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ORDER TO SHOW CAUSE.

(Served Oct. 27, 1927, on defendant personally.)

IN CHANCERY OF NEW JERSEY.

Between MARY WATSON REIK, *Complainant,* and HENRY O. REIK, *Defendant.*	On Bill for Maintenance. Order to Show Cause.

Upon reading and filing the bill of complaint with affidavit thereto.

It is on this 26th day of October, nineteen hundred and twenty-seven, on motion of Cole & Cole, solicitors of complainant.

Ordered that the defendant show cause before the Chancellor, at chambers, Law Building, Atlantic City, on Wednesday, the 9th day of November, 1927, at the hour of ten o'clock in the forenoon, why he should not be required to make an allowance for the support and maintenance of the complainant pending the suit, and also pay a counsel fee.

It is further ordered that complainant be allowed to produce testimony before the Court on the return of this order in support of the application for support and maintenance and counsel fee, and that the defendant be allowed to produce counter testimony at the same time.

It is further ordered that a copy of said bill, affidavit and of this order, none of which need be certified but marked as true copies by solicitors of complainant, be served upon the defendant within nine days from the date hereof.

Respectfully advised,

R. H. INGERSOLL,

V. C.

BILL OF COMPLAINT.

(Filed Oct. 26, 1927.)

IN CHANCERY OF NEW JERSEY.

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

Complainant, Mary Watson Reik, of Baltimore, Maryland, respectfully shows that:

1. Complainant, whose maiden name was Mary Watson, was lawfully married to Henry O. Reik on the 17th day of June, 1896, and they lived together as husband and wife from that time until the year 1919.

2. Sometime during the year 1919 her husband, without any justifiable cause, abandoned and separated himself from her and now refuses and neglects to maintain and provide for her.

3. After such abandonment and separation, and after defendant's refusal and neglect to support her, complainant instituted proceedings in the Supreme Court of the State of New York, in and for the County of New York, in the Borough of Manhattan, for support and maintenance, and such proceedings were had thereon that on the 13th day of May, 1921, the Court decreed that defendant pay to the complainant the sum of $50 per week as and for her support and maintenance which on June 6, 1921, was modified that commencing with April 1st, 1923, he should pay the sum of $150 per month. Payments were accordingly made until the month of March, 1924, in which month the defendant paid the sum of $75 and not the sum of $150, as provided, and he has paid nothing since. Said defendant is a resident of Atlantic City, New Jersey.

4. Complainant files this bill under Section 25 of the Divorce Act.

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

(1) That Henry O. Reik, who is the defendant to this suit, may answer this bill of complaint, without oath, and each statement therein made.

(2) That it be decreed that the defendant be required to make suitable support and maintenance for her and to be made out of his property if necessary and for such time as the nature of the case and circumstances of the parties render suitable and proper.

(3) That defendant be compelled to give reasonable security for such maintenance and allowance, and that the Court from time to time make such

further orders touching the same as shall be just and equitable and to enforce such decree as provided in said act.

(4) That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and abide by such order or decree as the Court shall make in the premises.

COLE & COLE,
Solicitors for and of Counsel with Complainant.

STATE OF MARYLAND, }
CITY OF BALTIMORE, } *ss.*

MARY WATSON REIK, of full age, being first duly sworn according to law upon her oath says:

I have read the bill of complaint hereto and say that the facts therein stated are within my personal knowledge and are true. It is true that I was married to the defendant as stated; that he abandoned me at or about the time stated; that we have not since lived together as husband and wife; that a decree was entered as stated; and that he has made no provision for my support or maintenance since the month of March, 1924.

Defendant is a resident of Atlantic City, New Jersey; he is in the employ of the Medical Society of New Jersey, and is the editor of its journal and executive secretary and lives at 22 Grammercy Court, Atlantic City, New Jersey. Under the law of the State of Maryland, applicable to Baltimore City and in force prior to the year 1922, one entitled to vote was compelled to register every two years;

beginning with the year 1922, one was compelled to register each four years, but in every year since the year 1920, a supplemental registration was had, when those entitled to register could do so, but the defendant has not registered since October 12th, 1920, at which time he registered from No. 300 East 30th Street, Baltimore, Maryland. He has not lived there for upwards of two years last past. Plaintiff is at present employed, earning one hundred and fifty dollars per month, but she should have two hundred and fifty dollars per month for proper maintenance and support.

MARY WATSON REIK.

Sworn and subscribed to before me this 14th day of October, 1927.

C. ROLLINS ROGERS,
Notary Public.

My commission expires May 6th, 1929.

A true copy.
COLE & COLE,
Solicitors of Complainant.

MARY W. REIK,
Plaintiff,
against
HENRY O. REIK,
Defendant.

The above entitled action having been brought by the plaintiff for a judgment of separation from the defendant on the ground of abandonment, and the summons and complaint having been duly personally served upon the defendant within the City of New York, and the defendant having appeared and having served a verified answer by his attorneys, Messrs. Covington & Moesel, and the issues having been duly brought on for trial and having been duly tried at special term, part IV of this court, without a jury, on the 13th day of May, 1921, and the plaintiff having appeared thereat by Robert B. Honeyman, Esq., her attorney, and the defendant having appeared thereat by his attorneys, Messrs. Covington & Moesel, and the proofs and allegations of the parties having been duly heard and considered.

