

FILE COPY

Record No. 5064

In the
Supreme Court of Appeals of Virginia
at Richmond

PAULINE LONG HINSHAW

v.

GEORGE F. HINSHAW

FROM THE CIRCUIT OF CHESTERFIELD COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5064

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Thursday the 3rd day of September, 1959.

PAULINE LONG HINSHAW, Appellant,

against

GEORGE F. HINSHAW, Appellee.

From the Circuit Court of Chesterfield County

Upon the petition of Pauline Long Hinshaw an appeal is awarded her from a decree entered by the Circuit Court of Chesterfield County on the 25th day of February, 1959, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and George F. Hinshaw was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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BILL OF COMPLAINT.

To the Honorable William Old, Judge of the aforesaid Court:

Your Complainant, PAULINE LONG HINSHAW, respectfully shows unto Your Honor the following:

1. That your Complainant was lawfully married to the Defendant, GEORGE F. HINSHAW, on the 19th day of April, 1957, in Richmond, Virginia, as will more fully appear from a certified copy of the Certificate of Marriage attached hereto and marked "Exhibit A."

2. That your Complainant and the Defendant have been *bona fide* residents of and legally domiciled in the State of Virginia for more than one (1) year next preceding the commencement of this suit.

3. That your Complainant and the Defendant are members of the Caucasian race, and that no children have been born as a result of this marriage.

4. That your Complainant and the Defendant last cohabited as husband and wife on or about July 18, 1957, in Chesterfield County, Virginia.

5. That your Complainant has a child by a previous marriage, namely, STANLEY CLARKE, an infant, aged fifteen (15) years, and the Defendant has a child by a previous marriage, namely, REBECCA HINSHAW, an infant, aged two (2) years.

6. That your Complainant has always been a true and dutiful wife unto the Defendant and a devoted mother to their respective children, but that the Defendant has for some time prior hereto subjected your Complainant to cruel and relentless treatment, in that the said Defendant, shortly after their marriage, embarked upon a cruel and relentless
 page 2 } course of conduct, voluntarily, wilfully and without
 any excuse or justification, calculated to embarrass your complainant and to affect her physical and mental health to such an extent that she would be compelled to leave their home and cease living with him as husband and wife. That the defendant has displayed violent fits of temper and has used cruel and abusive language to your Complainant in the privacy of their home as well as in the presence of their friends, all to her embarrassment and the detriment of your Complainant's health. Further, the Defendant, on July 25,

1957, without any excuse or justification, removed his infant daughter from their home, which action he knew would cause your Complainant great sadness; and, on several occasions the Defendant, without cause or justification, has demanded that your Complainant remove her infant son from their home, which demands were contemplated by the Defendant to and have caused your Complainant considerable embarrassment and sadness and have been detrimental to her health. That because of such cruel and relentless treatment by the Defendant, your Complainant is now and has been since the latter part of June, 1957, constantly under the care of a physician for the treatment of her nerves, and further, that as a result of such action by the Defendant, it was necessary that she enter the hospital on August 6, 1957, for further treatment and rest and upon her discharge from the hospital on or about August 16, 1957, and acting upon the advice of her physician, your Complainant did not return to their home in Chesterfield County. Your Complainant further avers that the Defendant, without any excuse or justification, voluntarily and wilfully deserted and abandoned your Complainant on the 18th day of July, 1957, in that on that date the Defendant did voluntarily, wilfully and without any excuse or justification, remove himself from the marital bed and move into another room in their home and has failed and refused to resume marital cohabitation with your Complainant as husband and wife. Further, the Defendant, on several occasions prior thereto and repeatedly since that date, has advised your Complainant that he wanted her to see a lawyer and settle this matter once and for all. Your Complainant, therefore, avers that the Defendant's actions are
 page 4 } such as to desert and abandon your Complainant
 and she alleges desertion and cruelty on the part
 of the Defendant on July 18, 1957, and that such desertion
 and cruelty were without cause or justification.

IN CONSIDERATION WHEREOF and forasmuch as your Complainant is without remedy save in a Court of equity where such matters are properly cognizable and relievable, your Complainant prays that the Defendant, GEORGE F. HINSHAW, be made a party defendant to this bill and required to answer the same, but not under oath, answer under oath being hereby waived; that proper process and all necessary orders and decrees may be entered against the Defendant; that your Complainant may be awarded a decree of separate maintenance upon satisfactory proof of the charges alleged herein; that your Complainant may be granted support money *pendente lite* for herself and her infant child, and that

she be granted permanent support and maintenance money for herself at the expiration of the hearing on the merits in regard to this matter; and, further, that the Defendant be required to pay the costs of this proceeding, including Counsel fees for the institution and conduct of this suit, for and on her behalf, and that your complainant may have all such further and general relief as the nature of her case may require and to equity shall seem meet.

PAULINE LONG HINSHAW

By L. PAUL BYRNE

Of Counsel.

Filed this 19th day of August 1957, process issued, by
Sheriff of Chesterfield.

LEWIS H. VADEN, Clerk.

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CERTIFICATE OF MARRIAGE
COMMONWEALTH OF VIRGINIA

City of Richmond

Full name of groom George Ferdinand Hinshaw

Clerk's No.

Present name
of bride Pauline Long Clarke

Maiden
Name

GROOM

BRIDE

Age	Race	Single, Widowed, or Divorced	No. Times Prev. Married
46	Wh.	Widowed	1
Occupation	Awning Mfgr.		Industry or Business

Age	Race	Single, Widowed, or Divorced	No. Times Prev. Married
39	Wh.	Divorced	1
Occupation	Tailoress		Industry or Business

Birthplace Winston Salem, N. C.

Birthplace Cardwell, Mo.

Father's
Full Name Fred Bonson Hinshaw

Father's
Full Name Ailliam Arthur Long

Mother's
Maiden Name Della Virginia Kretchmar

Mother's
Maiden Name Lula Mae Rooks

Residence:
City or County
Mailing Address Chesterfield Co. Va.

Residence:
City of County
Mailing Address Richmond, Va.

Proposed
Date of Marriage April 19, 1957

Proposed
Place of Marriage Richmond, Va.

Given under my hand this 16th day of April, 1957. Thos. R. Miller, Clerk of Hustings Court.

