middle of December, 1933, and thereafter taking up residence at her home, 540 Fifteenth Avenue, in the City of Paterson, where she has ever since resided.

9. Suit for divorce in the Court of First Instance, Athens, Greece (see Exhibit "A" attached to Amended Bill), was instituted by the defendant on December 1, 1933, at which time the complainant was on her way back to the United States, and the summons and suit papers were never served upon the complainant, nor did she have notice that the suit for divorce was instituted.

10. On the sixth day of January, 1934, complainant instituted a suit for maintenance, and on January 10, 1934, an order for a writ of sequestration was made, and subsequently amended on January 15, 1934, and on the twenty-third day of June, 1934, the defendant filed an answer to the effect that he had obtained a decree of divorce from the Court of First Instance at Athens, Greece. On

the thirty-first day of October, 1934, complainant petitioned this Court and obtained an order permitting her to file a special replication to the defendant's answer, setting up facts to show that the defendant had procured the said decree of divorce fraudulently.

11. From the thirty-first day of October, 1934, to the twenty-fifth day of April, 1935, several hearings were had before Advisory Master Stanton, to whom the matter had been referred, and on the said twenty-fifth day of April, 1935, the defendant returned to live with complainant at No. 540 Fifteenth Avenue, in the City of Paterson, County of Passaic and State of New Jersey.

12. On April 29, 1935, complainant petitioned this Court to dismiss the bill of complaint relating to her maintenance and custody of her children and also to discharge the writ of sequestration, and that the defendant's property seized by the sequestrator be released and returned to him because her marital difficulties with the defendant had been settled. On the twenty-ninth day of April, 1935, a decree in conformity with her petition was made and filed in this Court.

13. Complainant and defendant resumed cohabitation at their home, No. 540 Fifteenth Avenue, in the City of Paterson, from the twenty-fifth day of April, 1935, until the first day of December, 1935, when the defendant left his home and traveled through various sections of the United States, returning to his home on June 6, 1936, where he stayed until June 20, 1936, and since that time the defendant has never returned.

14. On December 23, 1936, this Court entered an order that the defendant pay to the complainant Two Hundred Dollars ($200) a week until the further order of this Court, said payment to be

made for complainant's support and maintenance and that of the children of the marriage, two of whom reside with her all the time and two part time. Since the entrance of the order of December 23, 1936, the defendant has stated on many occasions that he intends to return to Greece after he has completed disposing of his holdings, and that he will then have the benefit of his Grecian divorce.

15. On February 20, 1937, the complainant, while visiting the U. S. Theatre at Paterson, saw some five men coming out of the defendant's office in said theatre, and she recognized two of the men who had portfolios as officers of the Paramount Corporation of New York City. It is with the Paramount Corporation that the U. S. Theatre has a contract to show its pictures. Due to the defendant's many threats of disposing of his holdings in this State, and that he intends to move to another jurisdiction wherein he would have the benefit of his Grecian divorce, the complainant has every reason to believe that the defendant is disposing of his stocks in the U. S. Theatre, wherein he is the principal owner and holder of said stock; that he will seek to deprive the complainant of any and all opportunity to have redress in this Court; that the defendant's departure will defeat the complainant's cause of action in her bill, or that the defendant is leaving the State for that purpose, and that the defendant will do everything he possibly can to avoid the jurisdiction of this Court before the cause of action in the bill comes on for final hearing.

16. While she does not know the whereabouts of the defendant at the present time, she has every reason to believe that he is concealing himself. She believes that before this bill is brought on

for hearing the defendant intends to be without this State so as to be without the jurisdiction of this Court and therefore avoid the purposes of this bill. She believes that the defendant has concealed his property within this State, because a general power of attorney was given to his brother, Adam A. Adams, who resides in the City of Newark, and at the present time she does not know but that the defendant's brother, Adam A. Adams, has exercised his power of attorney and disposed of all available assets in this State belonging to the defendant.

17. Many endeavors have been made in behalf of the complainant to examine the defendant's books, records, etc., in conformity with an application now pending before this Court, but all these endeavors have been to no avail. It is apparent that the defendant is doing everything possible to prevent his records and books from being examined, and the reason for this action is within his knowledge. In view of the defendant's attitude and the obstacles he is putting in the way of the complainant as to examining his records, along with the various declarations made by him that he will not come to Court, and that he will fix things so that the complainant will have no redress, the complainant is nervous, upset, and under great physical strain, and believes that with his past actions as a criterion the defendant will be successful in evading the decree of this Court.

The complainant therefore prays that a writ of ne exeat republica be issued out of this Court to restrain the defendant, Peter A. Adams, from doing anything to affect the rights of the complainant; that a writ of injunction may be granted unto the complainant, the petitioner herein, issuing out

of and under the seal of this Honorable Court, commanding, enjoining, and restraining the defendant from doing anything to affect the rights of the complainant; that a receiver be appointed to take possession and manage the choses in action, assets, property, and things of the said defendant, Peter A. Adams, so as to abide the decree; that the said defendant, Peter A. Adams, his agents, servants, employees, solicitors, attorneys and especially his brother, Adam A. Adams, be enjoined and restrained from making any transfer or assignment of any property, choses in action, assets, and things of the said defendant; and that the defendant, Peter A. Adams, be ordered and compelled to pay the taxes now due on the complainant's premises.

And your petitioner will ever pray, etc.

COLLINS & CORBIN,
Solicitors of Petitioner.

**Affidavit of Marie P. Adams.**

Filed April 16, 1938.

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, &c.

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

Marie P. Adams, of full age, being duly sworn according to law, upon her oath deposes and says that:

1. I recently filed my amended bill, which contained a cause of action for maintenance against my husband, Peter A. Adams; a cause of action to annul the foreign decree for divorce obtained by my said husband; and a cause of action for arrearages due under the terms of an agreement. I allege therein that my said husband did, without justifiable cause, separate himself from me between December 1, 1935, and June 6, 1935, and from June 20, 1936, up to the present time; that my said husband refuses and neglects to properly maintain and provide for me and the children of the marriage in my custody in accordance with the requirements of the statute, and since the separation my said husband refuses and neglects to provide support for the children and me suitable to his income, means, and ability to support us, and

that the amount provided by my husband for the children and me is not such as the nature of the case and the circumstances of the parties render suitable and proper in order to enable us to live in the same style in which we were accustomed to live when my husband and I were cohabiting; that a decree of divorce from the Court of First Instance, at Athens, Greece, copy of which is attached to the said amended bill and made a part thereof, was obtained by fraud and suppression of the truth, and that my husband be ordered and decreed to pay to me the sum of Two Thousand and One Dollars ($2001), which sum constitutes the arrearages due under the terms of the agreement made on April 25, 1935.

2. Process of subpoena has been served upon my husband, and he has filed an amended answer to said amended bill.

3. Charges made in my bill against my husband are true, as I am ready to maintain and prove. A case for relief has been made out. In paragraph 10 of the defense to the first cause of action, my husband admits that he left me, and in the second paragraph of my husband's affidavit filed in opposition to my application for alimony, etc. pendente lite, my husband also admits therein that he left me. Therefore, one issue is that the maintenance should be suitable to my husband's income, means, and ability to support the children and me, and as the nature of the case and the circumstances of the parties render suitable and proper in order to enable the children and me to live in the same style in which we were accustomed to live when my husband resided with us.

4. On February 11, 1938, notice of motion relative to my application for an inspection and copy, or permission to take a copy, of any books, let-

ters, papers, or documents in my husband's possession, or under his control and power, wherein there were facts upon which my right to relief as to maintenance was based, was served upon my husband's solicitors. This motion was adjourned, by order, on the return day, to wit, February 18, 1938, upon the application of my husband's solicitors. Thereafter, the motion was continued, by order, to March 4, March 18, April 1, and to April 22, 1938, upon the application of my husband's solicitors. On April 1, 1938, William W. Evans, Esquire, solicitor for my husband, in applying for another adjournment of this motion, stated in open Court that arrangements were being made to have the records, as called for by this motion, available for inspection on the following Monday, to wit, April 4, 1938.

5. Since April 1, 1938, several endeavors have been made in my behalf to have the records available for inspection, as called for by the motion of February 18, 1938, and up to this time the several requests made in my behalf have not been complied with by my husband.

6. Walter J. Hunziker, Receiver of Taxes and Assessments of the City of Paterson, has advised me that taxes in the sum of Two Thousand Sixty-four Dollars and Ninety Cents ($2,064.90) are due on my premises in the City of Paterson, and that the said premises will be put up for sale on May 12, 1938. During the pendency of the above-entitled cause before this Court, my husband paid the taxes for 1935 on these premises in a sum between Eight and Nine Hundred Dollars. The said sum was paid to Walter J. Hunziker on June 15, 1937, after these premises had been put up for sale and after my husband's solicitors had been advised to the latter effect.

*Affidavit of Marie P. Adams.*

7. On March 22, 1933, my husband, the children and I left our home at 540 Fifteenth Avenue, in the City of Paterson, for a trip to Europe, and while on that trip my husband deserted me at Athens, Greece, for the purpose of establishing a residence at Athens, Greece, whereon to base an application for divorce from me.

8. Toward the end of November, 1933, I left Athens, Greece, for the United States, arriving in the middle of December, 1933, and thereafter took up residence at my home, 540 Fifteenth Avenue, in the City of Paterson, where I have ever since resided.

9. Suit for divorce in the Court of First Instance, Athens, Greece, (See Exhibit "A" attached to Amended Bill) was instituted by my husband on December 1, 1933, at which time I was on my way back to the United States, and the summons and suit papers were never served upon me, nor did I have notice that the suit for divorce was instituted.

10. On the sixth day of January, 1934, I instituted a suit for maintenance, and on January 10, 1934, an order for a writ of sequestration was made, and subsequently amended on January 15, 1934, and on the twenty-third day of June, 1934, my husband filed an answer to the effect that he had obtained a decree of divorce from the Court of First Instance, at Athens, Greece. On the thirty-first day of October, 1934, I petitioned this Court and obtained an order permitting me to file a special replication to my husband's answer, setting up facts to show that my husband had procured the said decree of divorce fraudulently.

11. From the thirty-first day of October, 1934, to the twenty-fifth day of April, 1935, several hearings were had before Advisory Master Stanton,

to whom the matter had been referred, and on the said twenty-fifth day of April, 1935, my husband returned to live with me at No. 540 Fifteenth Avenue, in the City of Paterson, County of Passaic, and State of New Jersey.

12. On April 29, 1935, I petitioned this Court to dismiss the bill of complaint relating my maintenance and the custody of the children and also to discharge the writ of sequestration, and that my husband's property seized by the sequestrator be released and returned to him because my marital difficulties with my husband had been settled. On the twenty-ninth day of April, 1935, a decree in conformity with my petition was made and filed in this Court.

13. My husband and I resumed cohabitation at 540 Fifteenth Avenue, in the City of Paterson, from the twenty-fifth day of April, 1935, until the first day of December, 1935, when my husband left home and traveled through various sections of the United States, returning home on June 6, 1936, where he stayed until June 20, 1936, and since that time he has never returned.

14. On December 23, 1936, this Court entered an order that my husband pay me Two Hundred Dollars ($200) a week until the further order of this Court, said payment to be made for my support and maintenance and that of the children of the marriage, two of whom reside with me all the time and two part time. Since the entrance of the order of December 23, 1936, my husband has stated on many occasions that he intends to return to Greece after he has completed disposing of his holdings, and that he will then have the benefit of his Grecian divorce.

15. On February 20, 1937, while visiting the U. S. Theatre at Paterson, I saw some five men

coming out of my husband's office in said theatre, and I recognized two of the men who had portfolios as officers of the Paramount Corporation of New York City. It is with the Paramount Corporation that the U. S. Theatre has a contract to show its pictures. Due to my husband's many threats of disposing of his holdings in this State, and that he intends to move to another jurisdiction wherein he would have the benefit of his Grecian divorce, I have every reason to believe that he is disposing of his stocks in the U. S. Theatre, wherein he is the principal owner and holder of said stock; that he will seek to deprive me of any and all opportunity to have redress in this Court; that my husband's departure will defeat my cause of action in my bill, or that my husband is leaving the State for that purpose, and that my husband will do everything he possibly can to avoid the jurisdiction of this Court before the cause of action in the bill comes on for final hearing.

16. While I do not know the whereabouts of my husband at the present time, I have every reason to believe that he is concealing himself. I believe that before this bill is brought on for hearing my husband intends to be without this State so as to be without the jurisdiction of this Court and therefore avoid the purposes of this bill. I believe that my husband has concealed his property within this State, because a general power of attorney was given to his brother, Adam A. Adams who resides in the City of Newark, and at the present time I do not know but that Adam A. Adams, my husband's brother, has exercised his power of attorney and disposed of all available assets in this State belonging to my husband.

17. Many endeavors have been made in my be-

half to examine my husband's books, records, etc., in conformity with an application now pending before this Court, but all these endeavors have been to no avail. It is apparent that my husband is doing everything possible to prevent his records and books from being examined and the reason for this action is within his knowledge. In view of my husband's attitude and the obstacles he is putting in the way as to examining his records, along with the various declarations made by him that he will not come to Court and that he will fix things so that I will have no redress, I am nervous, upset, and under great physical strain, and I believe that with his past actions as a criterion, my husband will be successful in evading the decree of this Court.

MARIE P. ADAMS.

Subscribed and sworn to at Jersey City, N. J.
this 16th day of April, 1938, before me
John H. Young,
(Seal) Notary Public
of New Jersey.

**Affidavit of John F. Leonard.**

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, &c.

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

John F. Leonard, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a counsellor at law of the State of New Jersey, associated with the law firm of Collins & Corbin, solicitors of complainant. I am familiar with the above entitled cause of action and I have been preparing same for hearing ever since it came into the office, and I am familiar with this proceeding, having participated in all the motions and moves made since the institution of the above entitled cause.

2. Since April 1, 1938, I have spoken with William W. Evans, solicitor for the defendant, Peter A. Adams, and I have also corresponded with him relative to making the necessary arrangements so that Mr. Burke might examine the books and records of this defendant. Up to this time, no endeavors have been made in behalf of the defendant to submit the books for Mr. Burke's examination.

3. Since April 1, 1938, I also spoke with Mr. Evans about the defendant's paying the taxes in

the sum of Two Thousand Sixty-four Dollars and Ninety Cents ($2,064.90) which are due on the premises owned by the complainant in the City of Paterson, and which premises will be put up for sale if the said taxes are not paid, and Mr. Evans has advised me that the defendant does not intend to pay said taxes.

4. I have been advised on several occasions that the defendant intends to dispose of his holdings in the State of New Jersey. The above entitled cause could have come on for hearing about a year ago if it were not for the delays in behalf of the defendant in not permitting his books, records, etc. to be inspected.

JOHN F. LEONARD.

Subscribed and sworn to at Jersey City, N. J.
this 16th day of April, 1938, before me
John H. Young,
(Seal) Notary Public
of New Jersey.

**Affidavit of William W. Evans.**

Filed April 22, 1938.

IN CHANCERY OF NEW JERSEY.

115/248

Between

MARIE P. ADAMS,
Complainant,

and

PETER A. ADAMS,
Defendant.

On Bill, &c.

State of New Jersey }
County of Passaic } ss.:

William W. Evans, being duly sworn according to law, upon his oath deposes and says:

I am the solicitor of Peter A. Adams, the defendant in the above entitled matter.