Now, on motion of Robert B. Honeyman, the attorney for the plaintiff, it is

Ordered, adjudged and decreed that the plaintiff, Mary W. Reik be and she hereby is forever separated from the defendant, his bed and board on the ground of abandonment providing, however, that the parties hereto may at any time hereafter, by their joint petition, apply to this Court to have this judgment modified or discharged; and it is further

Ordered, adjudged and decreed that neither of

the said parties is at liberty to marry any other person during the lifetime of the other party; and it is further

Ordered, adjudged and decreed that commencing the 13th day of May, 1921, the defendant pay to the plaintiff the sum of fifty dollars ($50) per week as and for her support and maintenance.

Enter,
(Signed) G. V. M.,
J. S. C.
WM. F. SCHNEIDER,
Clerk.

Sirs:

Please take notice that the within order will be presented to the Hon. George V. Mullan, a Justice of the Supreme Court of the State of New York, at his Chambers, in the Borough of Manhattan, City of New York, on the 20th day of May, 1921, at 10.30 o'clock in the forenoon of that day, for settlement and signature.

Dated, New York, May 17th, 1921.

Yours, etc.,
ROBERT B. HONEYMAN,
Attorney for Plaintiff.

To COVINGTON & MOESEL, ESQS.,
Attorneys for Defendant.

[Endorsement]

3890-1920
SUPREME COURT
County of New York.
MARY W. REIK,
Plaintiff,
v.
HENRY O. REIK,
Defendant.
JUDGMENT AND NOTICE OF SETTLEMENT.

Service of a copy of the within Order admitted this day of May, 1921.

Attys. for Pltff.

Filed June 7, 1921
ROBERT B. HONEYMAN,
Attorney for Plaintiff,
No. 61 Broadway,
Borough of Manhattan,
New York City.

All which we have caused by these presents to be exemplified and the seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. Isidor Wassewogel, a Justice of the Supreme Court for the County of New York, the tenth day of November, in the year of our Lord one thousand nine hundred and 27, of our independence the one hundred and fifty-one.

William T. Collins.

(Seal)

I, Isidor Wassewogel, a Presiding Justice at a special term of the Supreme Court of the State of New York for the County of New York, do hereby certify that William T. Collins, whose name is subscribed to the preceding exemplification is the clerk of the said County of New York, and clerk of said Supreme Court for said county duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, Nov. 10, 1927.

Isidor Wassewogel,
Justice of the Supreme Court of the State of New York.

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

I, William T. Collins, clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. Isidor Wassewogel whose name is subscribed to the preceding certificate, is Presiding Justice at a special term of the Supreme Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court this 10th day of Nov., 1927.

William T. Collins,
Clerk.

(Seal)

EXHIBIT D1.
11/22/27L

No.....
THE PEOPLE OF THE STATE OF NEW YORK
BY THE GRACE OF GOD FREE AND
INDEPENDENT
To all to whom these presents shall come or may concern, GREETING:
KNOW YE, That we having examined the records and files in the office of the Clerk of the County of New York and Clerk of the Supreme Court of said State for said
(Seal) County, do find a certain
JUDGMENT
there remaining, in the words and figures following, to wit:

At a Special Term of the Supreme Court of the State of New York, Part IV thereof, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 6th day of June, 1921.
Present:
HON. GEORGE V. MULLAN,
JUSTICE.

MARY W. REIK,
Plaintiff,
against
HENRY O. REIK,
Defendant.

The above entitled action having been brought by the plaintiff for a judgment of separation from the defendant on the ground of abandonment, and the summons and complaint having been duly personally served upon the defendant within the City of New York, and the defendant having appeared and having served a verified answer by his attorneys, Messrs. Covington & Moesel, and the issues having been duly brought on for trial and having been duly tried at Special Term, Part IV of this Court, without a jury, on the 13th day of May, 1921, and the plaintiff having appeared thereat by Robert B. Honeyman, Esq., her attorney, and the defendant having appeared thereat by his attorneys, Messrs. Covington & Moesel, and the proofs and allegations of the parties having been duly heard and considered;

NOW, on motion of Robert B. Honeyman, the attorney for the plaintiff, it is

ORDERED, ADJUDGED and DECREED that the plaintiff, Mary W. Reik, be and she hereby is forever separated from the defendant, his bed and board on the ground of abandonment, providing, however, that the parties hereto may at any time hereafter, by their joint petition, apply to this Court to have this judgment modified or discharged; and it is further

ORDERED, ADJUDGED and DECREED that neither of the said parties is at liberty to marry any other person during the lifetime of the other party; and it is further

ORDERED, ADJUDGED and DECREED that commencing the 13th day of May, 1921, the defendant pay to the plaintiff the sum of Fifty Dollars ($50.) per week as and for her support and maintenance.

Enter,

G. V. M.,
J. S. C.

Wm. F. Schneider,
Clerk.