CERTIFICATE OF DATE AND PLACE OF MARRIAGE

I,, a of the Church, or religious order of that name, do hereby certify that on the day of 19, in the county, city, or town of, Virginia, under authority of this license I joined together in the Holy State of Matrimony the persons named and described therein. I qualified and gave bond in the county or city of, year 19....., which authorizes me to celebrate the rites of marriage in the Commonwealth of Virginia.

Given under my hand this day of, 19

Address of celebrant

(Person who performs ceremony sign here.)

MARGIN RESERVED FOR BINDING

The minister or other person celebrating this marriage is required within five days to fill out and sign both copies of the Certificate of Date and Place of Marriage, and deliver them to the clerk who issued the license.

The copy with the license on the back is for the clerk, the other for the Bureau of Vital Statistics.

Pauline Long Hinshaw v. George F. Hinshaw

(on back)

MARRIAGE LICENSE.

Virginia City of Richmond to-wit:

TO ANY PERSON AUTHORIZED TO CELEBRATE MARRIAGES:

You are hereby authorized to join together in the Holy State of Matrimony, according to the rites and ceremonies of your Church or religious denomination, and the laws of the Commonwealth of Virginia, George Fredinand Hinshaw and Pauline Long Clarke.

Given under my hand, as Clerk of Hustings Court of City of Richmond County (or City) this 16th day of April, 1957.

THOS. R. MILLER, Clerk.

Copy—Teste:

BLANCHE E. HARMON, Deputy Clerk.

The above parties were married in Richmond, Va. April 19, 1957 by Rev. Clyde V. Hickerson.

Teste:

BLANCH E. HARMON, Deputy Clerk.

Filed August 19, 1959.

LEWIS H. VADEN, Clerk. (M. F.)

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ORDER.

This day came the respective parties in person and by counsel, pursuant to proper and legal notice duly served upon the defendant, and the complainant, by counsel, moved the Court to require the defendant to pay temporary alimony

and support money for herself and her infant son during the pendency of this suit and, further, to require the defendant to pay her counsel fees and court costs.

On consideration whereof, upon the evidence orally heard and upon the argument of counsel for the complainant and the defendant, the Court doth

ADJUDGE, ORDER AND DECREE that the defendant do pay the complainant forthwith the sum of FIFTY (\$50.00) DOLLARS per week, commencing on August 28, 1957, and a like sum on each Wednesday hereafter until the further order of this Court as temporary alimony and support money for herself; and the Court doth further

ADJUDGE, ORDER AND DECREE that the defendant pay unto L. Paul Byrne, counsel for the complainant, the sum of ONE HUNDRED FIFTY (\$150.00) DOLLARS counsel fees and TWENTY-FIVE (\$25.00) DOLLARS court costs.

Seen; Counsel for the complainant objects and excepts to the foregoing order with regard to temporary alimony and support money for the complainant on the ground that it is contrary to law and evidence, inadequate and for other reasons which have been stated to the Court.

L. PAUL BYRNE, p. q.

Seen; Counsel for the defendant objects and excepts to the order of this Court which requires the defendant to pay temporary alimony and support money to the complainant.

JAMES F. BOSTON, p. d.

Enter Sept. 4, 1957.

WILLIAM OLD, Judge.

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DECREE DENYING CROSS-BILL.

This cause came on to be heard on the 7th day of November,

1958, upon the defendant's cross-bill filed herein on August 31, 1957, and upon the defendant's amended cross-bill filed with leave of Court on November 7, 1958, and was argued by counsel.

It appearing to the Court from the evidence that the defendant is not entitled to the relief prayed for in his cross-bill and amended cross-bill, the Court doth

ADJUDGE, ORDER and DECREE that the defendant be, and he hereby is, denied a divorce from bed and board from the complainant and that said cross-bill and amended cross-bill be, and the same hereby are, dismissed, to all of which counsel for the defendant objected and noted an exception.

I ask for this:

L. P. BYRNE, Esq., p. q.
MERHIGE, BYRNE, MONTGOMERY &
BABER
810 Insurance Building
Richmond, Virginia.

Seen: And objected to.

J. F. BOSTON, Esq., p. d.
American Building
Richmond, Virginia.

A. SCOTT ANDERSON, Esq., p. d.
BOWLES ANDERSON & BOYD
Mutual Building
Richmond, Virginia.

Enter Jan. 27, 1959.

WILLIAM OLD, Judge.

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DECREE.

This cause, which has been regularly matured, docketed and set for hearing, came on this day to be heard upon the Com-

plainant's Bill of Complainant; upon proof of proper and legal service of process on the Defendant; upon the Defendant's Answer; upon the Defendant's Cross Bill, which has been heretofore denied; and upon the depositions of witnesses on behalf of the Complainant and the Defendant regularly taken after proper and legal notice to the Defendant; and filed in accord with the law; and was argued fully by Counsel for the Defendant, and argued by Counsel for the Complainant insofar as the Court indicated its desire to hear argument.

UPON CONSIDERATION WHEREOF, it appearing to the Court from the evidence, independently of the admissions of the parties in the pleadings or otherwise, that both the Complainant and the Defendant are members of the Caucasian race, and that they were lawfully married in Richmond, Virginia, on April 19, 1957; that the Complainant and the Defendant were *bona fide* residents of and domiciled in the State of Virginia at the time of the commencement of this suit; and that the Complainant and the Defendant last cohabited as husband and wife on or about July 18, 1957, in the County of Chesterfield, State of Virginia; that page 16 } there were no children born of the aforesaid marriage; that the charge of desertion on July 18, 1957, of the Complainant by the Defendant, without legal justification, has been fully proved by the evidence and has continued without interruption since July 18, 1957; and that the Complainant is entitled to a portion of the relief prayed for in her Bill of Complaint; therefore, the Court doth

ADJUDGE, ORDER AND DECREE that the Complainant, PAULINE LONG HINSHAW, be, and she hereby is, granted a decree for separate maintenance and support from the Defendant, GEORGE F. HINSHAW, on the ground of cruelty and desertion as of July 18, 1957; to which action of the Court the Defendant objects and excepts; and the Court doth further

ADJUDGE, ORDER AND DECREE that the Defendant, GEORGE F. HINSHAW, pay unto the said Complainant, PAULINE LONG HINSHAW, the sum of FIFTEEN (\$15.00) DOLLARS per month, payable on or before the 27th day of each month, commencing the 27th day of February, 1959, until the further order of this Court, to which action of the Court, the Defendant objects and excepts. as does the Complainant in reference to the amount specified.