On April 16th, 1938, I was served with a notice of motion for a writ of ne exeat republica, writ of injunction Re: appointment of receiver, and payment of taxes, which said motion was made returnable on April 22nd, 1938.

The defendant, Peter A. Adams, has been spending the winter in the State of Florida, on the advice of his physicians, who have advised him that it is necessary, in order to prolong his life, that he spend the cold months in a warm climate. The necessity for this arises due to the fact that Peter A. Adams is suffering from a serious heart condition.

In view of the false charges in the petition on which the said motion was based, wherein Marie P. Adams, the complainant, alleges that the de-

fendant, Peter A. Adams, is attempting to avoid the jurisdiction of this court, I deemed it advisable for my client to return to New Jersey on or before the return day of the said motion. To that end, I communicated with him by telegram, copy of which is annexed hereto and made a part hereof, and on the 21st day of April, 1938, I received an answering telegram wherein the defendant, Peter A. Adams, advised that due to illness it was impossible for him to come to Paterson before late Friday, April 22nd, or Saturday morning, April 23rd, copy of which telegram is annexed hereto and made a part hereof.

During the stay of Peter A. Adams in Florida this winter, I have, on many occasions, advised Mr. Leonard, of Collins & Corbin, of my client's sojourn in Florida, so that I am at a loss to understand the statement of Marie P. Adams made in her petition that she does not know the whereabouts of her husband and has every reason to believe that he is concealing himself.

On April 19th, 1938, I forwarded a letter to Collins & Corbin, Esqs., solicitors of complainant, Marie P. Adams, advising them that the accountant of the complainant, Mr. Burke, might make an inspection of all records under the control of Mr. Adams pertaining to his business and personal affairs. Several days prior to this time, I forwarded to Mr. Leonard, of Collins & Corbin, Esqs., copy of supplemental report as to the income of Peter A. Adams for 1937, which said report was prepared by John J. White, of James F. Welch & Co.

The complainant, Marie P. Adams, has requested of the defendant the inspection of books and documents of corporations in which the defendant has no financial interest of any sort. Moreover,

none of the requested books and documents were in the possession and under the control of the defendant. However, as counsel for the defendant, I have endeavored to meet every demand made upon us by the complainant and her attorneys by way of inspection of the records, both of the defendant and of the companies he formerly held an interest in, and conferences in conjunction therewith have consumed weeks of time because of the relunctance of the parties in possession of the books to accede to the request of the complainant, which necessitated the numerous adjournments stressed by complainant in her application. After discussing the matter of inspection at great length, both with such parties individually and with their counsel, I have finally persuaded them to permit of such examination being made and the records are now available to Mr. Burke.

The defendant, Peter A. Adams, has regularly paid his wife the sum of $200.00 a week since the order for temporary alimony, and has fully complied with all orders of the court in this matter.

In regard to the amount of the taxes which have fallen due on the property of the complainant, it appears that complainant, although she is in receipt of $200.00 per week ordered by the court in full payment of her support and maintenance and that of the two children of the marriage, has made no effort to pay the same. The taxes on the property amount to approximately $800.00 per year, or about $15.00 a week, which would constitute but a small item of the liberal income of which complainant is in receipt. The property is free and clear of encumbrances, having been cleared of its mortgage debt by act of the defendant since the institution of these proceedings, and hence

the complainant is subjected to no burden in this regard.

WILLIAM W. EVANS.

Sworn and subscribed to before me
this 22nd day of April, 1938.
William A. DeMayo,
An Attorney at Law
of New Jersey.

* * * * *

Telegram sent to Peter A. Adams by W. W. Evans, Apr. 19, 1938.

Important you arrive in Paterson before Friday. Bring doctor's certificate properly notarized. Reply by Western Union.

W. W. EVANS.

* * * * *

Telegram sent by P. Adams to William Evans, April 21, 1938.

Nav 21 15—Daytona Beach Flo 21 936A
William Evans—
5 Colt St.

Impossible to be in Paterson before Friday Ill Be home Friday late or Saturday morning

—P. ADAMS.

**Order of Continuance Re Application for Defendant to Pay Taxes and for Restraint, Etc.**

IN CHANCERY OF NEW JERSEY.

115/248

Between

MARIE P. ADAMS,
Complainant,

and

PETER A. ADAMS,
Defendant.

On Bill, &c.

This matter being opened to the Court by John F. Leonard, Esquire, of counsel with the complainant, and in the presence of William W. Evans, Esquire, of counsel with the defendant; and it appearing that due notice of this application has been given to Evans, Smith & Evans, Esquires, solicitors for the defendant, by serving notice, petition, and supporting affidavits on April 16, 1938; and the Court having heard the arguments of counsel, permitted the complainant to file additional affidavits, and also permitted the defendant to file answering affidavits; and for the purpose of permitting said affidavits to be filed, the Court continued this application.

It is, on this 23rd day of April, 1938, ORDERED that this application, as covered by notice, petition, and supporting affidavits served April 16,

*Order of Continuance Re Application for Defendant to Pay Taxes and for Restraint, etc.*

1938, be and the same is hereby continued and adjourned to May 6, 1938.

LUTHER A. CAMPBELL,
*C.*

Respectfully advised,
BERNARD L. STAFFORD,
*A. M.*

We consent to the form and filing of the within Order.

EVANS, SMITH & EVANS,
Solicitors of Defendant.

## Affidavits in Support of Motion for Writ of Injunction and Payment of Taxes, Etc.

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### Affidavit of Marie P. Adams.

Filed May 6, 1938.

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, etc.

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

Marie P. Adams, of full age, being duly sworn according to law, upon her oath deposes and says:

1. I have never paid any taxes on either the house that I now reside in, nor on any other property. My husband, the defendant in this case, has always paid the taxes. Since the institution of the above-entitled cause of action, my husband has paid taxes on the premises where I now reside, in a sum between $800 and $900, and this sum was paid to Walter J. Hunziker, Receiver of taxes and Assessments of the City of Paterson, on June 15, 1937.

2. In view of the fact that my husband has not kept our sons, Arthur and Stewart, in sufficient expense money while they are attending the preparatory school at Lawrenceville nor bought them clothing during the year 1937 or up to the present

time, except one white gabardine suit for Stewart that he bought around Christmas time when both boys were his guests at Miami, Florida, I have been compelled to give both Stewart and Arthur moneys for their books and their other necessities, and I have also been compelled to buy their clothing during the year 1937 and up to the present time. The other two children who are home with me, to wit, Jean and Nicholas, have been under a doctor's care over a great period of time, because they are inclined to be highly nervous and sickly. I have been under the care of doctors because of my highly nervous condition which has been caused by this situation which has been created by my husband, the defendant. In order for my boys, Arthur and Stewart, to receive their friends at my home, it has become necessary to replace the dilapidated furniture which has been in use for some twenty-four years, and that has cost around $1200.

3. The defendant has always paid the insurance on a policy which he turned over to me in May of 1935, when he came back to live with me after the previous suit in this Court, and he would not pay this premium last year when it became due, and it became necessary for me to pay it, and the same was in the neighborhood of $600. When the defendant lived with me, he always gave me around $200 a week for spending money and sometimes more. When he lived with me, he would buy the children's clothes, permitted me to have charge accounts which he paid, and he would take the children and me on various extended trips, for which he paid. In view of the situation created by my husband, I am in a run-down condition, but I cannot afford a vacation. I have no funds available to pay for the taxes, which now

amount to over $2,000. If my husband had permitted his books to be examined back in May, 1937, when an application was made in my behalf to set the above-entitled cause of action down for trial, this matter would have been disposed of during last year. The reason for the delay in bringing this matter on for trial is that my husband has constantly put obstacles in the way of having these books examined, and the promises made in his behalf have never been kept. The position I now find myself in is caused solely through the actions of my husband. The delay in bringing this cause on for trial while my husband travels throughout the country has put me to a greater expense than I anticipated.

4. I have not seen my husband to speak to since he returned to my home in June, 1936, when he stayed for about two weeks, after having been away previously for some six months, and on his return in June of 1936, on the few occasions that he spoke to me, he was emphatic in his statements to me that he was winding up his business affairs; that he had made up his mind that he was not going to live with me; and further, he intended to make his permanent residence in Greece after he had wound up his affairs. In view of the past actions of his brother, Adam A. Adams, in taking an active part in the management of my husband's affairs when I had my previous suit pending in this Court, along with the fact that this brother, Adam A. Adams, had a power of attorney to dispose of my husband's holdings, etc., and with the further fact that Adam A. Adams has stated on many occasions that he wants to sever all relations with his brother, Peter, I have every reason to believe that with the delay in permitting the books to be examined in

this case, my husband and his brother are working out a scheme whereby I will not obtain the relief for me and my children in this Court as asked for by me in my suit.

5. The defendant has now submitted a report by Mr. White, for the year 1937, revealing that he made some $38,000 for that year, whereas, the report submitted by Mr. White showing his earnings for 1935 and 1936 reveal that in 1935 his income was around $20,000, and for the year 1936, around $28,000. When my husband lived with me he paid for the heating oil, all premiums covering insurance on property, the maid and for the gardener, and now all this expense has to be taken care of by me. My house needs painting, it having been painted three years ago, at which time it was paid for by my husband in the amount of $1,000.

MARIE P. ADAMS.

Subscribed and sworn to at Jersey City, N. J. this 30th day of April, 1938, before me

John H. Young,
Notary Public of
New Jersey.

(SEAL)

## Affidavit of John F. Leonard.

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.

On Bill, etc.

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

John F. Leonard, of full age, being duly sworn according to law, upon his oath deposes and says:

1. On the afternoon of March 31, 1938, the defendant's brother, Adam A. Adams, appeared at the office of the complainant's solicitors, Collins & Corbin, 1 Exchange Place, Jersey City, along with his accountant, Andrew C. Angelson, Esquire, his lawyer, H. Edward Toner, Esquire, and the lawyers of his brother, the defendant, to wit, William W. Evans, Esquire, and John W. Hand, Esquire, who conferred with me relative to arrangements for the examination of the defendant's records and other records pertaining to the defendant's financial status. This conference was arranged by Mr. Evans, the defendant's solicitor.

2. At the above conference, Adam A. Adams went into great detail as to the various incidents of his life since he came to this country from Greece in the early part of 1900. He finally stated that in view of the difficulties of his brother, the defendant herein, with his wife, he is going to

sever all business connections with him. Adam A. Adams further stated that the defendant has two courses to pursue, either to sell out to him or to the Paramount Pictures, with whom they have a contract wherein provisions are made for the sale of their interest. Adam A. Adams also stated that if the complainant insisted on pursuing the above-entitled cause to a final hearing, that then various salaries of the defendant would come to an end, and that he was at one time ill and went to Greece and became well again and because of the climate the defendant should reside in Greece for his health.

JOHN F. LEONARD.

Subscribed and sworn to at Jersey City, N. J. this 2nd day of May, 1938, before me

John H. Young,
Notary Public of
New Jersey.

(SEAL)

## Affidavit of Peter A. Adams on Motion for Writ of Injunction, Payment of Taxes, Etc.

Filed May 1, 1938.

IN CHANCERY OF NEW JERSEY.

115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, &c.

State of New Jersey }
County of Passaic } ss.:

Peter A. Adams, being duly sworn according to law, upon his oath deposes and says:

I have read the original and supplemental affidavit of my wife, Marie P. Adams, on her petition for writ of ne exeat, etc.

In the original affidavit of my wife on application for ne exeat, etc., my wife says that I have admitted in a former affidavit and in my answer that I left her; whereas, I therein stated that I left the complainant on July 20th, 1936, but that my leaving was caused by the antagonistic and spiteful attitude which my wife showed me which made it imperative that I absent myself from a situation which had become unbearable to me and which was affecting my health.

I have spent the past winter months in Miami, Florida, as I have been ordered by my physicians to spend the winters in the south in view of my serious heart condition.

*Affidavit of Peter A. Adams on Motion for Writ of Injunction, Payment of Taxes, etc.*

My attorneys, Evans, Smith and Evans, advised me some time before the 22nd of April that my wife had made a petition to the court for a writ of ne exeat and sequestration, etc., and my said attorneys requested that I return to New Jersey. I made immediate preparations for return, and arrived in Paterson on Saturday, April 23rd, 1938.

I am presently residing in my apartment at the Grenada Apartments, 534 Broadway, Paterson, New Jersey, where I maintain a bachelor apartment the entire year, and intend to continue there as my permanent residence. I am a registered voter in the County of Passaic, State of New Jersey.

In my wife's original affidavit for writ of ne exeat, etc., she states that she does not know my whereabouts and has every reason to believe that I am concealing myself, and believes that before the hearing in this case I intend to be without this state so as to be without the jurisdiction of this court. This statement is obviously false and untrue, as will be borne out by my wife's supplemental affidavit, wherein she states that I was in Miami, Florida, last winter, and admits that our sons, Arthur and Stewart, visited me about Christmas time. Furthermore, during the course of the winter, I was in touch by mail with my sons Arthur and Stewart and my daughter Jean, all of whom reside with my wife. So that when my wife stated that she did not know my whereabouts, the same was for a fraudulent purpose, in order to give this court false grounds for the issuance of process against me or my property. This obvious falsehood, as shown by my wife's affidavits themselves, is a clear indication of the lies and misrepresentations in which my wife has indulged in

order to further her own spiteful ends and cause my ruin.

My wife has indicated in her affidavits that the reason for the delay in this case has been that I did everything possible to prevent my records and books from being examined. I deny this, and say that this is another one of my wife's lies. The truth of the matter is that from the beginning of this case, I caused all my books and records to be opened to the examination of John White, accountant, who was approved by the court, and the report of his examination was turned over to Collins & Corbin, solicitors for my wife. The delay in this case has been due to the suspicious and unreasonable demands of my wife for an examination of books and documents of corporations with which I have had nothing to do either directly or indirectly since 1935. However, in order to smooth the way as much as possible for the court, I instructed my counsel, Evans, Smith and Evans, to endeavor to obtain permission from the individuals in possession and ownership of these books, for an examination by my wife's accountant. The obtaining of this permission on the part of Evans, Smith and Evans necessitated weeks of effort and numerous conferences and correspondence, so that it can be seen that because of my wife's suspicious and unreasonable attitude as aforesaid, this case has been solely delayed by her, and I have been put to great additional expense. I have been, since the beginning of this case, always ready, willing and anxious for the matter to go to trial, and I believe that the complainant has been guilty of studied delay in this proceeding, so as to preserve to herself for as long as possible the fine allowance of $10,400.00 per year awarded as ali-

mony pendente lite, knowing that the same would not be allowed after a complete hearing in this matter.

I deny the allegations in my wife's affidavits that I intend to liquidate my holdings and make my permanent residence in Greece, and I deny that I have ever stated to her such intention, or to any other person.

I have made my home in New Jersey for thirty-five years. My family is here, and all of my friends are here. I have no ties nor friends in Greece, save one brother whom I have seen twice in 35 years. Were I to go to Greece, I would be a solitary figure, wanted by nobody; whereas, in Paterson, I have my children and many friends with whom I hope to pass peaceably the remaining years of my life.

As referred to in my affidavit on application for reduction of alimony pendente lite, I have sold my holdings in Essex Amusement Corporation for the amount of $50,000.00. This fund has been invested by me in the best corporate bonds available in this country, consistent with a fair yield on the investment. This move was one which was necessitated by my inability to further engage in active business, and one calculated to remove as far as possible my interests from the uncertainties of business conditions as befits a man who now must rely upon income for bread and butter.