Sirs:—

PLEASE TAKE NOTICE that the within Order will be presented to the Hon. George V. Mullan, a Justice of the Supreme Court of the State of New York, at his Chambers, in the Borough of Manhattan, City of New York, on the 20th day of May, 1921, at 10:30 o'clock in the forenoon of that day, for settlement and signature.

Dated, New York, May 17th, 1921.

Yours, etc.,
ROBERT B. HONEYMAN,
Attorney for Plaintiff.

To Covington & Moesel, Esq.,
Attys. for Defendant.

3890-1920

SUPREME COURT,
COUNTY OF NEW YORK.

MARY W. REIK,
Plaintiff,

vs.

HENRY O. REIK,
Defendant.

JUDGMENT
and
NOTICE OF SETTLEMENT

Service of a copy of the within Order admitted this day of May, 1921.

Attys. for Plff.

Filed June 7-1921
ROBERT B. HONEYMAN,
Attorney for Plaintiff,
No. 61 Broadway,
Borough of Manhattan,
New York City.

All which we have caused by these presents to be exemplified, and the Seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. Isidor Wasserwogel a Justice of the Supreme Court for the County of New York, the Tenth day of November in the year of our Lord one thousand nine hundred and 27, of our independence the one hundred and Fifty-one.

William T. Collins

(Seal)

I, Isidor Wasserwogel, a Presiding Justice at a Special Term of the Supreme Court of the State

of New York for the County of New York, do hereby certify that WILLIAM T. COLLINS, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the Seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, Nov. 10, 1927.

Isidor Wassewogel
Justice of the Supreme Court
of the State of New York.

STATE OF NEW YORK
COUNTY OF NEW YORK, } ss.:

I, WILLIAM T. COLLINS, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. Isidor Wasserwogel whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 10th day of Nov. 1927.

William T. Collins
Clerk.

(Seal)

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between Mary Watson Reik, *Complainant,* and Henry O. Reik, *Defendant.*	On Bill for Maintenance. On Order to Show Cause. Conclusions.

Messrs. Cole & Cole, for the complainant.
Messrs. Bourgeois & Coulomb, for the defendant.

Ingersoll, V. C.:

The complainant files her bill for maintenance alleging: 1. Marriage. 2. Abandonment and refusal to support. 3. Proceedings in the Supreme Court of New York, and decree thereon on May 13th, 1921, that defendant should pay to complainant $50 per week. 4. Modification thereof on June 6th, 1921, reducing said payments to $150 per month. 5. No payments since March, 1924. 6. Defendant is a resident of New Jersey. 7. Bill filed under Section 25 of the Divorce Act.

Upon the filing of the verified bill an order to show cause was granted. Upon the return of said

order to show cause the defendant files answering affidavits in which it is stated: "That said judgment was entered against him in said cause, and that said judgment still remains of record unreversed in said court," and offered in evidence an exemplified copy of said judgment.

No denial was made of the allegation that said judgment was modified by the New York Court, and it is therefore assumed that that court had power so to do. *Tehsman v. Tehsman* (93 N. J. Eq. 76, at p. 78); *Bolton v. Bolton* (86 N. J. Law, 622, 630).

The defendant insists this Court has no jurisdiction in this matter in its present form, by reason of the clause in the federal constitution requiring "full faith and credit, &c.," and cites *Bates v. Bodie* (January 21st, 1918), (245 U. S. 520).

Freund v. Freund (71 N. J. Eq. 524; *affirmed per curiam,* 72 N. J. Eq. 943, is authority for the statement that, "The decree for future alimony being thus subject to future modifications, it was not a final judgment within the full faith and credit clause of the federal constitution. *Lynde v. Lynde* (1900), (181 U. S. 183)."

Vice-Chancellor Emery proceeded further and stated (at p. 528, 71 N. J. Eq.): "Whether, independent of the full faith and credit clause, and as a matter of comity, decrees of this character, subject to future modification, will be enforced by actions at law or in equity so long as they remain unrevoked or unaltered, has not been expressly decided in this State. In the courts of some states they have been enforced, but many of the decisions are rested on the full faith and credit clause, and being rendered before decision in the *Lynde Case,* these decisions are to this extent overruled by that case. The authorities are collected in 1 *Whart.*

Confl. L. (3d Ed.) (525, 239, c.). In a later case, *Wagner v. Wagner* (R. I.) (1904) (57 Atl. Rep. 1058), recovery of the future alimony on such decree, so long as it was unrevoked, was allowed on the basis of comity. These provisions are provisions for maintenance and are not usually considered as property or property rights, and in the absence of special circumstances more than one year's arrears will not be enforced by the Court which made the decree. *Kerr v. Kerr* (1897), (2 Q. B. 439, cited in Lynde v. Lynde, 64 N. J. Eq.) (19 Dick.) (Court of Errors and Appeals, 1902) (736, 757). In view of this practice it is evident that the questions of the right of action in another court upon such decrees, and the nature of the defenses to such action, and the extent of recovery, are matters for such consideration that a decision should not be made upon them in the present case unless necessary. I will not now pass on the question, for the reason that, in my judgment, the present bill must be treated purely as a bill for alimony under our statute, and the decree must be confined to this relief. The bill in this aspect is a bill to enforce a purely statutory right against the defendant, now a resident of this state, and the complainant cannot, in my judgment, have any additional relief to which she may be entitled by reason of the amount due on the New York judgment or any other property right or claim. For relief on such independent claim she must be remitted to her separate and independent action, and the prayer for this relief will therefore be denied, but without prejudice.