It is further ADJUDGED, ORDERED AND DECREED

that the Defendant pay unto L. PAUL BYRNE, Counsel of record for the Complainant, the sum of EIGHTEEN HUNDRED (\$1,800.00) DOLLARS as and for payment of counsel fees for services rendered the Complainant in this cause to date and in addition thereto Court costs and the sum of \$119.00 DOLLARS to Dr. Gilman R. Tyler M. D. for treatment rendered the Complainant.

page 17 } This cause is retained on the docket of this Court for such further proceedings herein as may be provided by law.

Seen:

L. PAUL BYRNE, p. q.
MERHIGE, BYRNE, MONTGOMERY &
BABER

810 Insurance Building
Richmond, Virginia.

JAMES F. BOSTON, p. d.
American Building
Richmond, Virginia.

A. SCOTT ANDERSON, p. d.
BOWLES, ANDERSON AND BOYD
Mutual Building
Richmond, Virginia.

Enter Feb. 25, 1959.

WILLIAM OLD, Judge.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

The undersigned, Counsel of Record for the Complainant, PAULINE LONG HINSHAW, in the above-styled matter, hereby gives notice of intention to appeal from the final order of this Court heretofore entered on February 25, 1959, insofar as it pertains to the award of allowances for the maintenance and support of the Complainant, and assigns the following errors:

1. The Court erred in reducing the amount of allowance

for the maintenance and support of the Complainant from \$50.00 per week to \$15.00 per month on the ground that there was insufficient evidence to support such a decree.

2. The decree of the Court awarding the Complainant \$15.00 per month for maintenance and support is grossly inadequate in amount under the evidence in this case and constitutes an arbitrary abuse of discretion by the Court.

Respectfully submitted this 22nd day of April, 1959.

L. PAUL BYRNE,
Counsel for Complainant.

Filed April 22, 1959.

LEWIS H. VADEN, Clerk
By MARGARET C. FOSTER, D. C.

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MOTION TO DISMISS APPEAL.

The Complainant, Pauline Long Hinshaw, by Counsel, moves the Court to dismiss the Notice of Appeal filed herein by the Defendant, George F. Hinshaw, of the Decree denying the Defendant's Cross-Bill and Amended Cross-Bill and denying the Defendant a divorce from bed and board from the Complainant entered herein on January 27, 1959, on the following grounds:

1. The Notice of Appeal is not filed within the time prescribed by Rule 5:1, Section 4, of the Rules of Court as set forth in Virginia Code of 1950, as amended.

PAULINE LONG HINSHAW,
By L. P. BYRNE
Of Counsel.

Filed April 27, 1959.

WILLIAM OLD, Judge.

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STIPULATION OF THE RECORD TO AND INCLUDING
SEPTEMBER 24, 1958.

In the instant case, the Complainant, Pauline Long Hinshaw, filed a Bill of Complaint on or about August 16, 1957, in the Circuit Court of Chesterfield County, Virginia, against the Defendant, George F. Hinshaw, her husband, alleging desertion on July 18, 1957, and certain misconduct on his part, and praying, among other things, for a decree of separate maintenance and allowances for support money, Counsel fees and costs. The Defendant filed an Answer and Cross-Bill on or about August 31, 1957, denying the pertinent allegations contained in the Bill of Complainant and alleging desertion and cruelty on the part of the Complainant on August 16, 1957, and praying that the Bill of Complainant be dismissed and that he be granted a divorce from bed and board. The depositions of the parties and witnesses have been filed with the Court.

On May 8, 1958, Counsel for the respective parties appeared before the Court to argue the case. At the beginning of such hearing the Court restricted Counsel for the Complainant in his argument to the issue of justification for the wife's failure to return to her home upon her release from the hospital on August 16, 1957. Counsel for the Complainant then moved the Court to strike the Defendant's evidence in support of his Cross-Bill for divorce from bed and board upon the grounds that it lacked corroboration as required by law and was insufficient in law to justify the granting of a divorce in favor of the Defendant. The Court having heard the argument of Counsel for the respective parties denied the Defendant's Cross-Bill for a divorce from bed and board, but, reserved its decision, pending further argument, on the question of allowances to the Complainant for support and Counsel fees.

On September 24, 1958, at 9:30 A. M., with the consent of Counsel, this cause was set down for hearing on the remaining issues of allowances to the Complainant for support and maintenance and Counsel fees. At this hearing, A. Scott Anderson, Esq., of the Law Firm of Bowles, Anderson & Boyd, appeared in association with Counsel for the Defendant and asked to be heard. When asked by Counsel for the Complainant to state the reasons for his request, Mr.

Anderson advised the Court that he represented the Defendant in a collateral matter involving his business and did not represent the Defendant in the divorce case pending before this Court, but wished to be heard relative to the latter. Counsel for Complainant objected. The Court stated, before any argument by Counsel, that it was of the opinion that allowances for separate maintenance should not be permanent and that it would be constrained to enter an order for the payment of \$50.00 per week to the Complainant for six months.

Counsel for the Complainant moved the Court that he be allowed to present his argument on the issue of allowances and that the Court enter an order this date denying the Defendant's Cross-Bill for a divorce from bed and board in keeping with its oral decision of May 8, 1958.

Counsel for the Defendant was then permitted, over the objection of Counsel for the Complainant, to reargue the merits of the Cross-Bill and to suggest to the Court that the Defendant be permitted to amend his Cross-Bill to change the allegation of desertion from August 16, 1957, to July 19, 1957.

Counsel for the Complainant objected to the amendment of the Cross-Bill on the ground that no notice of such a motion had been given as required by the rules of Court and, further, that the motion came too late since the Court had denied the Cross-Bill on May 8, 1958. Further, Counsel for the Complainant renewed his motion that the Court enter an order this date in keeping with its oral decision of May 8, 1958, denying the Defendant's Cross-Bill and, further, that he be permitted

page 25 } to present argument on the issue of allowances.
The Court then denied the motion for an entry of an order in keeping with its oral decision of May 8, 1958, denying the relief prayed for in the Defendant's Cross-Bill, to which action of the Court Counsel for the Complainant noted an exception.