My remaining holdings consist of real estate in the City of Paterson, for which there is no market. So that the bulk of my financial interests are centered in the City of Paterson and will remain centered in that city.

I have absolutely no business dealings or connections with my brother, Adam A. Adams, nor has Adam A. Adams any power of attorney to

dispose of any of my holdings, which fact is known to my wife, Marie P. Adams.

In regard to the expenses of my wife, I have in the past given to my wife her present home, worth $35,000.00, free and clear, and presented to her a $25,000.00 life insurance policy on my life. She has been receiving since 1936 the amount of $10,400.00 per annum.

My wife, in her affidavit, explains at great length how she has *not* been using this $10,400.00 per annum which she has been receiving, but omits entirely to state how she *has* used it. I have reason to believe that my wife has been retaining a great amount of her alimony pendente lite in her personal savings account, to the great prejudice of my sons, Arthur and Stewart, who have not been supplied with the proper clothing and necessities of life, of which said allowance would easily permit and which it is my wife's duty to provide under the order of this court.

No better example of the calculated campaign of my wife to attempt to extract from me every last penny is shown than by her refusal to pay the taxes on the home which she owns, free and clear, and her brazen application for an order requiring me to do so. This is also in the face of the conclusions of the court which awarded my wife the sum of $200.00 per week for taking care of all expenses in the maintenance and upkeep of the home, including food and clothes for herself and her children.

PETER A. ADAMS.

Sworn and subscribed to before me
this 6th day of May, 1938.
Kathryn E. Thompson,
Notary Public
of New Jersey.

## Affidavit of Peter A. Adams.

IN CHANCERY OF NEW JERSEY.

#115/248

Between
MARIE P. ADAMS,
Complainant,
and
PETER A. ADAMS,
Defendant.
} On Bill, &c.

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

Peter A. Adams, being duly sworn according to law, upon his oath deposes and says:

I am the defendant in the above entitled matter.

For some years past I have been suffering from angina pectoris and coronary disease.

This heart ailment is characterized by severe pains in the heart region. I have found that these pains can be eliminated to a degree by absolute rest on my part. On the other hand, I have found that the stress and strain of business activities aggravates my condition to such an extent that the pain remains practically constant. It has been the advice of my physicians that I spend the winter months in a warm climate, inasmuch as the cold of our northern winters is extremely distressing to my heart condition.

In 1931 I entered into an employment contract with the Essex Amusement Corporation for the management of the U. S. Theatre, in Paterson, at $15,000.00 per annum. The duration of this con-

tract was for five years, expiring in March, 1936.

After the expiration of the contract, I was continued along by the Essex Amusement Corporation at the old rate, but under no new contract.

Due to my heart condition, on the advice of my physician, I spent the entire winters of 1935, 1936 and 1937 in Florida, leaving with the first cold weather in November and returning in April or May. On returning home during these years, I found that my condition would not permit of active attendance to my duties, so that, on the advice of physicians and taking into account my own experience with my heart condition, I practically did no work during the summer months.

For some time last past the Essex Amusement Corporation, which, in turn, is owned fifty per cent by Paramount Publix Corporation, has indicated that it could not go on paying me the fine salary of $15,000.00 a year for practically no work performed. Finally, on April 5th, 1938, I received from Essex Amusement Corporation a letter addressed to me in Florida stating that at a Board of Directors meeting of the Essex Amusement Corporation the attention of the members of the Board was called to my continuous absence from my duties, and in particular the point was stressed that I had been absent for the past four or five years for a period of four to five months at a time. The letter further stated that unless I resumed my duties on or before April 15th, 1938, my services would be terminated and my salary of $15,000.00 discontinued as of that date.

On receiving this letter, I immediately consulted my Florida physician, Maurice H. Tallman, who has been treating me since the winter of 1935. Dr. Tallman advised me at this time, as he had advised me many times before, namely, that I

give up all of my business activities under penalty of sudden death at any time from my heart condition. Thereafter I very reluctantly advised the Essex Amusement Corporation that my health would not permit me to resume my duties as manager of the U. S. Theatre in Paterson. As a result, my salary of $15,000.00 per year was discontinued as of April 15th, 1938.

On March 1st, 1931, I entered into a contract with my brother, Adam A. Adams, and Paramount Publix Corporation, whereby the Essex Amusement Corporation was to be formed to operate the Newark Theatre in Newark, and the Passaic Theatres Corporation to operate the U. S. Theatre in Paterson. By virtue of said contract, I became the owner of 250 shares of Class "B" stock of the Essex Amusement Corporation and 250 shares of Class "B" stock of Passaic Theatres Corporation. My brother, Adam A. Adams, in turn, held 250 shares of Class "B" stock of both corporations and the Paramount Publix Corporation held 500 shares of Class "A" stock of both corporations. In 1936 the Passaic Theatres Corporation was dissolved and the Essex Amusement Corporation took over its assets and obligations. My said 250 shares of Class "B" stock of Essex Amusement Corporation cost me in all $13,000.00. The contract of March 1st, 1931, provides that no stock shall be sold by a stockholder without his first offering it for sale to the other holders of stock of the same class, and upon their failure or refusal to purchase the same, without then offering it to the holders of the other class of stock. The contract also provides a method of computing the sales price of shares offered for sale, such computation to be

made by an independent auditor, Price Waterhouse & Company.

Said contract of March 1st, 1931, provides that all sums required by the Essex Amusement Corporation to pay and discharge its obligations in excess of the sums available to the corporation from its own resources, shall be supplied by the respective stockholders. If any one stockholder refuses to supply his pro rata share of the deficit, his stock may then be bought by other stockholders at a figure greatly less than the ordinary valuation of stock as above set forth.

Accordingly, when it became certain that my salary of $15,000.00 in the Essex Amusement Corporation was to be discontinued, and considering the restrictions on my ownership of the Essex Amusement Corporation stock and the general uncertainty of the moving picture business at this time, I offered my holdings in the company for sale to my brother, Adam A. Adams, the only other Class "B" stockholder in the company, in accordance with the agreement of March 1st, 1931. On April 19th, 1938, Adam A. Adams accepted the said offer.

Thereafter the value of my holdings was computed under the terms of the contract by Price Waterhouse & Company, and the same was ascertained to be the sum of $50,197.74, which amount has been received by me and my stock certificate duly transferred to Adam A. Adams.

As the result of the discontinuance of my salary of $15,000.00 as aforesaid, I no longer have sufficient income to pay to my wife, Marie P. Adams, the amount of $10,000.00 annually, the preliminary alimony ordered by this court. My annual gross income at the present time as shown in the supplemental report of John White, certified pub-

lic accountant, is a salary of $5000.00 annually from U. S. Theatre Amusement Corporation, and a net consolidated income of U. S. Theatre Amusement Corporation and Adams Brothers Realty Corporation of $1987.84, plus a possible small dividend from Paterson Wimsett System Company, making a total possible income of approximately $7000.00.

Out of this income, it is necessary for me to pay the balance of my 1937 income tax in the amount of approximately $4306.97, and premiums on my life insurance in the amount of $1221.00 per annum. In addition, I will have the necessary expense of living quarters. Apart from this, in addition to my living expenses, I am constantly in the care of physicians and specialists, making necessary high medical bills, and in order to preserve my life, I must undergo the expense of spending every winter in Florida. I have also the responsibility of taking care of the education of my two boys, the cost of which said education must now be greatly curtailed. Under the present condition of my affairs it will be impossible for me to pay my wife more than a small fraction of what she is now receiving, and my wife will have to curtail her living expenses and standard of living as I must do, with the great reduction of my income.

PETER A. ADAMS.

Sworn and subscribed to before me
this 4th day of May, 1938.
Margaret O'M. Hansford,
Notary Public of
(SEAL) New Jersey.

## Affidavit of Peter A. Adams.

Filed June 11, 1934.

IN CHANCERY OF NEW JERSEY.

100-666

Between

MARIE P. ADAMS,
Complainant,

and

PETER A. ADAMS,
Defendant.

On Bill, &c.

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

Peter A. Adams, of full age, being duly sworn according to law on his oath deposes and says:

1. I am the defendant in the above entitled bill of complaint mentioned. I have read the same and I am familiar with the contents thereof. I have read the affidavits of Marie P. Adams, Arthur P. Adams and John F. Leonard annexed to said bill of complaint and am familiar with the contents thereof.

2. I am a native of the Republic of Greece but for many years up until March 22, 1933 I resided at 540 Fifteenth Avenue, in the City of Paterson, County of Passaic and State of New Jersey. On that date I left the City of Paterson, County of Passaic and State of New Jersey for Athens, Greece, where I have resided until the present time. I returned to this country on Thursday, April 5, 1934, for the sole purpose of defending

the suits instituted against me by my wife, Marie P. Adams, who left Greece on or about November 30, 1933 after I discovered that she had committed adultery with one Thomas Loukopoulou, the manager of the Hotel Pighai located at Ypati, Greece, and I had advised her of my intention to procure a divorce because of her unfaithful conduct. I have taken temporary quarters in the City of New York. It is my intention to remain in this country until the actions instituted by my wife against me have been concluded.

* * * * *

(Signed) PETER A. ADAMS.

Subscribed and sworn to before me
this 30th day of April, 1934.
(Signed) Samuel L. Frank,
Attorney at Law
of New Jersey.

# New Jersey Court of Errors and Appeals

| | |
|---|---|
| MARIE P. ADAMS,<br>Complainant-Appellee,<br><br>vs.<br><br>PETER A. ADAMS,<br>Defendant-Appellant. | On Bill for Maintenance.<br><br>On Appeal from Chancery. |

## BRIEF OF DEFENDANT-APPELLANT.

### Facts.

The above case arises out of a bill for maintenance filed by Marie P. Adams, complainant, against Peter A. Adams, defendant. The appeal in this matter is taken by Peter A. Adams, defendant-appellant, from an interlocutory order of the Court of Chancery on the advice of Advisory Master Stafford made on May 23rd, 1938, advising the appointment of a receiver of the goods and assets of the defendant-appellant and restraining the defendant-appellant from selling or assigning his goods and assets. The bill for maintenance was filed in July, 1936, alleging separation and refusal to properly maintain. In addition, the bill contains a cause of action to annul a foreign decree of divorce obtained by the defendant-appellant and a cause of action for arrearages due on an alleged agreement between husband and wife.

This is the second maintenance suit brought by the wife against the husband. The first suit was

settled by the resumption of marital relations (p. 13). The first maintenance suit followed a Grecian divorce secured by the husband against the wife as a result of the wife's adultery with one Thomas Loukopoulou, the manager of the Hotel Phighi, located at Ypati, Greece (p. 49). After the parties resumed cohabitation, the defendant-appellant gave his wife her present home, worth $35,000.00, free and clear, and presented to her a $25,000.00 life insurance policy on his life (p. 42).

The defendant-appellant, Peter A. Adams, has made his home in New Jersey for thirty-five years (p. 41). His principal holdings consist of real estate in the City of Paterson (p. 41). He is suffering from angina pectoris and coronary disease requiring absolute quiet on his part. It has been the advice of his physicians that he spend the winter months in a warm climate inasmuch as the cold of northern winters is extremely distressing to his heart condition (p. 43).

Accordingly, of recent years defendant has been spending the winters in Florida (p. 44), where he has been visited by his boys (p. 39).

On December 23rd, 1936, the court ordered the defendant-appellant to pay to his wife the sum of $200.00 per week as and for temporary maintenance until the further order of the court. Since the entry of the said order of December 23, 1936, the defendant-appellant has paid this amount faithfully to his wife. On April 16, 1938, complainant-appellee filed a petition in this cause praying, among other things, for an order enjoining the defendant-appellant from transferring his property of any kind and further for an order appointing a receiver to take possession and manage the property of the defendant-appellant (pp. 9 to 17). The allegations on which the petition was made were that on occasions more than a year before the filing of the petition the defend-

ant-appellant had stated to unknown persons that he intended to dispose of his holdings and flee the jurisdiction of the court, and further that the complainant-appellee believed that he would do so because a year previous she saw some business associates of her husband's with portfolios coming out of the defendant-appellant's office, from which she deduced that her husband was disposing of his holdings to said business associates. These allegations were expressly denied by defendant-appellant.

On April 22, 1938, argument was had on the petition, and order was entered continuing hearing on the same until May 6th for the purpose of permitting the filing of additional affidavits. On the filing of the petition, the defendant-appellant came to Paterson and was present at the time of the hearing on May 6th (p. 39). On May 23rd, 1938, the court made the order which is the subject matter of this appeal (pp. 4, 5 and 6), which said order enjoined and restrained the defendant-appellant from selling, pledging, assigning, encumbering, transferring or disposing of any or all of his property of any description, and further ordered that all of his property of any sort be forthwith delivered by him to Edward J. O'Byrne, Esq., to be by the said Edward J. O'Byrne held as custodial receiver until the further order of the court.

This appeal is taken upon the following grounds:

1. The Court of Chancery had no power to order the appointment of a receiver of the goods and assets of the defendant-appellant and enjoin the defendant-appellant from selling or assigning his goods and assets.

2. The Court should not have ordered the ap-

pointment of a receiver, as the complainant-appellee could have been equally protected by an order directing the defendant-appellant to give reasonable security for his compliance with the order of the court touching temporary maintenance, had the complainant-appellee exhibited a proper case for relief.

3. There was not sufficient evidence presented to the court warranting the appointment of a receiver and the issuing of an injunction.

4. The order of May 23, 1938, is improper as entered and will work oppression on petitioner.

## THE LAW.

### POINT 1.

**The Court of Chancery had no power to order the appointment of a receiver of the goods and assets of the defendant-appellant and enjoin the defendant-appellant from selling or assigning his goods and assets.**

It is well settled in this state that the power of the Court of Chancery in matters concerning maintenance is purely statutory. *Biddle* v. *Biddle*, 104 E. 313 (Chancery), *Baumgarten* v. *Baumgarten*, 107 E. 274. 279 (Chancery). In the *Biddle* case the court said:

> "The jurisdiction of the Court of Chancery in matters of alimony is purely statutory. By Section 25 of our Divorce Act (2 Comp. Stat. 2035) alimony may be awarded either pending a suit for divorce or nullity of marriage or after a decree of divorce. By the following section of the act (Section 26), in a suit for maintenance alimony may

be ordered paid by a husband to his wife in case the husband, without justifiable cause, shall abandon his wife or separate himself from her, and refuse or neglect to maintain and provide for her. *The latter section (section 26) is understood to be the only source of power of the Court of Chancery to decree the payment of alimony except as an incident to a suit for divorce or nullity of marriage. Yule* v. *Yule,* 10 N. J. Eq. 138, 144; *Rockwell* v. *Morgan,* 13 N. J. Eq. 119, 121; *Anshutz* v. *Anshutz,* 16 N. J. Eq. 162, 165. It is said that no English court enjoyed the power conferred by section 26 except as an incident of a suit for divorce. *Ball* v. *Montgomery,* 2 Ves. Jr. 191, 195. That power was not conferred upon the Court of Chancery of this state in the original Divorce Act of 1794 (Pat. 143), but was first conferred by the Act of February 16th, 1820 (Rev. 667), in substantially the same language employed by our present act." (Italics ours.)