Treating the bill as a bill purely for alimony under the statute, the New York decree set out in the bill is evidence of the wife's right thereto, as was said by Mr. Justice Dixon in a similar case. *Van*

Orden v. Van Ordern (58 N. J. Eq.) (13 Dick.) (Court of Errors and Appeals, 1899) (545), and the first question is how far it is conclusive on this point.

This judgment was rendered by a court having jurisdiction in a cause in which the defendant appeared and defended, denying the abandonment, and I think the judgment is conclusive evidence of the abandonment by the husband at the time therein fixed (December, 1881), and sufficiently proves a case of abandonment then commencing. If the former judgment for abandonment had been recovered in this State it would have been conclusive evidence of the abandonment and of the time of its occurrence in a subsequent suit for desertion. *Smith v. Smith* (55 N. J. Eq.) (10 Dick.) (Vice-Chancellor Pitney, 1897, 222, 225). And under the federal constitution and laws, the judgment in New York having been rendered by a court having jurisdiction of the parties and the subject-matter, and after a trial on the merits, is conclusive upon the issues determined as the foundation for the judgment of divorce or separation. *Bullock v. Bullock* (52 N. J. Eq.) (7 Dick.) (Court of Errors and Appeals, 1894) (561, 567, 575) *Bullock v. Bullock* (57 N. J. Law) (28 Vr.) (Supreme Court, 1895) (508). The same effect is given to such decrees for future alimony in the State of New York. *Lynde v. Lynde* (1900), (162 N. Y. 405, 418). Independent of the full faith and credit clause the general principle recognized by all courts is, that in a subsequent action between the same parties as plaintiff and defendant, involving the same issues as those of a former action, the judgment in the former suit, whether in a domestic or foreign court, is an estoppel as to the issues actually litigated and determined in the first section.

Cromwell v. County of Sac (1876), (94 U. S. 351, 353); (2 Black Jud. 610); *Lazier v. Wescott* (1862), (26 N. Y. 146, 151).

It follows that this case is within the case of *Freund v. Freund,* and this Court has jurisdiction in this cause, and the order will be advised in accordance with the oral statement made by the Court at the hearing.

ORDER.

IN CHANCERY OF NEW JERSEY.

Between MARY WATSON REIK, *Complainant,* and HENRY O. REIK, *Defendant.*	On Bill, &c. On Order to Show Cause. Order.

This matter coming on to be heard on the 22nd day of November, 1927, in the presence of Maurice Y. Cole, of Cole & Cole, solicitors of complainant, and George M. Shipman, Jr., representing Bourgeois & Coulomb, solicitors of defendant, and the Court having considered the bill, affidavit and answering affidavit, and being of the opinion that the complainant is entitled to maintenance pending the final hearing of the cause, and until the further order of the Court.

It is on this twenty-third day of November, 1927,

on motion of Cole & Cole, solicitors of complainant, ordered that the defendant pay to the complainant, or to her solicitors, the sum of fifty dollars a week, beginning with the date hereof, as and for maintenance as prayed for in the bill, and until the further order of the Court. The matter of counsel fees is reserved.

Respectfully advised,
E. R. WALKER,
C.

ROBERT H. INGERSOLL,
V. C.

A true copy.
COLE & COLE,
Solicitors.

SUPPLEMENTAL ORDER.

66/38.

IN CHANCERY OF NEW JERSEY.

Between MARY WATSON REIK, *Complainant,* and HENRY O. REIK, *Defendant.*	On Bill, &c. Supplemental Order.

It being represented to the Court that the defendant, Henry O. Reik, is unable to pay the sum of fifty dollars ($50.00) per week alimony, pursuant to an order of this Court bearing date the 23rd day of November, 1927, and the counsel of the respective parties in open court assenting.

It is, on this twenty-first day of December, 1927, ordered that said order of November 23rd, 1927, be modified in the following respects, to wit: That the defendant pay to the complainant or to her solicitors, the sum of twenty-five dollars ($25.00) per week, beginning with the date of said order, to wit, the twenty-third day of November, 1927, as and for maintenance until the further order of the Court; and that a counsel fee of one hundred dollars ($100.00) be paid by defendant to complainant's solicitors.

Respectfully advised,
E. R. WALKER,
C.

ROBERT H. INGERSOLL,
V. C.

NOTICE OF APPEAL.

(Served December 21, 1927.)

(Filed December 23, 1927.)

66/38.

IN CHANCERY OF NEW JERSEY.

Between MARY WATSON REIK, *Complainant,* and HENRY O. REIK, *Defendant.*	On Bill, etc. Notice of Appeal.