The Court further denied the motion of Complainant's Counsel that he be permitted to present argument on the issue of allowances and continued the matter indefinitely to permit the parties to file such other pleadings as they might deem necessary, to which action of the Court Counsel for the Complainant noted an exception.

L. P. BYRNE

Counsel for the Complainant.

R. R. RYDER

Of Counsel for the Defendant.

Pauline Long Hinshaw.

Received April 27, 1959.

WILLIAM OLD, Judge.

May 2, 1959.

WILLIAM OLD.

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ASSIGNMENT OF CROSS-ERROR.

Comes now the defendant, George F. Hinshaw, through his counsel, R. R. Ryder, and hereby assigns as cross-error to the notice of appeal and assignment of error filed by the complainant, the following:

1. The court erred in refusing to grant the cross-complainant's prayer for a divorce on the grounds of desertion in that the evidence was uncontradicted that the complainant was guilty of desertion; and the complainant's justification for such desertion was insufficient under the law and evidence to form a basis for the dismissal of the cross-complaint.
2. The court erred in granting the complainant a decree of separate maintenance and support in that this action by the court was contrary to the law and evidence.

GEORGE F. HINSHAW
By Counsel.

Filed May 11th 1959.

LEWIS D. VADEN, Clerk.

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Dep.
9-17-57
page 2 }

PAULINE LONG HINSHAW,
the complainant, a witness of lawful age, after being
duly sworn, deposes as follows:

Pauline Long Hinshaw.

DIRECT EXAMINATION.

By Mr. Byrne:

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Dep.
9-17-57
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Q. Mrs. Hinshaw, at the time you married the defendant, George F. Hinshaw, where were you residing?

A. 3209 Garland Avenue.

Q. Was that an apartment, flat, or house, or what?

A. Flat.

Q. How many rooms did it have?

A. Five rooms and bath.

Q. Did you rent it in your name?

A. Yes.

Dep. Q. Who resided there?

9-17-57 A. Stanley Clarke, myself, and Ruth Giannotti.

page 16 } Q. Did you rent that flat furnished or unfurnished?

A. Unfurnished.

Q. Did you own all of the furniture which went to make up the furnishings for the flat?

A. Everything except the stove.

Q. At the time you married George Hinshaw, was it necessary that you make any arrangements for the disposition of the apartment and the furniture?

A. Yes.

Q. Will you tell the Court what arrangements you had to make?

A. I had to sublease the apartment, get rid of my furniture, and find a place for Stanley to board until school was finished.

Q. At the time did you dispose of all of your furniture?

A. No.

Q. How much of it did you keep or retain?

A. I have the washing machine, the sewing machine, sofa, the dresser, vanity and chest-of-drawers for my bedroom suite.

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Pauline Long Hinshaw.

Dep.
9-17-57
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CROSS EXAMINATION.

By Mr. Boston:

Dep.
9-17-57
page 41 }

Q. Were you employed before you were married, Mrs. Hinshaw?

A. Yes.

Q. Where?

A. At the Town and Country Dress Shop.

Q. Where is that located?

A. 5812 Grove Avenue.

Q. What was your salary there?

A. \$75.00 per week.

Q. Did you get a commission on your sales over and above any specified amount?

A. No.

Dep. Q. You got a flat salary of \$75.00 a week?

9-17-57

A. Yes.

page 42 } Q. Where were you living when you were employed there?

A. 3209 Garland Avenue.

Q. Was your son living with you at the time?

A. Yes.

Q. Did you have an apartment?

A. I had a flat.

Q. Just you and your son occupied that flat?

A. And Ruth Giannotti.

Q. She shared the expenses?

A. Yes.

Q. Is that true?

Pauline Long Hinshaw.

A. Yes.

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Dep.
9-17-57
page 57 }

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RE-DIRECT EXAMINATION.

By Mr. Byrne:

Q. Mrs. Hinshaw, prior to your marriage with Mr. Hinshaw, did he discuss with you whether or not he desired you to continue with your employment?

A. No, he did not want me to continue working.

Q. Did he tell you specifically that he did not want you to continue working?

A. Yes. I was supposed to stay home, keep house, and take care of the baby, which I was very happy to do.

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Dep.
9-17-57
page 63 }

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RE-REDIRECT EXAMINATION.

By Mr. Byrne:

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Dep.
9-17-57
page 64 }

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Q. After you left the hospital on August 16, 1957, and until August 28, 1957, did you receive any money from Mr. Hinshaw for support?

Pauline Long Hinshaw.

A. No. That was the day of the hearing, is that correct, the 28th?

Q. Yes. During that period of time, and up until the present time, has it been necessary that you board Stanley in one home, and you occupy another?

A. Yes.

Q. Is that due to your present financial condition?

A. Well, yes and no. But, what I mean is: Well, it really is due to that, because when I went to the hospital I took Stanley to Mrs. Ragland's, and it was understood that I had no money, and that I would have to settle with her later.

So he was staying there without me paying any board at the time. I mean it was understood that it was to be paid later.

Dep. Q. In other words, Mrs. Ragland extended you 9-17-57 credit for his board during that time?

page 65 } A. Yes.

Q. Where did you go to live after you left the hospital?

A. With Mrs. Farrar, 1307 Chambers Street.

Q. Did you go there under the same arrangement?

A. Yes, I did.

Q. Mrs. Hinshaw, have you made up a list of your needs, at my request, for submission to the Court?

A. Yes.

Q. Do you have that list with you this morning?

A. Yes, I have it. (Taking a piece of paperwriting from her pocketbook.)

Q. Mrs. Hinshaw, will you tell the Court what effort you have made to secure an apartment, and what the rent would be on such an apartment suitable to your need and your station in life?

A. Yes.

Q. Tell the Court please.

A. I called several rental agents, and the prices ran anywhere from \$107.50 to \$112.50, which included all utilities.

Q. Where were those apartments located?

A. I called the Malvern, Keswick, and Lock Lane.

Dep. Q. Mrs. Hinshaw, what do you feel that you need 9-17-57 for food, including milk and other household food page 66 } goods?

A. Well, including milk and everything, it would run around \$95.00.

Q. Is that per month?

Pauline Long Hinshaw.