The statute granting the Court of Chancery jurisdiction in maintenance matters, formerly section 26 of our Divorce Act, is as follows:

"If a husband, without justifiable cause, shall abandon his wife or separate himself from her and refuse or neglect to maintain and provide for her, the Court of Chancery may decree and order suitable support and maintenance to be paid and provided by the husband for the wife and her children, or any of them, by their marriage, or to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court. *The court may compel the defendant to give reasonable security for such maintenance and allowance and may, from time to time, make further orders touching the same as shall be just and equitable and enforce such decree and*

> *orders in the manner mentioned in section* 2:50-37 *of this title.* (Italics ours). During the time such maintenance shall be allowed, the husband shall not be chargeable with the debts of the wife." R. S. 2:50-39.

Section 2:50-37 above mentioned (formerly section 25 of our Divorce Act above mentioned) reads as follows:

> "Pending a suit for divorce or nullity brought in this state or elsewhere, or after decree of divorce whether obtained in this state or elsewhere, the Court of Chancery may make such order touching the alimony of the wife, and also touching the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just, and require reasonable security for the due observance of such orders, and upon neglect or refusal to give such reasonable security, as shall be required, or upon default in complying with the order, may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just, or enforce the performance of the said orders by such other lawful ways and means as is usual, and according to the course and practice of the Court of Chancery; orders so made may be revised and altered by the court from time to time as circumstances may require."

It will be noted that although this latter section itself does not deal with maintenance matters but refers only to suits for divorce and nullity, still,

its provisions for enforcing decrees are incorporated by reference in the maintenance statute, R. S. 2:50-39 above quoted, as the methods for enforcing maintenance decrees. Hence, for our purpose, we may treat the provisions of this statute in reference to enforcement of decrees as though the maintenance statute specifically included these provisions.

In dealing with the construction of the maintenance statute, it should be clearly borne in mind that the same is derogatory of the common law, inasmuch as no right existed at common law for a wife to seek maintenance from a husband, other than as incident to a suit for divorce. *Biddle* v. *Biddle,* supra. Accordingly, the statute should be strictly construed. *U. S. Casualty Co.* v. *Hyrne,* 117 L. 547 (Court of Errors); *Wilentz, Att'y. Gen.* v. *Crown Laundry Service, Inc., et al.,* 116 E. 40 (Chancery).

As noted, the statute provides that the Court of Chancery is given power to enforce maintenance decrees "*in the manner mentioned in section 2:50-37.*" Section 2:50-37 provides that the court, in enforcing its orders, may "*require reasonable security for the due observance of such orders and upon neglect or refusal to give such reasonable security, as shall be required, or upon default in complying with the order, may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just, or enforce the performance of the said orders by such other lawful ways and means*

*as is usual, and according to the course and practice of the Court of Chancery.''* (Italics ours). Now, nowhere in the statute is there given to the court power to appoint a receiver for or enjoin a *resident* husband. The power given in the statute for sequestration is for use only in case the husband is absent from the jurisdiction of the court, as is made clear in our Sequestration act, R. S. 2:29-88, in which it is specifically limited to those cases where the defendant is outside of the jurisdiction of the state. In all cases in New Jersey in which a receiver has been appointed for the goods and assets of a husband, the husband has been absent from the state and the proceeding has arisen through sequestration. As illustrative of the practice in this regard, see *DeLukacsevics* v. *DeLukacsevice,* 88 E. 210 (Chancery), in which Vice Chancellor LANE said:

> ''Pending this suit the court made an order for temporary alimony. The defendant had appeared. The order was not complied with. *The defendant left the state.* Thereupon the court, under the provisions of the twenty-sixth section of the Divorce Act of 1907 issued its writ of sequestration under which the sheriff took in his possession two automobiles and certain other personal property of the defendant and entered upon real estate of the defendant and sequestered the rents and profits. Thereafter a receiver was appointed who superseded the sheriff * * *.'' (Italics ours.)

So that it is clear that there is no specific relief given in the statute justifying the appointment of the receiver and the issuance of the injunction in regard to this appellant, a resident of the State of New Jersey. It will be urged by complainant-appellee, however, that such authority is given by the general clause which provides that the court may *''enforce the performance of the said orders*

*by such other lawful ways and means as is usual, and according to the course and practice of the Court of Chancery.''* Suffice it to say, in this connection, that this case is one of novel impression in this state, the full research of counsel having failed to uncover one case in a maintenance matter in which a receiver has been appointed and an injunction issued in regard to the property of a resident husband. This being the case, it cannot be said that the method used in this case of enforcing performance of the order of the Court of Chancery is usual and according to the course and practice of that court.

However, assuming for the purpose of argument that the Court of Chancery has the authority to appoint a receiver for a resident husband in maintenance proceedings under the general clause in the statute as above referred to, R. S. 2:50-37, the statute specifically provides that the court may take affirmative steps to enforce the performance of an order of maintenance *only upon the defendant's neglect or refusal to give security as required by a previous order of the court or on default in complying with the order for maintenance.* In this case, the court at no time required or ordered the defendant-appellant to give security for the performance of the order for temporary maintenance. Hence there could be no neglect or refusal on the part of the defendant-appellant to give reasonable security. Nor was there any default of the defendant-appellant in complying with the order, the defendant-appellant having faithfully paid to complainant-appellee the sum of $200.00 weekly since the making of the said order. So that the court clearly erred in ordering other relief in the absence of either of these two jurisdictional factors. As referred to above, the statute for maintenance, together with its incorporated provisions in R. S. 2:50-37, is in

derogation of the common law and must be strictly construed. It is submitted that the wording of the statue is clear in requiring the court to first order security before proceeding to other relief. However, if the statute is susceptible of any other meaning, this court should, applying the rule of strict interpretation, construe the statute in the most favorable light to the person whose common law rights have been affected thereby—in this case, the defendant-appellant.

## POINT 2.

**The Court should not have ordered the appointment of a receiver, as the complainant-appellee could have been equally protected by an order directing the defendant-appellant to give reasonable security for his compliance with the order of the Court touching temporary maintenance, had the complainant-appellee exhibited a proper case for relief.**

The power to appoint a receiver and to enjoin a party from the free use of his property has always been exercised by the Court of Chancery with great hesitation. It has long been fundamental in our State that "*there is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, and is more dangerous in a doubtful case, than the issuance of an injunction. A fortiore, the appointment of a receiver.*" *Auburn Button Works* v. *Perryman,* 107 E. 554 (Chancery).

As is said in 53 *Corpus Juris,* page 36, section 21:

> "A receiver should be appointed only when the court is satisfied that the appoint-

ment will promote the interests of one or both parties, and not where no benefit or advantage is to be gained from the appointment; the court is not authorized to make an appointment merely because it can or will do no harm. Also, an appointment of a receiver should not be made where no injury will result from its refusal; it should be made only to prevent manifest wrong imminently impending, and where the court is satisfied that there is imminent danger of loss, and that, without a receivership, the interests of the parties or some of them will be jeopardized, and that the petitioning party will suffer irreparable loss or injury. Moreover, a receivership will not be granted where the injury resulting therefrom would probably be greater than the injury sought to be averted or the injury ensuing from leaving the possession of the property undisturbed. The interests of, and consequences to, all of the parties should be considered; and the power to appoint a receiver should not be exercised when it is likely to produce irreparable injustice or injury to private rights, or to the rights of all parties interested, or where the facts demonstrate that the appointment will imperil the interests of others whose rights are entitled to as much consideration from the court as those of complainant. The Chancellor should so mold his order that while favoring one, injustice is not done to another, and if this cannot be accomplished the application should ordinarily be denied.''

Keeping the above principles in mind, our Court of Chancery has always refused to appoint a receiver where other less harsh remedies are available. This principle was early established in the Court of Chancery in the case of *Low* v. *Holmes,* 17 E. 148 (Chancery). That case arose upon a bill for partition of chattels by a tenant against his co-tenant and for the appointment of a receiv-

er pending the suit. The Court, in determining the question as to whether or not a receiver should be appointed, said as follows:

> "All that the complainant can fairly require, is security for the rent of the property, including compensation for its deterioration or destruction by use. Upon the facts charged in the bill, this is clearly necessary for the protection of the complainant's rights. And it is proper to require it when the appointment of the receiver is denied. *Street* v. *Anderton,* 4 Bro. Chan. R. 414. *If this security is given, there is no necessity for a receiver.*" (Italics ours).
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> * * *
>
> "It will be ordered, that the defendant, Holmes, within ten days from the service of a copy of the order, give bond, with security, to the complainant, to account for and pay over the one half of the value of the rents and profits of the property, the bond to be approved by one of the special masters of the court; and on failure of the defendant to give such bond, then that an injunction issue to restrain him from the further use of the property, and that a receiver be appointed."

In *Holmes* v. *Holmes,* 29 E. 9 (Chancery), the question arose as to whether or not the Chancellor should appoint a receiver for the assets of a husband after divorce on the ground that he had left the state and was not subject to the jurisdiction of the court. Even though the court charged the alimony payments on the defendant's real property, it refused to appoint a receiver, provided the defendant give satisfactory security. In this regard the court said, at page 12:

> "The alimony and the other payments hereby directed to be made will be charged on the defendant's real property. He has

> ceased to reside in this state, and has not only left the interest on the encumbrances on the property unpaid, but also the taxes. There will be a receiver unless he shall give satisfactory security for the payment of the taxes and the interest due on the mortgages, and costs and execution fees in the foreclosure suits, in twenty days from the filing of the decree which may be made on this decision." (Italics ours.)

And Pomeroy, in his "Equity Jurisprudence," section 1331, says:

> "The appointment of a receiver is, as a general rule, discretionary. The discretion is not arbitrary or absolute; it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of promoting the ends of justice, and of protecting the rights of all of the parties interested in the controversy and the subject matter, and *based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding.*" (Italics ours.)

In 53 *Corpus Juris* 25, paragraph 10, the general rule is set forth as follows:

> "A receiver will not be appointed where there is another safe, expedient, adequate, and less drastic remedy at law or in equity, * * *."

Accordingly, apart from the court's lack of jurisdiction to make the order appealed from in this case in accordance with the maintenance statute, the Court of Chancery should not have ordered the receiver of the defendant-appellant and issued the injunction, as these harsh and extraordinary remedies could have been avoided and equal protection given by ordering the defendant-appellant to

furnish security for the payment of maintenance. This, of course, is provided that the evidence offered by the complainant-appellee warranted any relief, which is denied.

That the defendant-appellant is greatly prejudiced and injured thereby is beyond question, in these days of shifting change and economic instability, when constant personal surveillance is necessary for the preservation of capital assets.

## POINT 3.

**There was not sufficient evidence presented to the Court warranting the appointment of a receiver and the issuing of an injunction.**

Even if it be assumed that the court had power to appoint a Receiver and issue an injunction there was not sufficient evidence presented to the court warranting this relief. The appointment of a receiver should not be made and injunction issued unless there be a well-grounded apprehension of injury about to be done. *Kean* v. *Colt, et al.*, 5 E. 365 (Chancery). In that case the court said, at page 379:

> "To authorize an injunction and the appointment of a receiver, there must be a well-grounded apprehension of injury about to be done. I see no sufficient cause of present alarm to demand the interposition of the court. The misconduct alleged in the bill occurred, if at all, several years since; too long since to be the ground of apprehension of impending mischief. No act is stated as now threatened, or misapplication of funds as about to be made."

In this case there was no evidence produced by the complainant-appellee constituting proper grounds for the appointment of a receiver or the issuance of injunction. In the complainant-appellee's affidavit on which the petition for receiver and injunction was based (pp. 17-23), only paragraphs 14, 15 and 16 deal with subject-matter touching upon this relief. In paragraph 14 the complainant-appellee states that since the entry of the order of December 23rd, 1936, her husband has stated on many occasions that he intends to return to Greece after he has completed disposing of his holdings. The affidavit here is vague and uncertain as to time and place, and neglects to state as to whom the said statements of the husband were made. Paragraph 15 refers to an alleged occurrence taking place fourteen months prior to the date of the affidavit, to the effect that affiant saw five men coming out of her husband's office in the U. S. Theatre at Paterson, and recognized two of the men as business associates of her husband. As a result of this, the affiant concluded in her affidavit that the defendant-appellant intends to dispose of any interest he might have in the U. S. Theatre and flee the jurisdiction of the court. It is submitted that the evidence in this paragraph is entirely improper, in that it merely sets forth a wild conclusion of the affiant. In paragraph 16 the affiant airs her opinion to the effect that the defendant is concealing himself and intends to remain without the jurisdiction of the court to avoid the purposes of her bill. In the latter part of paragraph 16 the defendant-appellant's brother is vaguely accused of disposing of defendant-appellant's property under an alleged power of attorney. This, too, is a baseless assumption of the affiant and is substantiated by no degree of proof whatsoever.

On the hearing concerning the application for a receiver and injunction, etc., which hearing took place on April 22nd, 1938, and after argument by counsel, the court continued the same until May 6, 1938, and leave was given to complainant-appellee to file additional affidavits. Two affidavits were filed—one by the complainant-appellee and one by John F. Leonard, associated with Collins & Corbin, her solicitors. The only paragraph in the complainant-appellee's supplementary affidavit (pp. 32-35) which bears on the appointment of a receiver, etc., was paragraph 4, as follows:

> "4. I have not seen my husband to speak to since he returned to my home in June, 1936, when he stayed for about two weeks, after having been away previously for some six months, and on his return in June of 1936, on the few occasions that he spoke to me, he was emphatic in his statements to me that he was winding up his business affairs; that he had made up his mind that he was not going to live with me; and furthere, he intended to make his permanent residence in Greece after he had wound up his affairs. In view of the past actions of his brother, Adam A. Adams, in taking an active part in the management of my husband's affairs when I had my previous suit pending in this Court, along with the fact that this brother, Adam A. Adams, had a power of attorney to dispose of my husband's holdings, etc., and with the further fact that Adam A. Adams has stated on many occasions that he wants to sever all relations with his brother, Peter, I have every reason to believe that with the delay in permitting the books to be examined in this case, my husband and his brother are working out a scheme whereby I will not obtain the relief for me and my children in this Court as asked for by me in my suit."

It should be noted that in paragraph 4 the complainant-appellee states that she has not seen her husband since June, 1936 (the affidavit being made on April 30, 1938), and that on or about that time he told her that he was winding up his business, and because Adam A. Adams, the brother of defendant-appellant, is said to have stated that he wants to sever all relations with the defendant-appellant the affiant says she has every reason to believe that a scheme is being worked out which will end in her being deprived of any relief. In the first place, the alleged threats in this particular paragraph were made in June, 1936, and cannot be evidential in April, 1938, *Kean* v. *Colt,* supra. In the second place, the rest of the said paragraph contains no proof whatsoever as to the present intention of the defendant-appellant to defeat the jurisdiction of the court.