The defendant, Henry O. Reik, hereby appeals from the whole and every part of the interlocutory order of the Court of Chancery of New Jersey, advised by Vice-Chancellor Robert H. Ingersoll, made in this court, in the above-entitled cause, on the 23rd day of November, A. D. 1927, and from a supplemental and modifying interlocutory order made in said court on the 21st day of December, A. D. 1927, whereby the defendant, Henry O. Reik, was directed to pay his wife, the complainant, Mary Watson Reik, or to her solicitors, the sum of $25 per week, beginning with the date of said original order, to

wit, November 23, 1927, as and for her maintenance, until the further order of the said Court, and directing said defendant, Henry O. Reik, to pay a counsel fee of $100 to the solicitors of said complainant, to the Court of Errors and Appeals, the last resort in all causes.

BOURGEOIS & COULOMB,
Solicitors for Defendant.
H. R. COULOMB,
Of Counsel with Defendant.

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

H. R. COULOMB,
Of Counsel with Defendant.

Dated: December 21, 1927.

To: COLE & COLE, ESQS.,
Solicitors for and of Counsel with Complainant.

[ENDORSED]

Service of the within Notice of Appeal is hereby acknowledged this 21st day of December, A. D. 1927.

Cole & Cole,
Solicitors for Complainant.

PETITION OF APPEAL.

(Served December 21, 1927.)

(Filed December 23, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between MARY WATSON REIK, *Complainant-Respondent,* and HENRY O. REIK, *Defendant-Appellant.*	On Bill, etc. Petition of Appeal.

To the Honorable, the New Jersey Court of Errors and Appeals in the Last Resort in all Causes:

The petition of Henry O. Reik, defendant-appellant, respectfully shows, that your petitioner finds himself aggrieved by the whole and every part of the interlocutory order of the Court of Chancery, made on the 23rd day of November, A. D. 1927, and the supplemental and modifying interlocutory order made on the 21st day of December, A. D. 1927, by the Court of Chancery of New Jersey, in that said original interlocutory order, and said supplemental

and modifying interlocutory order, orders and decrees that he pay to his wife, the complainant-respondent, the sum of $25 per week, beginning with the 23rd day of November, A. D. 1927, until the further order of said Court, and that he, said Henry O. Reik, defendant-appellant, pay to the solicitors of said defendant, the sum of $100 counsel fees.

And your petitioner hereby appeals from the whole and every part of said interlocutory orders on the ground that the same are erroneous, because said Court of Chancery was without jurisdiction to make any order or decree in said cause requiring defendant-appellant to pay alimony or counsel fee, and further, because said interlocutory orders are in contravention of Article 1, Section 4, the Federal Constitution providing that each State must give full faith and credit to the records and judicial decrees and judgments of any other State.

Your petitioner, therefore, prays that said decree may be reversed, set aside and for nothing holden.

And your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

BOURGEOIS & COULOMB,
Solicitors for Defendant-Appellant.
H. R. COULOMB,
Of Counsel.

[ENDORSED]

Service of the within petition of appeal is hereby acknowledged this 21st day of December, A. D. 1927.

Cole & Cole,
Solicitors for Complainant.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between Mary Watson Reik, *Complainant-Respondent,* and Henry O. Reik, *Defendant-Appellant.*	On Appeal. Answer to Petition of Appeal.

The answer of Mary Watson Reik, complainant-respondent to the petition of appeal of Henry O. Reik, defendant-appellant.

This respondent says that she is advised and believes that the interlocutory order and the supplemental order thereto, from which said appeal is taken, are in all respects in accordance with equity and prays that the same may be affirmed with costs.

Cole & Cole,
Solicitors of Complainant-Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
Mary Watson Reik,
Complainant-Respondent,
and
Henry O. Reik,
Defendant-Appellant.

On Appeal.

BRIEF OF DEFENDANT-APPELLANT.

The appeal in this case brings up for review two interlocutory orders of the Court of Chancery of New Jersey advised by Vice-Chancellor Ingersoll awarding alimony to the complainant. The first order was made on the 23rd day of November, 1927, and awarded the sum of $50 per week. A supplemental order was subsequently made on the 21st day of December, 1927, modifying the original order by reducing the alimony to $25 per week.

The defense to the making of these two orders was that an order had been made by the Supreme Court of the State of New York, whereby the complainant and the defendant were divorced *a mensa*

et thora at the suit of the complainant, and that under said decree the complainant had been awarded by the New York court the sum of $50 per week, and that, therefore, under the full faith and credit clause of the Federal Constitution, Article 1, Section 4, the Court of Chancery of this State was without jurisdiction to make any further order touching or concerning alimony.

FACTS.

Prior to the 6th day of June, 1921, the complainant and defendant resided in New York and lived together as husband and wife. The defendant having abandoned the complainant, she brought suit in the New York Supreme Court, in and for the County of New York, for divorce from bed and board and for alimony. The matter was heard on the 13th day of May, 1921, and on the 6th day of June, 1921, an order was entered whereby the complainant was divorced *a mensa et thora* from her husband, and her husband, the defendant herein, was required to pay the sum of $50 per week alimony. The Court provided that either party might apply for modification. (See copy of Judgment, p. 12-16, State of Case.)