A. Yes.

Q. Will you state in your own words, Mrs. Hinshaw, what you consider your other needs to be per month, and the estimated cost per month? You have to make sure to state them individually. Just state what you feel that you need to run a home for you and your son, and what it would cost you per month.

A. Well, it would average about \$4,000.00. You—Oh, a month—

Q. That's right.

A. About \$350.00 or \$400.00.

Q. Have you any estimates on which you base that, do you have the cost by item?

A. Yes, I have.

Q. Will you state those for the record?

A. Would be: Rent, \$112.50; groceries, \$95.00; maid, \$25.00; phone, \$5.75; clothes, \$50.00; cleaning, \$15.00; insurance, \$18.00; doctors and medicine, \$10.00; automobile expenses, \$30.00; miscellaneous, \$50.00.

Q. Have you totaled that up, Mrs. Hinshaw?

Dep. A. I believe that totals around \$4,000.00. I don't

9-17-57 have it totaled up here.
page 67 } Q. Wait just a minute, those amounts do not
add up to \$4,000.00.

A. \$411.00. I am getting all mixed up here. That was for the furniture and stuff that I would need.

Q. What is the total of the estimate that you give of your living expenses per month, approximately?

A. Oh, \$400.00.

Q. Now, Mrs. Hinshaw, at the time you married Mr. Hinshaw, I believe you testified that you were living in a flat which you had completely furnished with your own furniture, and, at that time, with his knowledge, it was necessary for you to dispose of all of your furniture, except a few miscellaneous pieces. Is that true?

A. Yes.

Q. Have you also made a list of the costs to replace the furniture which you would need if you went into an apartment?

A. Yes.

Q. Would you read that list into the record?

A. Living Room, \$1,225.00; Bedroom, \$700.00; Dining Room, \$750.00; Kitchen, \$300.00; TV, \$400.00; Curtains, \$500.00; Mirrors, \$200.00.

Pauline Long Hinshaw.

Q. The estimate of the cost of furniture for the living room, does that include or exclude the sofa which you now have?

Dep. 9-17-57 } A. That is excluded.
page 68 }

Q. Have you totaled those figures?

A. Well, I don't have it down here right now. I could do it in a jiffy.

Q. Do you know approximately what it would add up to?

A. That would be about \$4,000.00.

Q. Mrs. Hinshaw, do you have any idea of Mr. Hinshaw's income per year, from his business and other interests?

A. Well, the only thing he told me, or, he asked me, rather, before we were married if I thought I could get along on \$12,000.00 a year.

Q. Has he ever discussed with you the value of his estate in any manner?

A. Yes, he told me that would be valued at between \$35,000.00 and \$40,000.00.

Q. What did he have reference to at that time?

A. The home:

Q. Is that the home in which you were living in Chesterfield County?

A. Yes.

Q. Did he discuss with you any of his other interests or estate holdings?

A. Well, not the amount. He told me that he had some real estate. He also has \$15,000.00 interest in the Monacan Hills Country Club.

Dep. 9-17-57 } Q. Are you asking the Court to allow you approximately \$400.00 per month as living expenses?
page 69 }

A. Yes.

Q. Are you asking the Court also to allow you the sum of approximately \$4,000.00, if necessary, to outfit any home which, or apartment, which you would require?

A. Yes.

Q. I would like to ask you one more questions with reference to the figure of \$4,000.00. Have you included in that figure any furniture for Stanley Clarke's bedroom?

A. No, I did not, because with the miscellaneous pieces I have, I could make a bedroom out of that.

Dr. Gilman R. Tyler.

page 70 } RE-RE-REDIRECT EXAMINATION.

By Mr. Byrne:

Q. Let me ask you this, Mrs. Hinshaw: Have you discussed with Dr. Tyler the advisability of your returning to employment?

A. Yes, I did. I asked him if I could go back to work, and he said he didn't want me to go back to work yet; that he didn't feel that I could hold down a job yet, in my condition.

.

Dep.

9-24-57

page 3 }

DR. GILMAN R. TYLER,

a witness introduced on behalf of the complainant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Byrne:

.

Dep.

9-24-57

page 22 }

Q. Did Mrs. Hinshaw discuss with you prior to her discharge from the hospital, or subsequent thereto, whether or not her physical condition would permit her to return to work?

A. Well, she stated at that time that she was still considerably upset and nervous, and I recall specifically that she was complaining that she was having difficulty sleeping, and it was my feeling that she was not physically well enough to return to any type of regular work, you might say.

.

Dep.

9-24-57

page 31 }

C. H. Gordon.

RE-CROSS EXAMINATION.

By Mr. Boston:

Q. Her blood pressure when it was elevated at the highest point was 210/110?

A. No, 200/110.

Q. Well, I understood you to say that in your professional opinion that anxiety or nervousness would not—
 Dep. A. Ordinarily, if I may stick that in there, be-
 9-24-57 cause I know what you are going to say, I did
 page 32 } testify—I said that ordinarily it would not in-
 crease it from a level of an average of 125/80 much
 more than 160/90. That is right, ordinarily, it would not.
 There are exceptions to all rules.

RE-REDIRECT EXAMINATION.

By Mr. Byrne:

Q. In your professional opinion what is the danger of a hypertensive condition indicated by the blood pressure being elevated to 200/110, to which you testified?

A. My answer to that question is this: Any blood pressure of that level that has not pre-existed chronically over a period of time could, if not brought under control, lead to a very serious vascular damage, such as a stroke, coronary thrombosis and so forth.

Dep.

12-5-57

page 4 }

C. H. GORDON,

a witness introduced in behalf of the complainant,
 first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Byrne:

O. L. Hopkins.

Dep.
12-5-57
page 5 }



Q. Did you know Mr. Hinshaw prior to the date of their marriage?

A. Approximately two weeks prior to the marriage. It was towards the end of March or the last Sunday in March. Mrs. Clarke—at that time she was Mrs. Clarke, and Mr. Hinshaw were in my home late on a Sunday evening for supper, I believe.