That the complainant-appellee was desperate for evidence to bolster up her accusations against her husband in order to obtain the appointment of a receiver for his property, can be seen by the affidavit of John F. Leonard, associated with Collins & Corbin, her solicitors (pp. 36, 37). If there were any possible evidence available for the complainant-appellee to prove her case, she would have used the same and her solicitors would not have placed themselves in the unusual position of testifying in their client's case. On reading over the affidavit of John F. Leonard it can be seen that the same consists entirely of hearsay which is not binding on this defendant-appellant and in finality proves nothing. An example of the total ineffectiveness of this affidavit is shown by one of its main points, which is that Adam Adams, the brother of Peter A. Adams, the defendant-appellant, stated to the said John F. Leonard that the said Peter A. Adams was at one time ill and

went to Greece and became well again and because of the climate the defendant-appellant should reside in Greece for his health. On such affidavits the complainant-appellee based her cause for relief. In a last effort to induce the Court of Chancery to appoint a receiver and issue an injunction, the complainant-appellee offered an affidavit made by the defendant-appellant in the year 1934 during a previous maintenance suit between the parties, wherein defendant-appellant indicated that he was a native of the Republic of Greece and intended to return to Greece at the conclusion of the hearings in that matter (p. 48). It is submitted that this affidavit has no bearing whatsoever in the present controversy, and certainly is not evidential as indicating a present intention of the defendant-appellant to leave the jurisdiction of the court, under the rule of *Kean* v. *Colt,* supra, inasmuch as the same was made in the year 1934 and the defendant was still in the jurisdiction of the court at the time of the hearing of this matter, four years later.

On the other hand, the very presence of the defendant-appellant at the hearing in this matter refuted his wife's accusations that he intended to flee the jurisdiction of the court and return to Greece and otherwise render any decree of the court without effect. Moreover, it is undisputed that the defendant-appellant has faithfully paid to his wife weekly the sum of $200.00 temporary maintenance ordered by this court under date of December 23, 1936. There was no allegation in the wife's affidavit or petition that this sum of weekly temporary maintenance had not been advanced to her promptly and fully in accordance with the order of the court. The defendant, in defense of this matter, offered proof to the court that he had made his home in New Jersey for

thirty-five years and presently resides in Paterson, New Jersey, the home of the complainant-appellee (p. 39); that he is a registered voter of the County of Passaic, New Jersey (p. 39); that his health necessitates his spending the winter months in Florida (p. 38); that his wife knew his location in Florida at the time she filed her petition for appointment of receiver, etc. (p. 39); that all his friends are in New Jersey and he has no ties, no friends in Greece, save his brother, whom he has seen but twice in thirty-five years (p. 41); furthermore, he expressly denies the allegations in his wife's affidavit that he intends to liquidate his holdings and make his permanent home in Greece, and he denies that he has stated to her or to any other person any such intention (p. 41). Finally, the evidence shows that the bulk of the defendant-appellant's financial interests consists of real estate in the City of Paterson (p. 41). There was evidence also indicating the efforts of defendant-appellant to conserve his assets and remove the same as far as possible from the uncertainties of business conditions (p. 41). Accordingly, it is respectfully submitted that not only was there no evidence produced by the complainant-appellee justifying the court in granting the extreme, harsh and unusual remedies of the appointment of a receiver and issuance of an injunction, but the facts shown by the defendant-appellant in this matter indicate conclusively the lack of necessity for the appointment of receiver and issuance of injunction in this case.

## POINT 4.

**The order of May 23, 1938, is improper as entered and will work oppression on petitioner.**

The order of May 23rd orders that "*all of the property or assets, real or personal, choses in action, tangible or intangible,, choate or inchoate, goods, chattels, moneys, effects, rights and credits, which the said defendant, Peter A. Adams, now owns, holds, possesses, controls or which he in any capacity or in any way exercises dominion, be forthwith delivered by him to Edward J. O'Byrne, Esquire, to be by him held as custodial receiver until the further order and direction of the Court in the premises;* * *." (p. 4). In short; the defendant-appellant was ordered to turn over everything he possessed in this world to the receiver. There was no provision in the order, however, relieving the defendant-appellant from paying to his wife the sum of $200.00 a week ordered by the court under date of December 23, 1936. Nor was there any provision in the order requiring the receiver to pay the said amount of temporary maintenance in the place and stead of the defendant-appellant. Therefore, the Court of Chancery, by this order, placed the defendant-appellant in a position where he was unable to comply with the previous order of the court for temporary maintenance, inasmuch as the order of May 23, 1938, stripped him of all his assets. The inconsistency and lack of equity of such an order is apparent.

Furthermore, even though the order of May 23, 1938, provides that all assets of any description be turned over by the defendant-appellant to

the receiver, there is no provision in the order for the living expenses of the defendant-appellant. The purport of this order is to deprive the defendant-appellant of every possible asset, leaving him in effect a pauper and without monies to provide himself with food and shelter. It is submitted that such an order is manifestly unjust, harsh and oppressive, and the court erred in the making thereof.

## Conclusion.

The order of May 23, 1938, appointing a receiver of and enjoining defendant-appellant from transferring his goods and assets, was clearly erroneous in that:

1. The Court of Chancery had no power to order the appointment of a receiver of the goods and assets of the defendant-appellant and enjoin the defendant-appellant from selling or assigning his goods and assets.

2. The Court should not have ordered the appointment of a receiver, as the complainant-appellee could have been equally protected by an order directing the defendant-appellant to give reasonable security for his compliance with the order of the court touching temporary maintenance, had the complainant-appellee exhibited a proper case for relief.

3. There was not sufficient evidence presented to the court warranting the appointment of a receiver and the issuing of an injunction.

4. The order of May 23, 1938, is improper as entered and will work oppression on petitioner.

The defendant-appellant respectfully urges this Court to reverse and set aside the order made by the Court of Chancery above recited, and to remit the record to the Court of Chancery with direction to dismiss the petition filed by the said complainant-appellee against the defendant-appellant on which the said order was based. It is respectfully suggested that the Court of Chancery be specifically directed to require security of the defendant-appellant before resort to other relief in the future, provided the necessity for such security is properly shown by the complainant-appellee.

EVANS, SMITH AND EVANS,
Solicitors for and of Counsel
with Defendant-Appellant.

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# New Jersey Court of Errors and Appeals

Between

MARIE P. ADAMS,
*Complainant-Appellee,*

*and*

PETER A. ADAMS,
*Defendant-Appellant.*

On Bill, Etc.
On Appeal from the Court of Chancery.

## BRIEF FOR APPELLEE.

### (1)

***Statement of the Case.***

This appeal brings before this Court for review an interlocutory order entered on May 23, 1938, in the Court of Chancery, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, upon the advice of the Honorable Bernard L. Stafford, Advisory Master, whereby the defendant-appellant (hereinafter referred to as the "defendant") was ordered to turn his holdings over to a custodial receiver until the further order and direction of that Court, and also restraining the defendant, his agents, servants, attorneys, solicitors, and assigns, from disposing of any of his property. This order resulted from an application made by the defendant's wife, the complainant-appellee (hereinafter referred to as the

"complainant"), which application was a step in the cause to preserve the subject matter incident to the marital *res* before the Court below. The bill of complaint out of which arose this order from which the appeal has been taken, contains causes of action for maintenance, to have the defendant set aside his foreign decree for divorce obtained in the Grecian Courts, and for arrearages due under an agreement between the respective parties, and has been pending in the Court of Chancery since July 15, 1936.

The defendant's state of case before this Court on this appeal does not contain the pleadings and proof as called for by this Court's Rule 21, which pleadings and proof were before the Chancery Court below (see the order appealed from reading as follows, p. 5, ll. 27-32):

> "* * * it further appearing that on May 20, 1938, *the Court, having considered the proofs and the record* and further argument of counsel, and *good cause having been shown by the record and the petition and affidavits* filed in this cause why the complainant is entitled to relief in the premises; * * *" (Italics ours).

In accordance with this Court's Rule 22, the complainant served her notice of objections upon the defendant's solicitors one day (September 29, 1938) after the defendant's state of case was served (September 28, 1938) upon complainant's solicitors. In view of the incompleteness of the defendant's state of case, the complainant has before this Court, on the opening day of the October Term, 1938, a motion to dismiss this appeal, or in the alternative, that an order be made that the defendant submit a supplemental state of case containing the omitted pleadings, proofs and record, or pay for the printing of the said sup-

plemental state of case. There has been omitted from the defendant's state of case the colloquy that took place in open court between Honorable Advisory Master Stafford and counsel of the respective parties on May 20, 1938, at which time the order appealed from was made, and as it appears most important that this Court should have this colloquy, which appears between pages 1 and 22 of the transcript which Honorable Advisory Master Stafford ordered the defendant to produce for the complainant's use, we are affixing it at the end of this brief.

Complainant's petition and supporting affidavits reveal: On March 22, 1933, the defendant, in company with the complainant and the children of their marriage, left their home at 540 Fifteenth Avenue, in the City of Paterson, for a trip to Europe, and while on that trip the defendant deserted the complainant at Athens, Greece, for the purpose of establishing a residence at Athens, Greece, whereon to base an application for divorce from the complainant (p. 12, ll. 9-18; p. 20, ll. 3-9). Toward the end of November, 1933, the complainant left Athens, Greece, for the United States, arriving in the middle of December, 1933, and thereafter taking up residence at her home, 540 Fifteenth Avenue, in the City of Paterson, where she has ever since resided (p. 12, ll. 19-24; p. 20, ll. 10-15). Suit for divorce in the Court of First Instance, Athens, Greece (see Exhibit "A" attached to Amended Bill), was instituted by the defendant on December 1, 1933, at which time the complainant was on her way back to the United States, and the summons and suit papers were never served upon the complainant, nor did she have notice that the suit for divorce was instituted (p. 12, ll. 25-32; p. 20, ll. 16-23). On the sixth

day of January, 1934, complainant instituted a suit for maintenance, and on January 10, 1934, an order for a writ of sequestration was made, and subsequently amended on January 15, 1934, and on the twenty-third day of June, 1934, the defendant filed an answer to the effect that he had obtained a decree of divorce from the Court of First Instance at Athens, Greece. On the thirty-first day of October, 1934, complainant petitioned the Court of Chancery and obtained an order permitting her to file a special replication to the defendant's answer, setting up facts to show that the defendant had procured the said decree of divorce fraudulently (p. 12, ll. 33-40; p. 13, ll. 3-8; p. 20, ll. 24-37). From the thirty-first day of October, 1934, to the twenty-fifth day of April, 1935, several hearings were had before Advisory Master Stanton, to whom the matter had been referred, and on the said twenty-fifth day of April, 1935, the defendant returned to live with complainant at No. 540 Fifteenth Avenue, in the City of Paterson, County of Passaic, and State of New Jersey (p. 13, ll. 9-16; p. 20, ll. 38-40; p. 21, ll. 3-7). On April 29, 1935, complainant petitioned the Court of Chancery to dismiss the bill of complaint relating to her maintenance and custody of her children and also to discharge the writ of sequestration, and that the defendant's property seized by the sequestrator be released and returned to him because her marital difficulties with the defendant had been settled. On the twenty-ninth day of April, 1935, a decree in conformity with complainant's petition was made and filed in the Court of Chancery (p. 13, ll. 16-26; p. 21, ll. 8-17). Complainant and defendant resumed cohabitation at their home, No. 540 Fifteenth Avenue, in the City of Paterson, from the twenty-

fifth day of April, 1935, until the first day of December, 1935, when the defendant left his home and traveled through various sections of the United States, returning to his home on June 6, 1936, where he stayed until June 20, 1936, and since that time the defendant has never returned (p. 13, ll. 27-36; p. 21, ll. 18-26). Complainant recently filed her amended bill, which contained a cause of action for maintenance against her husband, Peter A. Adams; a cause of action to annul the foreign decree for divorce obtained by her said husband; and a cause of action for arrearages due under the terms of an agreement. Complainant alleges therein that said defendant did, without justifiable cause, separate himself from her between December 1, 1935, and June 6, 1936, and from June 20, 1936, up to the present time; that the defendant refuses and neglects to properly maintain and provide for her and the children of the marriage in her custody in accordance with the requirements of the statute, and since the separation the said defendant refuses and neglects to provide support for her and the said children suitable to his income, means, and ability to support them, and that the amount provided by the defendant for her and the children is not such as the nature of the case and the circumstances of the parties render suitable and proper in order to enable her and the said children to live in the same style in which they were accustomed to live when the complainant and defendant were cohabiting; that the decree of divorce from the Court of First Instance, at Athens, Greece, copy of which is attached to the said amended bill and made a part thereof, was obtained by fraud and suppression of the truth; and that the defendant be ordered and decreed to pay

to her the sum of Two Thousand and One Dollars ($2,001), which sum constitutes the arrearages due under the terms of the agreement made on April 25, 1935 (p. 9, ll. 22-40; p. 10, ll. 3-18; p. 17, ll. 20-40; p. 18, ll. 3-17). Process of subpoena has been served upon the defendant, and he has filed an amended answer to said amended bill (p. 10, ll. 19-21; p. 18, ll. 18-21). Charges made in complainant's bill against the defendant are true, as she is ready to maintain and prove. A case for relief has been made out. In paragraph 10 of the defense to the first cause of action, the defendant admits that he left the complainant, and in the second paragraph of defendant's affidavit filed in opposition to complainant's application for alimony, etc. *pendente lite,* the defendant also admits therein that he left the complainant. Therefore, one issue is that the maintenance should be suitable to defendant's income, means, and ability to support the complainant and her children and as the nature of the case and the circumstances of the parties render suitable and proper in order to enable the complainant and the children to live in the same style in which they were accustomed to live when the defendant resided with them (p. 10, ll. 22-40; p. 18, ll. 22-38). On February 11, 1938, notice of motion relative to an application that the complainant have an inspection and copy, or permission to take a copy, of any books, letters, papers, or documents in the defendant's possession, or under his control and power, wherein there were facts upon which the complainant's right to relief as to maintenance was based, was served upon the solicitors of the defendant. This motion was adjourned, by order, on the return day, to wit, February 18, 1938, upon the application of defendant's solicitors. Thereafter, the motion

was continued, by order, to March 4, March 18, April 1, and to April 22, 1938, upon the application of defendant's solicitors. On April 1, 1938, William W. Evans, Esquire, solicitor for defendant, in applying for another adjournment of this motion, stated in open Court that arrangements were being made to have the records, as called for by this motion, available for inspection on the following Monday, to wit, April 4, 1938 (p. 11, ll. 3-23; p. 18, ll. 39-41; p. 19, ll. 3-20). Since April 1, 1938, several endeavors have been made in behalf of the complainant to have the records available for inspection, as called for by the motion of February 18, 1938, and up to this time the several requests made in behalf of the complainant have not been complied with by the defendant (p. 11, ll. 24-30; p. 19, ll. 21-26; p. 24, ll. 30-37). Upon the defendant's return to the complainant in June, 1936, after being away for some six months, he stated to the complainant that he was winding up his business affairs; that he had made up his mind not to live with the complainant; and that he intended to make his permanent residence in Greece (p. 34, ll. 20-29). In view of the past actions of the defendant's brother, Adam A. Adams, in taking an active part in the management of the defendant's affairs when the complainant had her previous maintenance suit, along with the fact that the said Adam A. Adams had a power of attorney to dispose of the defendant's holdings, the defendant and the said Adam A. Adams were working out a scheme whereby it would be impossible for the complainant to obtain relief for herself and her children, as prayed for in her bill (p. 34, ll. 30-40; p. 35, ll. 3-6). On February 20, 1937, the complainant, while visiting the U. S. Theatre, in Paterson (owned by the defendant), saw some five men