This decree was modified so that the husband was required to pay $150 per month. Payments were made by the husband until March, 1924.

That since March, 1924, the defendant has paid nothing to complainant.

Sometime after March, 1924, the husband came to Atlantic City, and the wife, the complainant herein, became a resident of Baltimore, Maryland.

On or about the 26th day of October, 1927, Mrs. Reik filed her bill of complaint in the Court of Chancery in this State asking for alimony. She likewise filed a petition in the same cause asking for temporary alimony until final hearing.

The above facts, including the judgment record in the New York Supreme Court, were before the Court of Chancery upon the argument on the petition for alimony *pendente lite*, resulting in the orders above referred to.

ARGUMENT.

It is conceded in this case that the appellant is in default in the New York decree. It is further conceded that that decree is subject to modification. It is, nevertheless, contended that the complainant's only remedy is by suit at law in this State to recover the back alimony and the future installments of alimony as they accrue, or if the defendant were within the jurisdiction of the New York Court, he apply to that court for relief.

We contend that in face of the New York decree, the Court of Chancery of this State is without jurisdiction to award alimony either temporary or permanent.

The learned Vice-Chanceller, in his opinion, relied upon the case of *Freund v. Freund* (71 N. J. Eq. 524, affirmed, 72 Eq. 943). Neither in this case nor in any of the other cases referred to in the Vice-Chancellor's opinion was the point here presented raised or discussed.

In the *Freund* case, the complainant sought to recover back alimony due under a New York decree in

her favor and to compel the defendant thereafter to pay the installments of alimony as they accrued under the New York decree.

The complainant, in the *Freund* case, contended that she had a right to enforce the New York decree in our Court of Chancery under the full faith and credit clause of the Federal Constitution.

Vice-Chancellor Emery held that while our courts might, as a matter of comity, enforce said decree, the remedy was in the Courts of Law to recover back alimony or future alimony.

The Court of Chancery, however in the Freund case, did award alimony to the complainant under our Statute.

The question here raised, namely, that the New York decree finally adjudicated the rights of the parties, and that, therefore, under the full faith and credit clause, was a bar to further proceedings in this State, was not raised in the Freund case.

The situation is this: The decree in New York adjudicated the marital status of the defendant and the complainant in this cause, and further adjudicated the obligation of the defendant to support his wife by the payment of the stipulated sum by way of alimony. That decree has never been altered or amended. It is still a valid subsisting decree, and can be sued upon wherever personal service can be had upon the defendant, or can be enforced *in rem* by way of attachment wherever property of the defendant might be found. The fact that the defendant was paying alimony under an independent decree in this State would be no defense to such an action, nor would a recovery under such action, either for past-due alimony or the accruing installments of alimony, be a defense in proceedings by way of contempt or otherwise under the decree now before this Court.

The complainant is not, however, without remedy. She can bring suit for her back alimony in our courts of law, and she can bring suit for each recurrent installment of alimony.

It is our contention that this case is governed by *Bates v. Bodie* (245 U. S. 520, 62 L. Ed., 444, L. R. A. 1918, C. 355). In this case the husband and wife had been divorced by the courts of Arkansas, the wife being the successful party. She was awarded a certain lump sum in lieu of alimony, which sum was paid. It was her contention that under the laws of Arkansas, the only property which could be taken in consideration in determining the amount of this award was property located in Arkansas. She thereupon brought suit in Nebraska, where her husband had owned property for the purpose of being awarded alimony based on the value of the Nebraska property.

In the Nebraska case, the husband set up the Arkansas decree as a bar. The Nebraska courts overruled this contention, and awarded a further sum of alimony to the wife.

The husband, who was the defendant in the Nebraska proceedings, thereupon prosecuted a writ of error to the United States Supreme Court. In that court, the Nebraska decree awarding further alimony to the wife was reversed and set aside. There appears to have been some doubt as to whether in making the award of alimony in the Arkansas decree, the value of the Nebraska property was considered.

Mr. Justice McKenna, who wrote the opinion in the Supreme Court, did not take in consideration, in arriving to his conclusion, whether the Arkansas Court had considered the Nebraska property or not, but proceeded upon the theory that the wife having

obtained a judgment in the courts of Arkansas under the full faith and credit clause of the Constitution must be considered as final, and all of the rights of the parties merged therein.