Q. At that time do you recall having a conversation with Mr. Hinshaw with reference to their marriage plans?

A. Yes, sir. There was some conversation taking place at that time.

Q. Tell the Court in your own words just what Dep. that conversation was about, as you recall it.

12-5-57 A. A short while after the two had been in our
page 6 } home and were sitting in the living room—Well, we
had several cocktails, and then there was the follow-
ing conversation. Mrs. Hinshaw at that time made some refer-
ence in regard to working or being employed after their
marriage, along with other statements in regard to the two
children, one of each, belonging to one of each, in regard to
their care.

Q. Do you recall what Mr. Hinshaw's reply was to Mrs. Hinshaw's suggestion that she continue working?

A. Mr. Hinshaw apparently disapproved of this, advising that he would be willing to support the children, and that there would be no necessity for his wife to be employed.



Dep.
12-5-57
page 12 }



O. L. HOPKINS,

a witness introduced in behalf of the complainant, first being duly sworn, deposes as follows:

O. L. Hopkins.

DIRECT EXAMINATION.

By Mr. Byrne:

Dep.

12-5-57

page 13 } Q. Mr. Hopkins, are you a member of any particular real estate associations dealing with brokerage and development of property?

A. I am a member of the Richmond Real Estate Board, the National Real Estate Board. Therefore I am a realtor.

Q. Mr. Hopkins, are you familiar with the property in the Midlothian Magisterial District of Chesterfield County?

A. Yes.

Q. Is the greater portion of your business dealing with that property?

A. Ninety per cent of it is.

Q. Are you familiar with the property of George F. Hinshaw in Midlothian Magisterial District?

A. Yes.

Q. At one time were you not employed as the exclusive agent for the development and sale of some property belonging to George F. Hinshaw in that district?

A. Yes, sir. I developed a portion of George Hinshaw's property, known as Arsenal Hills.

Q. Do you recall what period of time that covered, from and to?

Dep. A. I think it was during 1955 and 1956.

12-5-57 } Q. Did you completely handle the platting and
page 14 } sub-dividing of this sub-division known as Arsenal
Hills, in addition to the sales?

A. Yes.

Q. Do you recall how many acres there were in Arsenal Hills in the beginning?

A. No, I don't remember, because it had two tracts in it. And we developed one portion of it first and the other portion second. I don't remember the exact amount of acreage in there.

Q. Did you estimate the amount of acreage in there?

A. I go by lots instead of acreage in there. I have that record at the office, but I did not bring it with me.

Q. How many lots were you able to sub-divide in the development known as Arsenal Hills?

O. L. Hopkins.

A. The plat as laid out, that would be 28 lots. That was the original plat, but I did not develop all of that property. I only developed 20 lots.

Q. What was the average of the lot as laid out by the original sub-division plat?

A. They run from an acre to an acre and three-quarters.

Q. Did that average hold true in the 20 lots
Dep. that you have testified that you developed?

12-5-57 A. Yes, sir.

page 15 } Q. Do your records indicate how many of those
lots were sold from 1955 to 1956?

A. There were six sold in 1956, but the sixth one was not settled for until later.

Q. How many were sold in 1955?

A. That was '55 I gave you.

Q. How many were sold in '56?

A. Five sold in each year, because the one sold in 1955 to Thompson was not settled until 1956. So that went into '56. So it was five in each year.

.

Dep.

12-5-57

page 16 } Q. Mr. Hopkins, in March of 1955 did you handle
the sale of 1.98 acres in Arsenal Hills to Edward E.
Ralston and Marjorie R. Ralston, his wife?

A. I sold Lot No. 2. I don't have down here the exact number of acres, but I sold Lot No. 2 to E. E. Ralston.

Q. Do your records indicate the selling price of that lot?

A. \$2,000.00.

Q. During the same month in 1955 did you sell an additional lot to A. W. Goode, Jr., and wife?

A. Yes.

Q. Your records indicate the sales price on that, do they not?

A. Yes, sir.

Q. What is that?

A. \$2,000.00.

Q. In April of 1955, did you sell or handle the sale of a lot to Robert M. Hathaway and wife?

A. Yes. That was Lot No. 3.

Q. What was the sales price on that?

A. \$2,500.00.

O. L. Hopkins.

Q. In June of 1955 did you handle the sale of
 Dep. Lot 24 to Ferdinand Wiederspohn and wife?
 12-5-57 A. Yes.

page 17 } Q. What was the sales price on that?
 A. \$3,950.00.

Q. In September of 1955 did you handle the sale of a lot
 on Arsenal Hills Road to Frederick W. Buckley, Sr.?

A. Yes.

Q. What was the sales price on that lot?

A. \$2,600.00.

Q. In October of 1955 did you handle the sale of Lot 5,
 Block A, of Arsenal Hills, to James R. Thompson and wife?

A. Yes.

Q. What was the sale price on that?

A. \$1,950.00. That was not recorded until the next year,
 however.

Q. In March of 1956 did you handle the sale of Lot 3, of
 Block A, of Arsenal Hills, to Conrad H. Akers and wife?

A. Yes.

Q. What was the sale price on that lot?

A. \$1,950.00.

Q. In June of 1956 did you handle the sale of Lot 5, Block
 B, Arsenal Hills, to Alexander C. Graham and

Dep. wife?

12-5-57 A. Yes.

page 18 } Q. What was the sales price on that?

A. \$3,250.00.

Q. In July of 1956 did you handle the sale of Lots 8 and
 9, of Block B, Arsenal Hills, to James A. Redmond and
 wife?

A. Yes.

Q. What was the sales price of those two lots?

A. \$7,700.00.

Q. In January of 1957 did you handle the sale of Lot 1,
 Block A, Arsenal Hills, to Richard V. Lancaster, Jr., and
 wife?

A. Yes. I have the contract filed here. I do not remember
 the date, but that is approximately right, yes.

Q. What was the sales price on that lot?

A. \$2,950.00.

Q. In November of 1956 did you handle the sale of Lot 4,
 Block A, Arsenal Hills, to Edgar H. Mallory and wife, which
 was settled in April of 1957?

A. That's right.

Q. What was the sale price on that lot?

O. L. Hopkins.

A. \$2,950.00.

Q. Mr. Hopkins, I would like to refer you back to the Lancaster lot, if you will, please. Does your contract positively show that the sales price of that lot was \$2,950.00?
Dep. 12-5-57 }
page 19 } A. Yes, sir.

Note: Off the record discussion.