coming out of the defendant's office in said theatre, and she recognized two men who had portfolios as officers of the Paramount Corporation of New York City. It was with the Paramount Corporation that the U. S. Theatre had a contract to show its pictures. Due to the defendant's many threats of disposing of his holdings in this State and that he intended to move to another jurisdiction where he would have the benefit of his Grecian divorce, the complainant believed that the defendant was disposing of his stock in the U. S. Theatre, wherein he was the principal owner and holder of said stock. While the complainant did not know the whereabouts of the defendant at the time, she had every reason to believe that he was concealing himself (p. 14, ll. 12-39; p. 21, ll. 39-40; p. 22, ll. 3-26). Many endeavors had been made in behalf of the complainant to examine the defendant's books and records in conformity with an application pending before the Court below, but all the endeavors had been to no avail. The defendant did everything possible to prevent his records and books from being examined, and the reason for this action was within his knowledge. In view of the attitude of the defendant and the obstacles he put in the way of the complainant as to examining his records, the hearing on the bill had been delayed for about a year (p. 15, ll. 15-26; p. 23, ll. 3-12; p. 25, ll. 12-16; p. 34, ll. 3-13). On the afternoon of March 31, 1938, the defendant's brother, Adam A. Adams, appeared at the office of the complainant's solicitors, Collins & Corbin, 1 Exchange Place, Jersey City, New Jersey, along with his accountant, Andrew C. Angelson, his lawyer, H. Edward Toner, and the lawyers of the defendant, to wit, William W. Evans and John W. Hand, and they conferred with John F. Leonard, associated with the complainant's so-

licitors, Collins & Corbin, relative to arrangements for the examination of the defendant's records and other records pertaining to the defendant's financial status. This conference was arranged by Mr. Evans, the defendant's solicitor. At this conference, Adam A. Adams went into great detail as to the various incidents of his life since he came to this country from Greece in the early part of 1900, and he finally stated that in view of the difficulties of his brother, the defendant, he was going to sever all business connections with him, and that the defendant had two courses to pursue, either to sell out to him or to the Paramount Pictures Corporations, with whom they had a contract wherein provisions were made for the sale of this interest. Adam A. Adams further stated that if the complainant insisted upon pursuing her suit to a final hearing the various salaries of the defendant would come to an end, and that since he (Adam A. Adams) was at one time ill and went to Greece and became well again, in his opinion the defendant should reside in Greece for his health because of the climate (p. 36, ll. 21-40; p. 37, ll. 3-15). In an affidavit sworn and subscribed by the defendant on April 30, 1934, and filed in the Chancery Court on June 11, 1934, in the suit between the complainant and defendant, the defendant stated that he was a native of the Republic of Greece, but for many years up until March 22, 1933, he resided at 540 Fifteenth Avenue, in the City of Paterson, and on that date he left the City of Paterson, for Athens, Greece, where he resided up to the time of this affidavit. He returned to the United States on Thursday, April 5, 1934, for the sole purpose of defending the suits instituted against him by his wife, who left Greece on or about November 30, 1933, after he discovered that she had com-

mitted adultery with Thomas Loukopoulou, the manager of the Hotel Pighai, located at Ypati, Greece. He had advised the complainant of his intention to procure a divorce and he had taken temporary quarters in the City of New York, as it was his intention to remain in the United States until the actions instituted by his wife against him had been concluded (p. 48, ll. 30-40; p. 49, ll. 3-13).

The defendant's affidavit and the affidavit of his solicitor, William W. Evans, reveal that due to defendant's heart condition, and on the advice of his physician, he spent the entire winters of 1935, 1936, and 1937 in Florida, leaving with the first cold weather in November and returning in April or May. On returning home during these years, he found that his condition would not permit his active attendance to his duties, so, on the advice of his physician, and taking into account his own experience with his heart condition, he practically did not work during the summer months (p. 44, ll. 7-16; p. 43, ll. 25-35; p. 38, ll. 37-40; p. 26, ll. 29-36). The defendant denies that he intends to liquidate his holdings and make his permanent residence in Greece (p. 41, ll. 7-11). Defendant had absolutely no business dealings or connections with his brother, Adam A. Adams, nor had Adam A. Adams any power of attorney to dispose of any of his holdings (p. 41, ll. 39-41). On April 5, 1938, the defendant received from the Essex Amusement Corporation a letter addressed to him in Florida, stating that at a board of directors' meeting of the Essex Amusement Corporation the attention of the members of the board was called to the defendant's continuous absence from his duties, and the letter further stated that unless the defendant resumed his duties on or before April 15, 1938, his services would be terminated and his salary of $15,000 discontinued as of that date. Defendant immediately consulted his Florida physician, who advised him that he should give up

all his business activities, and thereafter the defendant advised the Essex Amusement Corporation that his health would not permit him to resume his duties as manager of the U. S. Theatre in Paterson, and, as a result, his salary of $15,000 per year was discontinued as of April 15, 1938 (p. 44, ll. 23-40; p. 45, ll. 3-10). When it became certain that the defendant's salary of $15,000 in the Essex Amusement Corporation was to be discontinued, the defendant, considering the restrictions on his ownership of stock in the said Essex Amusement Corporation along with the general uncertainty of the moving picture business at the time, offered his holdings in the Essex Amusement Corporation for sale to his brother, Adam A. Adams, and on April 19, 1938, the said Adam A. Adams accepted the defendant's offer, and paid the defendant $50,197.74 for said stock (p. 46, ll. 15-33). The complainant had requested of the defendant the inspection of books and documents of corporations in which the defendant had no financial interest of any sort, and none of the requested books and documents were in the possession and under the control of the defendant. The defendant and his solicitor have endeavored to meet every demand made upon them by the complainant and her solicitors, and conferences in conjunction therewith have consumed weeks of time, because of the reluctance of the parties in possession of the books to accede to the requests of the complainant, which necessitated the numerous adjournments stressed by the complainant in her application. After discussing the matter of inspection at great length, both with such parties individually and with their counsel, the defendant and his solicitor had finally persuaded them to permit of such examination being made, and the records were now available to Mr. Burke (p. 27, ll. 37-40; p. 28, ll. 3-20; p. 40, ll. 10-34).

## (2)

### *Prefatory Remarks.*

As the matter before this Court is an appeal from an order and it was a step in the cause to preserve the assets of the defendants so that the decree of the Court of Chancery could not be evaded by the defendant, we respectfully submit that if the whole record and all the proofs in this cause pending in the Court below since July 15, 1936, were before this Court, as they were before the Court below, then this Court would have the facts, which would show how the defendant deliberately delayed, by every device and excuse, the hearing, for over a year, so that the complainant could not have an examination of his books and records in order for the complainant to offer proof as to his earning power. The whole record and all the proofs would also show that in March, 1937, the Court below allowed the complainant a rule to show cause why the relief which was later granted by the order now on appeal in this Court should not be granted, and as there was no definite proof that the defendant was transferring his property, the Court below denied the complainant's application with the right to renew the same. The records and proofs would further show that it was not until the defendant submitted voluntarily to the complainant his own accountant's report, which he insisted that the complainant submit at the hearing as the basis for her proof as to his earning power, that it was revealed that within several weeks after the defendant returned to live with the complainant, after the previous maintenance suit, he made a transfer to his brother of all his interest in the Newark Theatre, which interest

was ownership in fee, for his brother's interest in the Paterson Theatre, which interest was a leasehold, so that, with the defendant having knowledge that the complainant had previously endeavored to obtain relief from the Court below to prevent his making transfers of his property, and with the moving papers of the second application now before this Court, having been served upon the defendant on April 16, 1938, he transferred, on April 19, 1938, his interest in the Essex Amusement Company for $50,000, which interest had brought him in an income for the year 1937 of $31,000, and also, his salary of $10,000 a year in the U. S. Theatre Company, in which he was the sole owner of the stock, was cut by him to $5,000 a year. We further submit that the whole record and all the proofs would reveal to this Court, as it was revealed to the Court below, the defendant's attitude and purpose; the defendant's state of mind and intent; the defendant's fraudulent design; and the whole plan or scheme of the defendant.

*McDonald* v. *McDonald,* 110 N. J. Eq. 399, at 401;
*Kunz* v. *Mason,* 75 N. J. Eq. 16;
*Jenks* v. *Breen,* 42 N. J. Eq. 325;
*Crosby* v. *Wells,* 73 N. J. L. 790, at 807;
*Cowen* v. *Blumberg,* 69 N. J. L. 462;
*Den. Ex. Dem. Stewart* v. *Johnson,* 18 N. J. L. 87.

In *Crosby* v. *Wells,* Judge Green, speaking for the Court of Errors and Appeals, at page 807, stated:

"Fraud is complex, involving a mental state, as well as an open act. The mental

state, in turn, has usually at least three elements—knowledge, intent and design. Knowledge is the receiving of a mental impression—the state of being aware (*Wigm. Evid.*, Secs. 244, 245, 300); intent is the state of mind which precedes or accompanies an act—volition (Id. Secs. 242, 300), and design is the conceived plan or system by which the intent is to be carried out or attained (Id., Secs. 237, 300). *As this mental state can in itself be neither seen nor handled, the existence of its elements must be shown by acts of the person charged or occurrences in which he has borne some part.* Furthermore, as the logical process by which knowledge, intent or design may be inferred from acts or occurrences is inductive, we increase the probability of safe and sane inference by multiplying instances of the act or occurrence. *Hence, it becomes a sound rule, both in logic and in law, that evidence of acts similar to the one immediately under investigation may be offered for the purpose of showing the knowledge, intent or design which are elements of the fraudulent conduct.* See *Wigm. Evid.*, Secs. 300, 305, 320, 340, 344; also *Greenl. Evid.* (*Lewis' ed.*), Sec. 53, and *Tayl. Ev.* (9th Am. & Eng. ed.), Secs. 327, 338, 349." (Italics ours.)

With the whole record and all the proofs in the Court below before this Court on this appeal, it would be revealed that on April 16, 1937, this matter was referred to Honorable Advisory Master Stafford, and on May 14, 1937, an application was made in behalf of the complainant to fix the time and place for hearing; that as one issue involved the maintenance of the complainant and the four

children, which should be suitable to the defendant's income, means, and ability, Honorable Advisory Master Stafford stated that before fixing a time and place for said hearing the complainant should have the opportunity to inspect the defendant's books and records pertaining to the said defendant's financial status so that the complainant could present proof relative to the issue pertaining to maintenance; that while it was stated in behalf of the defendant, on May 14, 1937, that the books would be submitted voluntarily for inspection, and while repeated demands for said inspection were made in behalf of the complainant, the defendant never produced his records and books for such inspection; that an application was made to Honorable Advisory Master Stafford, on June 11, 1937, for said inspection, and in open Court it was stated in behalf of the defendant that the accountancy firm of James F. Welch, through its associate, John J. White, was examining the defendant's books and records in order to make a report as to the financial holdings and status of the defendant, and in view of this admission made in behalf of the defendant Advisory Master Stafford ordered that the complainant's application on June 11, 1937, would be denied with the reservation that the complainant have the right to apply, at a later date, for an examination of the defendant's financial status, by her own accountant, if the complainant were not satisfied with the report as made by the said James F. Welch Company; that during the months of June, July, August, September, and October, 1937, requests and inquiries on an average of once, and sometimes twice, a week were made of Mr. White, the defendant's accountant, and of Mr. Evans, the defendant's solicitor, for the said report, and the

said report was not submitted until a notice was served upon the defendant's solicitors, on October 25, 1937, relative to an application to be made on October 29, 1937, before Advisory Master Stafford, for an order that the report of the defendant's accountant be submitted within a time to be specified by the Court because the repeated requests and inquiries in behalf of the complainant for the said report had been unavailing; that the report was delivered on October 28, 1937, and, as there was a great difference in the report made by Mr. White, the defendant's accountant, and the report submitted by the defendant's accountant, Andrew C. Angelson, in the previous trial had between these parties some two years prior to the submission of Mr. White's report, the complainant retained Mr. Burke, an accountant, to give an opinion; that as it became necessary for Mr. Burke to make an examination of the defendant's books and records, repeated requests were made both of Mr. White and Mr. Evans, during the months of November and December, 1937, and January and February, 1938; that although many promises were made in behalf of the defendant to produce his books for Mr. Burke's examination, the said books were never produced; that, in accordance with Honorable Advisory Master Stafford's previous ruling, another application was made, on February 18, 1938, for an inspection of the defendant's books, and every two weeks counsel of the respective parties appeared before Advisory Master Stafford, during the period between February 18, and April 22, 1938, when Advisory Master Stafford finally ordered that the defendant would have to produce his books; that this application made on February 18, 1938, was continued to March 4, March 18, and April 1, 1938, and, on the defend-

ant's application for another adjournment on April 1, it was stated in his behalf in open Court that arrangements were being made to have the defendant's records available for inspection on the following Monday, to wit, April 4, 1938, but that promise was never kept; and that the appeal (*notice of appeal served June 21, 1938, the order appealed from having been entered May 23, 1938*), was taken only after Honorable Advisory Master Stafford allowed a rule to show cause to the complainant, on June 17, 1938, why the defendant should not be held in contempt for not complying with the provisions of the order now on appeal before this Court and why the defendant should not turn over his assets to the custodial receiver and the custodial receiver then comply with the provisions of the order entered December 23, 1936, relating to the maintenance of the complainant.

We respectfully submit that if the whole record and all the proofs were before this Court then it would be seen that the conduct of the defendant offended the dictates of natural justice, and under the circumstances the complainant's application was an appeal for relief to the moral sense of the Chancellor. *Kem Products Company* v. *Levin,* 117 N. J. Eq. 560, at 564. As was stated in *Weinberg* v. *Weinberg,* 118 N. J. Eq. 97, at 104, by Vice Chancellor Berry, the Chancery Court will not give its aid to the schemes developed by one, as its aim is to prevent, not encourage, wrongdoing.

It was held in the Chancery Court in *Stockton* v. *Central Railroad Company,* 15 N. J. Eq. 52, at 76:

> "It must not be thought that courts are powerless to strip off disguises that are designed to thwart the purposes of the law. The mere suggestion of such a condition is an insult to the intelligence of the judiciary.

> Whenever such disguises are made apparent they can readily be disrobed. The difficulty is in showing the disguises, not in penetrating them when they appear. *Attorney-General* v. *The Great Northern Railway Co., supra; Pennsylvania R. R. Co.* v. *Commonwealth,* 7 Atl. Rep. 268; *People* v. *Chicago Gas Trust Co.,* 130 Ill. 268; *People* v. *North River Sugar Refining Co.,* 121 N. Y. 582; *State of Ohio, ex rel. Attorney-General* v. *Standard Oil Co.,* 30 N. E. Rep. 279."

In *State* v. *Hogan,* 13 N. J. Misc. 117, at 119, affirmed 115 N. J. L. 531,

> "It is incumbent upon the courts to 'look carefully into the secret motives that might actuate bad minds to draw in and victimize the innocent.' "

## (3)

***Brief of the Argument.***

**The Court of Chancery had the jurisdiction to appoint a custodial receiver of the property and assets of the defendant and to enjoin and restrain the defendant from selling, assigning, transferring, or disposing of his property and assets, as the records and proofs in this cause pending for more than two years in the Court below reveal that the complainant was entitled to the relief as called for by the order appealed from.**

We respectfully submit that the Court of Chancery has jurisdiction of all matters and things pertaining to alimony and maintenance. *Vol. I, Revised Statutes of New Jersey,* Title 2:50-7, p. 266; Title 2:50-39, p. 270; and Title 2:50-37, p. 267:

> "2:50-7. *Jurisdiction stated.* The court of chancery shall have jurisdiction of all causes of divorce or nullity and of alimony and maintenance by this chapter directed and allowed."
>
> * * * * * *
>
> "2:50-39. *Abandonment of wife; support of wife and children.* If a husband, without justifiable cause, shall abandon his wife or separate himself from her and refuse or neglect to maintain and provide for her, the court of chancery may decree and order suitable support and maintenance to be paid and provided by the husband for the wife and her children, or any of them, by their marriage, or to be made out of his property and

for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court. The court may compel the defendant to give reasonable security for such maintenance and allowance and *may, from time to time, make further orders touching the same as shall be just and equitable and enforce such decree and orders in the manner mentioned in section 2:50-37 of this title.* During the time such maintenance shall be allowed, the husband shall not be chargeable with the debts of the wife." (Italics ours.)