Mr. Justice McKenna said (62 L. Ed., 449):

> "The case is not in broad compass and depends upon the application of the quite familiar principle that determines the estoppel of judgments, and the principle would seem to have special application to a judgment for divorce and alimony. They are usually concomitants in the same suit—some cases say must be— or rather, that as alimony is an incident of divorce, it must be awarded by the same decree that grants the separation. And it is the practice to unite them, as alimony necessarily depends upon a variety of circumstances more adequately determined in the suit for divorce; not only the right to it, but the measure of it, all circumstances upon which it depends then naturally brought under the view and judgment ot the Court. Whether, however, the right to it should be litigated in the suit for divorce, or may be sought subsequently in another, the principle is applicable that what is once adjudged cannot be tried again. And this Court has established a test of the thing adjudged and the extent of its estoppel. It is: If the second action is upon the same claim or demand as that in which the judgment pleaded was rendered, the judgment is an absolute bar not only of what was decided, but of what might have been decided. If the second action was upon a different claim or demand, then the judgment is an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." Cromwell v. Sac County, 94 U. S. 351, 353, 24 L. Ed. 195, 198; Virginia-Carolina Chemical Co. v. Kirven, 215 U. S. 252, 54 L. Ed. 179, 30 Sup. Ct. Rep. 78; Troxell v. Delaware L. & W. R. Co., 227 U. S. 434, 57 L. Ed. 586, 33 Sup. Ct. Rep. 274; Radford v. Myers, 231 U. S. 725, 58 L. Ed. 454, 34 Sup. Ct. Rep. 249; Hart Steel Co. v. Railroad Supply Co., 244 U. S. 294, 61 L. Ed. 1148, 37 Sup. Ct. Rep. 506.
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> But how find the matters in issue or the points controverted upon the determination of which the judgment was rendered? The obvious answer would seem to be that for the issues we must go to the pleadings; for the response to them and their determination, to the judgment; and each may furnish a definition of the other. National Foundry & Pipe Works v. Oconto Water Supply Co., 183 U. S. 216, 234, 46 L. Ed. 157, 169, 22 Sup. Ct. Rep. 111."

The case of *Bates v. Bodie* was decided January 28, 1918. The *Freund* case was decided May 15, 1906, so that, of course, Vice-Chancellor Emery did not have the decision of the United States Supreme Court upon this point before him when he decided the *Freund* case.

In the *Bates v. Bodie* case, the Arkansas decree had been fully satisfied while in this case, the New York decree has not been satisfied.

The equitable maxim "He who seeks equity, must do equity" does not apply to defendant.

Pomeroy says:

> "The rule only applies where a party is appealing as actor to a Court of Equity in order to obtain some equitable relief; that is, either

some relief equitable in its essential nature, as an injunction or a cancellation, or equitable because it may come within the power of the Court to administer by virtue of its concurrent jurisdiction." (Pom. Eq. Jur., 4th Ed., Vol. 1, Sec. 386, pages 716-717.)

The same is true with respect to the maxim "He who comes into equity must come with clean hands."

Like the preceding maxim, this applies only to complainants or those seeking some affirmative relief.

With respect to this maxim, Pomeroy says:

"That whenever a party, who as *actor,* seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience or good faith; or some other equitable principal in his prior conduct, then the doors of the Court will be shut against him *in limine;* the Court will refuse to interefere on his behalf, to acknowledge his right, or to award him any remedy." (Pom. Eq. Jr., 4th Ed., Vol. 1, Sec. 397, p. 738.)

It will thus be seen that neither of these maxims can be applied to defendant who seeks to take advantage of some rule of law precluding the complainant from enforcing his or her demand.

Where a cause of action has been reduced to judgment, whether in the home State or a sister State, there can be thereafter no recovery on the cause of action itself in any State.

The judgment creditor is limited to his action on the judgment.

"As between the several States of the American Union (contrary to the rule in regard to

judgments from foreign countries), it is well settled that the recovery of a judgment in one State, in a court having jurisdiction, merges the original cause of action, so that it cannot thereafter form the basis of a fresh suit in another State. And so, where the plaintiff, after commencing an action in one State, sues the defendant on the same claim in another State and obtains a valid judgment against him, that judgment will constitute a bar to the further prosecution of the action first begun. For, as the foreign judgment is entitled to the same credit as a domestic one, the plaintiff would have two judgments against the same defendant for the same cause of action. But if the judgment is not ex-territorially valid for want of jurisdiction—as where it has been obtained against a non-resident without service upon him or appearance—such judgment, if unsatisfied, will constitute no bar to a subsequent action against him in the State of his domicile on the original demand. But a judgment thus recovered in another State and partially satisfied will bar a recovery upon the original demand to the extent of the sum paid in such partial satisfaction, but no further. And where joint debtors reside in different States, they may be sued separately, in the respective States having jurisdiction of their respective persons or property, and a judgment in such case against one in one State, is no bar to a recovery against the others, in another State. A report of a commissioner of insolvency in one State, in favor of an administrator there, accepted and recorded by the Probate Court to which it is returned, and acquiesced in by the parties, is such a judgment that the same person as administrator in an-

other State may plead it in bar to a suit by the same claimant upon the same cause of action. Where a suit is brought in one State upon the same cause of action on which judgment has been recovered in another State, and such judgment is pleaded in bar to a recovery in the second suit, it is no sufficient answer to such plea to allege that a motion was filed by the defendant in the court in which the judgment was rendered to set the same aside, on the ground that he was not indebted to the plaintiff and that he had not been served with process, and that, for the purpose of pleading the said judgment in bar in the second suit, the defendant fraudulently consented to have the said motion overruled."