Q. Mr. Hopkins, you are referring to a plat of the sub-division of Arsenal Hills, are you not?

A. That's right.

Q. Does that plat show seven lots as being in Block A?

A. Yes.

Q. Does it show nine lots in Block B.

A. Yes.

Q. Does it show five lots in Block C?

A. Yes.

Q. Does it show two lots in Block D?

A. Yes.

Q. In addition, are there six un-numbered lots on the south line of Arsenal Road shown on that plat?

A. That's correct.

Q. According to my calculations, that would be 29 lots, rather than 28, in the sub-division of Arsenal Hills, is that correct?

A. Yes.

Q. Of that 29 lots, you have already testified to handling the sale of 12?

Dep. 12-5-57 } A. That's right.

Q. Leaving a remaining total of unsold lots of page 20 } 17, is that correct?

A. Correct.

Q. Mr. Hopkins, are you familiar with the real estate values in the area in which the sub-division of Arsenal Hills is located?

A. Yes.

Q. Mr. Hopkins, your records show there is one un-numbered lot, unsold, on the south line of Arsenal Hills. What is your opinion as to the value of that lot on today's market?

A. \$3,000.00.

Q. Now your records show that Lots 2, 6, and 7, of Block A, of Arsenal Hills, are unsold?

A. That's right.

O. L. Hopkins.

Q. What is your opinion as to the value of those lots on today's market?

A. No. 8 is \$2,000. No. 2 is \$2,000. No. 6 is \$3,000. No. 7 is \$2,500.

Q. Your records show that Lots 1 and 2 of Block D are unsold. In your opinion, what is the average value on today's market for those lots?

A. One of them is worth \$3,000. The other one Dep. is worth \$2,000.

12-5-57 Q. State which is which?

page 21 } A. No. 1 is worth \$3,000. No. 2 is worth \$2,000.

Q. Your plat also shows that Lots 6 and 7, of Block B, are unsold?

A. That's right.

Q. In your opinion, what is the value of those two lots?

A. \$2,000., because they are bad lots. They lay badly.

Q. Is that \$2,000 each?

A. That's right.

Q. The records also show that Lots 1, 2, 3 and 4, of Block B, are unsold. In your opinion, what is the value of those lots on today's market?

A. Those lots should bring \$2,500 apiece.

Q. Now your records show also that Lots 1, 2, 3, 4, and 5, of Block C, are unsold. In your opinion, what is the value on today's market of those lots?

A. One and 2 are \$2,500 each; 3 is worth \$2,750. No. 4 is worth \$2,750. No. 5 is worth \$3,000.

Q. Mr. Hopkins, are you also familiar with the real estate of Mr. George F. Hinshaw which is located in Midlothian District?

A. Yes, sir.

Dep. Q. In your opinion, sir, what is the value of that
12-5-57 home and the land on which it is located, on today's
page 22 } market?

A. I will have to qualify that statement in this way: The house sits almost in the middle of the property, which precludes selling off much of it to any advantage. It is a house that is worth more if you find people who want that type of house. However, it is the type of home that is rather hard to sell at the present time. So I would say that the whole value of it would be—on today's market would be \$27,500.

Q. Are you also familiar with a piece of property owned by Mr. Hinshaw on U. S. Route 60 containing approximately ten acres of land?

George F. Hinshaw.

A. That location is not correct. So far as the ten acres that I know anything about, that property is on what is called the old CCC road. I think that is the name of it.

Q. Is that off of Route 60?

A. At least half a mile.

Q. In your opinion, what is the value of that ten acres of land on today's market?

A. The top in that would be \$75 an acre. That is according to other property sold in the neighborhood on Route 60. Most land in that area sells for \$50 an acre.

Q. You have testified that in your opinion the value of the home of Mr. Hinshaw on today's market would be \$27,500?

A. That's right. I would like to qualify that and say this. I would like to say that to produce the same house today it would perhaps cost more. However, you asked me the value of it on today's market, and we consider the sale price or what the property will bring.

Q. Sir, would your value be different if you had a particular purchaser who wanted that particular house?

A. That we cannot go into, as I see it, because we don't know when we are going to get a particular purchaser. It might be possible, yes. But those things are few and far between.



Dep.
12-5-57
page 24 }

GEORGE F. HINSHAW,
the defendant, first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Byrne:

Q. Please state your full name, address, and occupation?

A. George F. Hinshaw.

Q. Your address?

A. R. F. D. 1, Midlothian, Virginia.

Q. What is your occupation?

A. Canvas goods manufacturer.

Q. Are you the sole proprietor of the Capitol Awning Company, located in Richmond, Virginia?

A. Yes, sir; I am.

George F. Hinshaw.

Dep.
12-5-57
page 25 }

Q. In accounting for the profits of the Capitol Awning Company, is your accounting method set up on a calendar year basis?

A. Yes, sir. It runs from January to January.

Q. What were your gross sales for the year ending December 31, 1957?

A. I have not completed that as yet. My estimate would be around \$40,000.

Q. What were the gross sales for the year ending December 31, 1956?

A. I do not have exact figures, but it was approximately \$44,000.

Dep. Q. What was the net profit on sales in the year
12-5-57 1956?

page 26 } A. I don't have those exact figures with me
either, but it was approximately \$9,600. I have
my tax returns and other papers to prove that if you think
it is necessary, that net profit was before the taxes, Federal
and State.

Q. Well, operating as the sole proprietorship, you are not entitled under the law to deduct your taxes from your net profit before determining the net figures, are you?

A. I am not qualified to say. I don't know.

Q. Mr. Hinshaw, are you in a position to state the amount of cash on hand in the bank on December 31, 1957?

A. I could give you a close figure on it.

Q. All right, sir.

A. That would run between \$19,000 and \$20,000. I might add to that that I have not bought any inventory for the coming year, which would amount to \$7,000 or \$8,000.

Q. Are you in a position to state the value of the accounts receivable on December 31, 1957?

A. Roughly \$8,000.

Q. What was your ending inventory of merchandise on hand?

Dep. A. Approximately \$1,000.

12-5-57 Q. Would it be any higher than that, Mr. Hin-
page 27 } shaw?

A. Well, I don't think it would run much higher

George F. Hinshaw.

than that. I have not completed my inventory for the end of the year.