* * * * * *

"2:50-37. *Alimony; custody and maintenance of children; security; failure to obey order; sequestration; receiver; modification of orders.* Pending a suit for divorce or nullity, or after decree of divorce, the court of chancery may make such order touching the alimony of the wife, and also touching the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just, and require reasonable security for the due observance of such orders, and upon neglect or refusal to give such reasonable security, as shall be required, or upon default in complying with the order, may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such ali-

mony and maintenance as to the said court shall from time to time seem reasonable and just, *or enforce the performance of the said orders by such other lawful ways and means as is usual, and according to the course and practice of the court of chancery; orders so made may be revised and altered by the court from time to time as circumstances may require.*" (Italics ours.)

Under the above statutes and the following rules of the Court of Chancery it is submitted that there was jurisdiction to restrain the defendant from disposing of his property and to appoint a receiver to take possession of the defendant's property to abide the decree so that the jurisdiction of the Court of Chancery would not be evaded.

"118. When a cause shall be specially referred to a Vice Chancellor or Advisory Master, *all proceedings in it to the final decree shall be had before him;* but this rule shall not operate to prevent applications in interlocutory matters of emergency to any member of the court available, when the Vice Chancellor or Advisory Master to whom the cause has been referred is not available." (Italics ours.)

"125. When a cause or matter is referred to a Vice Chancellor or Advisory Master, he shall proceed to hear it with all reasonable dispatch, and shall, with all convenient speed, advise the Chancellor what order or decree to make therein."

Rule 128:

"(e) In matrimonial causes, *applications for all orders* or decrees not contemplated by Rule 118 (except applications for orders of

reference under Rule 117 and for orders of publication under Rule 33) may be made to any Advisory Master, including applications for writs of *ne exeat* and *habeas corpus,* for custody of children, to punish for contempt for disobedience of orders or decrees in such causes, and to punish for criminal contempt; provided that applications to punish for criminal contempt, not committed in *facie curiae,* shall be made to and heard by an Advisory Master other than such one who advised the order or decree alleged to have been contemned. In causes not matrimonial, application for the custody of infants may be made to an Advisory Master. All such applications are hereby referred to such Advisory Master, to hear and advise orders or decrees.

"In all matrimonial causes, litigated or unlitigated, orders of reference shall be made to an Advisory Master to hear the same for the Chancellor and *to advise what orders* or decrees should be made therein." (Italics ours.)

"4. These rules shall be considered as general rules for the government of the court and the conduct of causes, and as the design of them is to facilitate business and advance justice, *they may be relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherence to them will work surprise or injustice.*" (Italics ours.)

This application was a step in the cause so as to preserve the subject matter. Where, as here, there was no doubt as to the fact that the complainant was entitled to the main relief sought in her bill, the Advisory Master had the right to grant

this order, and the hand of the Court of Chancery should not be stayed in this ancillary relief because the defendant has admitted in his affidavits that on April 19, 1938 (*three days after the service upon the defendant's solicitors of the complainant's notice, petition, and affidavits relating to this application*), he sold to his brother his holdings in the Essex Amusement Corporation (*during the year 1937, defendant received $15,000 salary and stock dividend of $16,000, making a total of $31,000 income from the Essex Amusement Corporation*) for $50,000, and that on April 15, the Essex Amusement Corporation, in which he was a director and an officer, discontinued his salary of $15,000. So that the very thing that had been threatened all along by the defendant while the defendant had delayed the hearing by not producing his books, etc., was being done. Even if there was any doubt in the Advisory Master's mind as to granting this relief, we respectfully submit that under the circumstances it should be resolved in favor of the complainant, for, under Rules 118, 125, and 128 (e), *supra,* when a case is referred to an Advisory Master all proceedings in it to final decree shall be had before him; applications for all orders are to be made to him; the Advisory Master is to advise the Chancellor what orders or decrees should be made; and, if the Advisory Master did not grant this application for relief, it might very well be that when the hearing was completed and the decree advised there would be no assets of the defendant available to satisfy the decree. The Court of Chancery would not do a vain thing. *Feichert* v. *Feichert,* 98 N. J. Eq. 444, at 450. If, by a stretch of the imagination, it would appear from the rules of the Court of Chancery that the Advisory Master's

jurisdiction in this application was limited, then we submit that Rule 4 of the Court of Chancery should be invoked so as to advance justice and prevent injustice. See *In Re*: *Ries,* 101 N. J. Eq. 315, at 318, wherein this Court stated:

> "The court controls its own rules, and rule 4 provides that the rules shall be considered general for the government of the court and the conduct of causes, *and as their design is to facilitate business and advance justice, they may be relaxed or dispensed with by the court in any case where it shall be manifest that a strict adherence to them would work surprise or injustice.*" (Italics ours.)

If the defendant disposes of his property it can be readily seen that the complainant will have an irreparable injury inflicted upon her.

This State is an interested party and very jealous of the marital status when the parties are domiciled here, and will not permit any interference with the marital *res* by a Court of another jurisdiction. The authorities are in accord in this State to the effect that where the matrimonial residence is within this State and one attempts to acquire a domicile in a foreign state for the purpose of obtaining a divorce and instituting proceedings, proceedings so instituted may be restrained by the Chancery Court.

*Kempson* v. *Kempson,* 58 N. J. Eq. 94, 61 N. J. Eq. 303, 63 N. J. Eq. 783;
*Streitwolf* v. *Streitwolf,* 58 N. J. Eq. 563, 181 U. S. 179;
*Von Bernuth* v. *Von Bernuth,* 76 N. J. Eq. 177;
*Perlman* v. *Perlman,* 113 N. J. Eq. 3;
*DiBrigida* v. *DiBrigida,* 116 N. J. Eq. 208.

So that if the Chancery Court can protect the marital *res* by such restraint, surely it should be in a position to protect an incident to the marital *res* at bar, to wit, that which sustains it, the assets of this defendant. With the defendant coming into Court and brazenly admitting that he is disposing of his assets, and with the cases of this State holding that an injunction will be granted when the act threatened to be done will inflict an irreparable injury upon the complainant, we submit that the Advisory Master had a right to grant the complainant relief.

*D'Elia* v. *Warren,* 103 N. J. Eq. 190;
*Loomis* v. *Public Service Transport Company,* 102 N. J. Eq. 259;
*Ideal Laundry Company* v. *Gugliemone,* 107 N. J. Eq. 108;
*Guangione* v. *Guangione,* 97 N. J. Eq. 303;
*Aldrich* v. *Union Bag & Paper Company,* 81 N. J. Eq. 244;
*McMillan* v. *Kuehnle,* 78 N. J. Eq. 251;
*Citizens Coach* v. *Camden Horse R. R.,* 29 N. J. Eq. 299.

In *Guangione* v. *Guangione,* 97 N. J. Eq. 303, at 305, Justice Minturn, speaking for the Court of Errors and Appeals stated:

> "Chief Justice Beasley, in *Citizens Coach Co.* vs. *Camden Horse Railroad Co.,* 29 N. J. Eq. 299, after a review of the cases, that 'the general rule, *subject to but few exceptions,* is, that if the facts constituting the claim of the complainant for the immediate interposition of the court are contraverted, under oath, by the defendant, the court will not interfere at the initial stage of the case'. This declaration of practice was followed in *Bru-*

*nette* v. *Montclair,* 87 N. J. Eq. 338; *Harned* v. *Rowand,* 74 N. J. Eq. 264; *Aldrich* v. *Union Bag, &c., Co.,* 81 N. J. Eq. 244; *McMillan* v. *Kuehnle,* 78 N. J. Eq. 251.

*"The recognized exception to the absolute enforcement of the rule is presented by the supplementary rule that the court will always intervene to protect the res from destruction, loss or impairment, so as to prevent the decree of the court, upon the merits, from becoming futile or inefficacious in operation, and particularly so where it appears that the damage resulting to the complainant by a continuance of the status may prove to be irreparable."* (Italics ours.)

In *Ideal Laundry Co.* v. *Gugliemone,* 107 N. J. Eq. 108, the Court of Errors and Appeals, through Justice Trenchard, at pages 115 and 116 stated:

"But the defendant contends that a temporary injunction could not lawfully issue in the face of his denial of secret methods contained in his affidavits.

"We think that it could, in view of the character of such denial. While the general rule is that a preliminary injunction will not issue where the material fact in complainant's bill and affidavits, on which the complainant's right depends, is met by a full, explicit and circumstantial denial under oath, yet, where, as here, the denial lacks these essential qualities, and upon the entire showing from both sides it appears reasonably probable that the complainant had the right claimed, the injunction may issue. *Scherman* v. *Stern, supra; Brunetto* v. *Montclair,* 87 N. J. Eq. 338; *Meyer* v. *Somerville Water Co.,* 79 N. J. Eq. 613; *Citizens' Coach Co.* v. *Camden Horse Railway Co.,* 29 N. J. Eq. 299.

"Tested by that rule the defendant's affidavits are insufficient. In this connection we again point out that the defendant's affidavits, in treating of the respective methods of complainant and other laundries, speak of them as 'substantially' similar, conceding what he terms 'minor' differences, and that, while insisting that the methods before the departure of Schreiman were substantially similar to those in use now, he concedes what he terms 'minor' changes. *This is the mere conclusion of the affiant, and not the full, explicit and circumstantial denial required by the rule, and when considered in connection with complainant's affidavits, we feel constrained to say that upon the entire showing it appears reasonably probable that the complainant had the right claimed, and that therefore the injunction was properly awarded.*" (Italics ours.)

So we have the defendant with knowledge that the complainant had endeavored to obtain a previous relief because of his threats to be without the jurisdiction, and to dispose of his property, along with the application for the order now before this Court being served on the defendant's solicitors on April 16, 1938; nevertheless, he came into the Court below and said—Yes, I have transferred my assets in the Essex Amusement Company to my brother on April 19, 1938, for $50,000, and I have also had my salary cut in another company from $10,000 to $5,000. Therefore, the defendant himself supplied the definite proof that was lacking to the complainant at the previous application. Then, too, we have the defendant's brother taking it upon himself to come to the office of the complainant's solicitors, on March 31, 1938

(*a few weeks before the transfer of stock and the discontinuance of the defendant's salary*), and in so many words saying—Well, if the complainant pursues this course to final hearing the salaries of the defendant will be discontinued in the various companies in which the defendant and I are officers and principal stockholders, and he will have to sell out his holdings to me, and further, the defendant should reside in Greece where the climate would be suitable for him. We respectfully submit that the facts showed many of the familiar signposts pointing toward what was taking place in this case, and, therefore, under the circumstances, the complainant was entitled to the relief as given by the Court below.

The defendant's solicitors advanced the argument that the complainant is resorting to an oppressive procedure but we respectfully submit that that is not so. The order appealed from stated that the custodial receiver should hold the defendant's assets, etc, "*until the further order and direction of the Court in the premises*" (p. 6, ll. 10-20). *Then, too, the Advisory Master, in granting the order, stated, "I will advise such an order, and if the defendant should show me that it should be later denied, I will reconsider the motion"* (last page of addenda). Therefore, the defendant had the right to apply to the Court for any redress that he deemed necessary. The complainant was only pursuing an absolute right which she had under the law and statutes of this State, plus the rules of the Court of Chancery.

*Emmons* v. *Union Indemnity Company*,
116 N. J. Eq. 24, at 25.

The power to make this order was a part of the fundamental jurisdiction of the Chancery Court.

It is inherent in natural justice and natural jurisprudence. It is incidental and necessary in all matrimonial actions. It is grounded upon the plainest principles of reason and justice, for without such power the rights of the woman in many cases could not be adequately protected. As was stated in *Wilson* v. *Wilson,* 14 N. J. Misc. 33, at 45:

> "In matrimonial litigation it is particularly important for the court to maintain such full control of its *ad interim* orders because of the summary nature of the hearings upon which such orders are based, because *ex necessitate the benefit of every reasonable doubt must be accorded to the wife pending final hearing,* because the circumstances of the parties frequently change pending the suit, and because of the regrettable fact that in matrimonial causes the bitterness of the parties toward each other often renders their affidavits unreliable to an extent which can be determined only upon the final hearing." (Italics ours.)

And in *Young* v. *Weber,* 117 N. J. Eq. 242, at 246:

> "So, while not doubting this court's power to provide a remedy for every wrong cognizable here, and while if 'the hardship be strong enough, equity will find a way' (Judge Cardozo, as quoted in the *Compson Case*), it should be understood that a petitioner seeking relief in this court as a matter of grace must affirmatively show the hardship to exist before he can invoke the equities."

As the defendant was actually carrying out his threats to dispose of his property, we respectfully submit that the complainant was entitled to the relief granted by the Court below.

## (4)

## Conclusion.

For these reasons, we respectfully submit that the order of the Chancery Court be sustained, and that the appeal be dismissed, with costs.

Submitted: October Term, 1938.

COLLINS & CORBIN,
Solicitors for and of Counsel
with Complainant-Appellee.

EDWARD A. MARKLEY,
JOHN F. LEONARD,
Of Counsel.

EDWARD A. MARKLEY will argue this matter orally.

## Addenda

Mr. Markley: If the court please, there are some preliminary matters that I would like to have disposed of before we proceed. Your Honor will recall that we were here two weeks ago today on May 6, 1938, at which time we asked for relief to prevent the sale of any further assets by this defendant.

Mr. Evans denied the jurisdiction of the court to grant such relief. He said he would submit authority that he had, showing that to be so. Your Honor then said, "All right, give me the authority."

We gave you our brief soon after. Up to the present time, two weeks later, we have had no word from Mr. Evans, showing any authority which he has to show that the court has no jurisdiction, and we have shown that he has.

We think we should have an order protecting us, especially in view of the two previous transfers of this man.

The Advisory Master: How about it?

Mr. Evans: We have the brief, your Honor.

Mr. Markley: I don't think we should be held up any longer, your Honor. Here is a brief that apparently has no vestige of authorities in it, except the Baumgartner case, which certainly would not affect this case and your Honor has our brief, and Mr. Evans has it, which shows ample authorities.

The Advisory Master: Mr. Evans, why shouldn't this court grant this application on the basis of two conveyances already by this defendant? One of them, I remember particularly. There was a sale of $50,000 for his rights in one concern where he would receive the dividends and salary

around the neighborhood of $31,000. That is one instance. Why shouldn't the court permit them to have an order? What is to prevent Mr. Adams even during the hearing of this case to flee the jurisdiction of the court after conveying the remainder of his assets?