It has been held that where a judgment has been recovered in a court of competent jurisdiction in one State, upon a judgment previously recovered in another State, the latter judgment is merged in the former, all of its liens or priorities upon lands in the State of its rendition are abandoned, and the owner of such lands may enjoin a sale of the same upon an execution issued upon the original judgment. But this view has been denied. And indeed, as pointed out by Mr. Bigelow:

"It may be inconvenient that two judgments should subsist in the same State against the same person on the same demand; but no such inconvenience can exist in the case of judgments rendered in different States, and there is no sufficient reason for the application of the purely technical doctrine of merger, subversive of substantial justice as it would be in such cases." *Black* in his work on *Judgments* (Vol. II, Second Edition, Section 864).

In our own State, it is held that parties having a judgment in another State, legally rendered by a court of common law jurisdiction, cannot maintain an action in this State on the original debt or cause of action. *Barnes v. Gibbs* (31 N. J. L. 317).

In the above case it was further held that "the effect of a common law judgment is practically to destroy, so long as it exists, the grounds upon which it rests."

To the same effect is *Traflet v. Empire Life Ins. Co.* (64 N. J. L. 387, 35Vr.).

We contend that the right of the Court of Chancery to award alimony under the present situation was a cause of action which had its origin in New York State, namely, the desertion of the complainant by the defendant in that State. That that breach of marital duty gave rise to the cause of action in New York, and resulted in a decree of divorce *a mensa et thora* and an award of alimony; that the failure to pay the alimony thus awarded is not a breach of any marital duty but a breach of the duty imposed by the judgment of the New York Supreme Court, for which breach a suit might be brought in our courts, either by way of comity or by reason of the full faith and credit clause of the Constitution to recover the amounts of alimony due and unpaid, and that, therefore, a failure to pay those amounts does not create a further breach of marital duty, which will justify the New Jersey Court of Chancery in entertaining a bill for alimony based upon such breach.

To put the matter somewhat differently: The defendant having abandoned his wife, without apparent justification, the New York Supreme Court held that he violated his marital obligations, and that in so doing, his wife was entitled to a limited divorce and to alimony. There was no violation of that de-

cree on the part of the defendant merely because he continued to live separate and apart from his wife. The violation of the decree consisted in the failure to pay the alimony. The parties having been divorced, the failure to meet this obligation, was not a violation of his marital duty towards his wife but was merely a violation of the decree.

The cause of action which the Court of Chancery sought to indicate was not that he had failed to perform his duties in the support of his wife, but that he had failed to perform the decree of the New York court. This must be so, because if the New York decree had failed to provide any alimony or had refused a wife alimony, it is quite apparent that our court could have had no jurisdiction to compel the husband to pay alimony when the New York court had failed or refused to grant it. Her sole remedy would have been to apply to the New York court for a modification of the decree. So, if the New York court had provided for a lump sum, which had not been paid, the right of the complainant would have been limited to a suit to recover that sum.

To permit the Court of Chancery, as an independent tribunal, to impose alimony in addition to the alimony imposed by the New York court, leaving both judgments stand so that a suit may be brought upon both to recover the amount allowed in each, is to violate the full faith and credit provision of the Federal Constitution, just as much as it would be to permit judgments in several States for the same cause of action, a practice which, as we have pointed out, is forbidden by our own courts.

We respectfully submit that the original and supplemental orders should be set aside.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel with Defendant-Appellant.

New Jersey Court of Errors and Appeals

Between
MARY WATSON REIK,
Complainant-Respondent,
and
HENRY O. REIK,
Defendant-Appellant.

ON APPEAL, &C.

BRIEF FOR RESPONDENT.

STATEMENT.

Appellant's brief states the essential facts and presents the single legal question involved.

ARGUMENT.

The orders under review should be affirmed.

Freund v. Freund, cited by the Vice-Chancellor, was affirmed in this court in 72 Equity 943, on the opinion of Vice-Chancellor Emery. The facts in

that case are analagous to the facts in the instant case for the purpose of disposition of the legal question raised by appellant. That case is *stare decisis* unless this Court shall feel that the case of *Bates v. Bodie*, in the U. S. Supreme Court and cited by appellant is to govern rather than *Freund v. Freund*. There is a clear and marked distinction between the two cases. In *Bates v. Bodie* the divorce was absolute and the decree fixed a distinct lump sum for alimony so that the judgment was final both as to the divorce and the amount of alimony. In the instant case the divorce is not absolute and the amount of alimony is subject to modification. Such are the facts in *Freund v. Freund*.

The distinction pointed out in that case holds that under its facts judgment was not final so as to be entitled to full faith and credit under the Federal Constitution. In the instant case the appeal is under the statute as was *Freund v. Freund*. The bill does not seek to recover alimony previous to the date of filing and the amount awarded is less than that awarded by the New York decree. Should respondent institute suit on the New York decree to recover any payment following the date of the filing of the bill it would be a perfect defense that payments had been made under the orders in this case.

The orders are correct and proper and should be affirmed.

Respectfully submitted,
COLE & COLE,
Solicitors for Respondent and
C. L. COLE,
Of Counsel.