Mr. Evans: If your Honor please, there are at present no authorities present in court other than that which comes in the Maintenance Act. The court is not sitting as a court of equity at this present proceeding. He is sitting by virtue of certain authorities vested in him under the Maintenance Act and its consequent statutes which relate to sequestration for those of a non-resident nature and those which relate to ne exeat for those who intend to flee the jurisdiction.

However, there is no authority for issuing restraining orders or injunctions in matrimonial causes. I have searched in books and failed to find anything which would indicate that in a matrimonial cause, and I think your Honor will bear me out that he knows of no authority in which the court has found that he has issued a restraining order on a man carrying out his business negotiations.

There is no evidence here even if I should grant that the court has equity jurisdiction; there is no evidence here to show that there is irreparable damage done to the complainant. On the one transaction that has been referred to, there was a division between the brothers of their property. There is not sufficient worth to a general allegation that this might possibly be fraudulent. There is no concrete evidence before this court by way of affidavits which would justify it.

The Advisory Master: This transfer took place after the application for the appointment of a receiver and the issuing of an order restraining him was made.

Mr. Markley: That is right, we came in and said to your Honor——

Mr. Evans: If Mr. Markley will permit me to answer your Honor's question, I think—perhaps I am confused. Will your Honor repeat the statement he just made?

The Advisory Master: I said when an application was made to the court for an issuance of a restraining order, together with the appointment of a receiver so that the assets remaining in the possession of Mr. Adams could not be transferred or conveyed, that while that application was pending, the defendant did exactly what the complainant was trying to prevent him from doing.

Mr. Evans: This was a transaction he had been interested in and had entered into before the application for this order was made. The preliminary steps for this had already gone through so that he was simply carrying out a negotiation that had been entered into in 1932. That was by virtue of a contract entered into in 1932.

Now, he has all these affidavits——

The Advisory Master: Transferring his remaining assets.

Mr. Evans: The fact is that he has not. He has not. If your Honor will go into the details of this transaction in this hearing, you will find out that there is absolutely no question of the bona fides. There has been no transfer of assets which impoverishes this man. He is wealthier and better off by reason of this transfer.

The Advisory Master: Well, what protection has Mrs. Adams got?

Mr. Evans: Is there sufficient justification simply because there might be a suspicion in the mind of Mrs. Adams?

The Advisory Master: I have to protect the res.

Mr. Evans: Only under certain circumstances.

The Advisory Master: Here are two circumstances in which he had done what she wanted to prevent him from doing.

Mr. Evans: A disposition of assets is a disposition whereby he might impoverish himself. The court is not justified in taking that position in such a matter unless and until there is proof positive brought to him of the intention so to do. The mere suspicion in the mind of the complainant does not justify the issuance of restraining or injunctive orders.

The Advisory Master: Well, there was a suspicious flavor to my knowledge.

Mr. Evans: How can your Honor classify it as suspicious where the parties are here? They are subject to subpoena by this court and there has been no default of any provision of any order of this court.

The Advisory Master: Let us take, for instance, the supposition that Mr. Adams should dispose of any of his remaining assets, or all of them, and flee the jurisdiction of the court. Who would be criticised; you or the court?

Mr. Evans: Suppose he did?

The Advisory Master: Yes.

Mr. Evans: Well, that is a mere supposition. There is nothing to bear out or justify that supposition. If he had been so inclined, these difficulties have lasted for years. If he had been so inclined, it would have happened years ago, because the very first thing this complainant did was to tie him up in a knot. He could have reasonably anticipated such an occurrence during the course of these proceedings. This is not the first application which has been made, but the second. If he

had been so minded, he would have done that before; he would have had many opportunities to do so. Anything that he does here now is subject to your Honor's rules and regulations.

The Court: What power has the court if he is out of the jurisdiction and there are no assets left? He is beyond contempt proceedings and the res has been destroyed. The assets are gone.

Mr. Evans: He can always be followed up. The powers of this court can be employed to follow up such a man. Wherever he goes, he is subject to the local jurisdiction indicated by the decree of this court, because then he would be in contempt. But before he could be in contempt, there must be a deed on which such conduct should be founded.

The Advisory Master: There is no doubt of that.

Mr. Markley: Here are the affidavits. Here is the affidavit of Mr. Adams, filed in this cause on June 8, 1934, in which he says:

> "I am a native of the Republic of Greece but for many years up until March 22, 1933 I resided at 540-15th Avenue, in the City of Paterson, County of Passaic and State of New Jersey. On that date I left the City of Paterson, County of Passaic and State of New Jersey for Athens, Greece, where I have resided until the present time. I returned to this country on Thursday, April 5, 1934 for the sole purpose of defending the suits instituted against me by my wife, Maria T. Adams——"

Mr. Markley: Here is a later affidavit filed in this court on July 18, 1934. He said:

> "I deny the complainant's allegation that I never took up or at any time had a residence in the City of Athens in the country of Greece.

> I deny that the residence there claimed was entirely fictitious and not such as is required by the statute and laws conferring jurisdiction upon the courts of the country of Greece over the subject matter of my petition or action for divorce."

Then, later on in a maintenance suit that was the suit to annul that marriage and for an injunction and for ne exeat and for receivers in which cause he says on June 8, 1934, this:

> "I am a native of the Republic of Greece but for many years up until March 22, 1933 I resided at 540-15th Avenue, in the City of Paterson, County of Passaic and State of New Jersey. On that date I left the City of Paterson, County of Passaic and State of New Jersey for Athens, Greece, where I have resided until the present time. I returned to this country on Thursday, April 5, 1934, for the sole purpose of defending the suits instituted against me by my wife Maria P. Adams, who left Greece on or about November 30, 1933——"

Then he found out that he could not establish his residence there. As soon as he gets back to his wife, he calls that suit off and as soon as he gets back, he makes these transfers of his half interest to his brother. Then soon after we had our application in, last December.

Long before anything was done in which we asked your Honor for an injunction and a receiver, your Honor said, "I hardly think that would be so." Then, in the face of that evidence, we made our application, and he again made this transfer of $50,000. What could be a plainer transaction?

He swears here that he comes from Greece, and what could prevent him from taking a boat back to Greece? That is a perfect case.

The Advisory Master: That is the view that the court takes on it.

Mr. Evans: Of course, any order your Honor enters in this matter we will have to take up on appeal.

The Advisory Master: That threat has no bearing——

Mr. Evans: I know, but your Honor has no affidavit of probative value in this court to justify such an order.

The Advisory Master: What about these affidavits filed in this cause?

Mr. Evans: They are not filed in this cause and since 1934 that man has been a resident of this state. It was made when this woman was apprehended in adultery.

The Advisory Master: That is disproved.

Mr. Evans: Yes, but I can make those statements just as much as Mr. Markley can make his statements.

Mr. Markley: Yes, but I am going to offer both of these affidavits. So that there won't be any question about the fact that when your Honor's ruling goes up that the court will have before it exactly what your Honor has here, I am going to offer both of these affidavits of Mr. Adams in that case. It is certainly evidential. In addition to that, there are these transfers which they admit.

Mr. Evans: Of course, your Honor, I want to lay a proper basis. They realized this fact, that in 1934 after proceeding for the Greek decree, for the purpose of the law of Greece, they had to have a residence established. He established a residence and obtained his decree at that time. After obtaining the decree, he came back to the United

States. That decree has been dissolved. That has been voided in good faith. He has resumed cohabitation with his wife. Each suggestion that has been made has been carried into effect. There is absolutely no probative evidence.

The Court: I don't think I understand what you mean by probative evidence.

Mr. Evans: Because there isn't any evidence which shows that he wants to depart from this jurisdiction. There are no affidavits to that effect and your Honor can't make an order unless there is an inclination on his part to leave the jurisdiction as shown by affidavits.

Mr. Markley: I served affidavits.

Mr. Evans: Show them to me, please.

Mr. Markley: The affidavits which have been filed and answered by Mr. Evans in this court.

The Advisory Master: Read Mrs. Adams' affidavit that to the best of her knowledge and belief she verily believed that he was going to leave the jurisdiction.

Mr. Markley: That is it.

The Advisory Master: Yes, read that.

Mr. Markley: The motion, your Honor, was made in this cause, filed April 16, 1938. In March, 1937, your Honor granted on affidavits an order to show cause returnable on March 19th why he should not be restrained and enjoined according to the prayer of the petitioner——

The Advisory Master: What date is that?

Mr. Markley: That is March 2, 1937.

The Advisory Master: March 2?

Mr. Markley: 1937. —should not be compelled to give reasonable security to abide by the decree so that the jurisdiction of the court will not be evaded. It is further provided that Peter Adams be enjoined to show cause why he——

The Advisory Master: What about the evidence?

Mr. Markley: She recites all about it in the previous suit. She recites the charges which were made and which were made in his affidavit. She also charges that he was not a resident in Greece and that his residence there was not proper. And it says that

> "the decree of divorce from the Court of the First Instance, Athens, Greece, copy of which is attached to the amended bill and made a part thereof and marked Exhibit 'A', was obtained by fraud and the suppression of the truth in inducing the Grecian Courts to adjudicate the defendant's residence to have been in Athens, Greece. It was never the intention of the defendant to live in Athens, Greece, nor was his residence in Athens, Greece, for any other purpose than to perpetrate a fraud on the complainant, the Court of the First Instance, Athens, Greece, and the Court of the State of New Jersey. During the defendant's stay in Greece, he meandered over various parts of that country with his family, never once settling and being stationary at a definite place. The residence claimed by the defendant at Athens, Greece, was entirely fictitious and not such as is required by the statute and laws conferring jurisdiction upon the Courts of the Country of Greece or the Courts of the State of New Jersey over the subject matter or the parties."

Mr. Evans: What affidavit is that?

Mr. Markley: This is the sworn petition, filed on March 2nd. Then she recites his various interests. She recites his trip to Greece.

Mr. Evans: March 2nd of what year?

The Advisory Master: 1937.

Mr. Evans: That is a year ago?

Mr. Markley: That is right.

Mr. Evans: Why are you referring to that?

Mr. Markley: I want to show that on this affidavit your Honor held up his decision until later and then your Honor again held it up.

Mr. Evans: The application was denied.

The Advisory Master: What was that?

Mr. Evans: The application was denied.

Mr. Markley: We are going back to it to prove the history of it. Of course it was denied. If it had not been denied, there would not have been any more transfers.

Mr. Evans: Bring it down to date. That is what the law requires.

Mr. Markley: I am going to bring it down to date. Then she recites his coming back to live with her, then his leaving, making transfers. Then she recites that she does not know his whereabouts at the time; has every reason to believe that he was concealing himself.

> "While I do not know the whereabouts of my husband at the present time, I have every reason to believe that he is concealing himself. I believe that before this bill is brought on for hearing my husband intends to be without this State so as to be without the jurisdiction of this Court and therefore avoid the purposes of this bill. I believe that my husband has concealed his property within this State, because a general power of attorney was given to his brother, Adam A. Adams, who resides in the City of Newark"—

Mr. Evans: And the boys were visiting each other.

Mr. Markley: Please don't interrupt.

The Advisory Master: Yes, let him continue.

Mr. Markley (continuing):

> "—and at the present time I do not know but that Adam A. Adams, my husband's brother, has exercised his power of attorney and disposed of all available assets in this state belonging to my husband."

The Advisory Master: Isn't that the case we are hearing now?

Mr. Markley: Yes, that is the case we are hearing now. Your Honor denied it, with leave to apply later for further relief if we thought we ought to have it.

Then we applied again in 1938 and that was before this last transfer was made and the affidavits filed by Mr. Evans. He never said anything about the contemplated transfers which were made shortly thereafter.

Mr. Evans: If your Honor please.

Mr. Markley: Please let me finish.

Mr. Evans: Go ahead.

Mr. Markley:

> "Many endeavors have been made in my behalf to examine my husband's books, records, etc. in conformity with an application now pending before this court, but all these endeavors have been to no avail. It is apparent that my husband is doing everything possible to prevent his records and books from being examined and the reason for this action is within his knowledge. In view of my husband's attitude and the obstacles he is

putting in the way as to examining his records, along with the various declarations made by him that he will not come to court and that he will fix things so that I will have no redress, I am nervous, upset, and under great physical strain, and I believe that with his past actions as a criterion, my husband will be successful in evading the decree of this court."

And then prior to that she again recites that he is about to leave the jurisdiction of the court. Now, in the light of all his own affidavits which are part of the residence—I mean, you can't throw out these previous affidavits, but we don't need them. They are recited in our papers.

Your Honor has before you a continual action. First, there is an attempt to go to Greece to get a divorce, which we are going to prove in this case was thrown out later on fraud; his affidavits show that he was a resident of Greece and always had been, and his actual transfers he mentions in his own papers here in this court on this very motion, the last motion, which shows that the transfer was made after our last application. Here they prove the very thing we want to prove.

The Advisory Master: Did I present an opinion in that last application?

Mr. Leonard: Yes, your Honor said that in view of the fact that there was no definite proof before your Honor, you would leave that open so that we could apply at any time in the future.

The Advisory Master: And reopen the old application?

Mr. Leonard: I was there at the time. Mr. Evans stated that he had the order signed, but he did not present it to us. I remember I sent a letter, saying we wanted to have a reservation put in.

The Advisory Master: You have a copy of the order, have you not?

Mr. Leonard: Yes.

The Advisory Master: How does it read?

Mr. Leonard: "It is on this 19th day of March, 1937, ordered that the said order to show cause on March 2nd be hereby dismissed." It wasn't sent to us and I sent a letter to Mr. Evans, outlining the fact that it was to be held open and we could apply for it in the near future.

The Advisory Master: Well, I am inclined to believe that there is enough before the court to exercise its discretion.

Mr. Evans: Before your Honor makes that order, may we say something?

The Advisory Master: All right, put in whatever you want in the record, Mr. Evans.

Mr. Evans: So that if any order is made on that, I will have to take it up.

The Advisory Master: That does not make any difference to the court. Threats carry no weight with the court.

Mr. Evans: Except that your Honor wants to be certain——

The Advisory Master: Well now, you leave my position to myself. I will take care of my business.

Mr. Markley: Your Honor, I will supplement the proofs we already have on this present petition which was filed in April with these two affidavits of Peter Adams.

The Advisory Master: What are they?

Mr. Markley: Which I just read to your Honor a moment ago. The original two suits.

The Advisory Master: Yes?

Mr. Markley: The first affidavit was filed in the court in the case of 100:666, Marie P. Adams vs. Peter A. Adams.

The Advisory Master: Yes?

Mr. Markley: And the affidavits were filed, one on July 18, 1934, and also one affidavit bearing jurat April 30, 1934. The other is an affidavit dated June 1, 1934, filed in this cause on June 8, 1934, Adams vs. Adams.

Mr. Evans: Of course, your Honor will note my objection——

The Advisory Master: Yes.

Mr. Evans: On the ground that they relate to previous proceedings and are so remote as not to be evidential in this particular cause. In connection with that, if your Honor please, I would like to make an application in order that my position, or the defendant's position, may be amply set forth to the court in signing an answering affidavit.

Mr. Markley: I don't think this matter should be delayed any longer.

The Advisory Master: No, I won't delay it. I will advise such an order and if the defendant should show me that it should be later denied, I will reconsider the motion. You may present an order.

Mr. Evans: A restraining order and an injunction?

The Advisory Master: No, a restraining order and an injunction restraining the defendant from making any further transfers until the final determination of this hearing, and a receiver will be appointed.

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