Q. Are there any other current assets of the business?

A. None that I know of.

Q. What is the value of the fixtures and equipment of that business, just approximately, on December 31, 1957?

A. I would say approximately \$5,000. Well, it would not be that much, I don't believe.

Q. You own two trucks?

A. Yes.

Q. What is their value?

A. One is a '47 International pick-up truck, and the other is a '48 International pick-up truck.

Q. What value do you put on those, approximately, or do your books show?

A. Well, my books would show it. The sale value of those trucks, if you wanted to trade them in, would be approximately \$300 apiece.

Q. Would that be the same as the book value?

A. Well, now I would have to get my tax man, Dep. the man who makes my year-end statement, to close 12-5-57 my books in order to qualify that. I really don't page 28 } know.

Q. Let me say this, Mr. Hinshaw. I have a statement based on figures which you have submitted which show that the value of those trucks on August 5, 1957, your books showed \$1,000. Now we understand that you would be entitled to take depreciation on them for the months of August, September, October, November, and December. All I want is the approximate figures from you.

A. What I think they are worth?

Q. What your books show they are worth.

A. I don't have any books here. I don't know what my bookkeeper has set up for that. I am not qualified to say what they are worth, what the books show, because I really don't know. You asked me what I thought they were worth.

Q. According to your best recollection, it is \$600., is that right?

A. Yes, sir.

Q. You are the owner of a '57 Mercury, is that right?

A. Yes, sir.

Q. Is that carried on the books of your business?

A. Yes.

George F. Hinshaw.

Q. What value is that carried at on there?
 Dep. A. Well, it has not been set up on the present
 12-5-57 books. I only bought it in September.
 page 29 } Q. What did you set it up in September as?
 A. I did not set it up at all.

Q. What did you pay for it?

A. \$4,570, I think, with the trade-in value of the other car.

Q. What was the trade-in value of the other car?

A. Well, I paid \$1,600 in cash, the difference. That would be what they allowed me on my other car which I traded.

Q. Mr. Hinshaw, assuming that the book value of your car which you traded was \$2,250, then if you paid \$1,600 cash, plus that automobile, for a Mercury which you have testified that the list price is \$4,570, you would have a book value again of approximately \$720 on the trade-in value of the '55 Mercury, would you not?

A. Well, I do not know what the book values on either one of those cars is. I do not know anything about that part of the business.

Note: Off the record discussion.

Q. Mr. Hinshaw, are you familiar with the tax regulations which would require you to adjust the basis on a new car by the amount of—Again on the trade-in of the old car?

A. No, I am not.

Dep. Q. Well, if we assumed that the tax regulations
 12-5-57 required you to adjust such basis, then the ad-
 page 30 } justed basis for setting up the '57 Mercury on
 your books which you purchased in September
 would be approximately \$3,850, is that correct?

A. I don't understand that.

Note: Off the record discussion.

Q. Your books indicate that you also own a '52 Hudson automobile, is that correct?

A. Yes.

Q. What is the value of that on your books?

A. I paid \$500 for it.

Q. When did you buy it?

A. I believe it was last May.

Q. May of 1957?

A. I think so.

George F. Hinshaw.

Q. You say that a reasonable value for the purposes of this deposition would be approximately \$350?

A. I would think that would be about right.

Q. What liabilities are owed by the business?

A. I would say approximately \$1,000.

Q. What would you estimate the net worth of the business to be, just approximately? Now by net worth I mean the excess of the assets over the liabilities.

Dep. A. In other words, you are taking into considera-
12-5-57 tion the accounts receivable, and what I think the
page 31 } business is worth outside of those?

Q. Taking into consideration all the assets less the liabilities.

A. I would say around \$12,000.

Q. How do you arrive at that figure?

A. Well, I think the equipment up there is worth about \$5,000, just approximately. And I have approximately \$8,000 in accounts receivable.

Q. You also have cash in the bank of approximately \$20,000?

A. That is true.

Q. In the business account?

A. It isn't in the business account.

Q. You carry it in the business account, don't you?

A. No, sir.

Q. Don't you carry it on the business books?

A. There is about \$5,500 on the business books.

Q. You have a separate bank account with approximately \$15,000 in it?

A. That's right.

Q. Separate from the business?

Dep. A. That's right. That was in the savings and
12-5-57 loan association.

Q. Is that in your name, trading as Capitol Awn-
page 32 } ing Company?

A. In my name.

Q. You have testified, Mr. Hinshaw, that the cash in bank in the business account is approximately \$5,500?

A. That's right.

Q. That the accounts receivable are approximately \$9,000?

A. I said \$8,000.

Q. You said \$8,000 to \$9,000, according to Mr. Boston. I believe he asked you that question.

A. I don't recall, but I think I said approximately \$8,000. I don't have those figures.

George F. Hinshaw.

Q. I am not trying to pin you down to a specific dollar, but just the approximate value of the business.

A. I think I testified it was approximately \$8,000.

Q. And you also testified that the merchandise inventory on hand was approximately \$1,000?

A. That's right.

Q. In other words, the total of those three figures would be \$15,500, is that correct, or \$14,500?

A. I think that's right.

Dep. Q. Now they would constitute the current assets
12-5-57 of your business, would they not?

page 33 } A. Wait a minute. You mean the \$8,000 which
is owing to me?

Q. That's right.

A. And the \$5,500 approximately in the bank in the business name?

Q. That's right.

A. And the \$1,000 on inventory?

Q. Yes.

A. Yes.

Q. They would constitute the current assets of your business, is that right?

A. Yes.

Q. Now you have testified as to the following fixed assets, just in approximate amounts. Now bear in mind again that I am not trying to pin you down to within a dollar of what your books would show on those things. Now you have fixtures and equipment there that would be worth \$5,000; that you have two trucks, the value of which at \$300 apiece would be \$600; a '57 Mercury, which we have concluded the value of for tax purposes as \$3,850; and you have a '52 Hudson which is valued at approximately \$350.

Now I come up with \$9,800 worth of fixed assets. Is that approximately correct?

Dep. A. As far as I know, it is.

12-5-57 Q. Now the current assets plus the fixed assets
page 34 } would total \$24,300, is that correct?

A. As far as I know, yes.

Q. You have testified that all the liabilities that the business owes would be approximately \$1,000?

A. Yes.

Q. Then deducting \$1,000 from \$24,300, would show a net worth of the business of approximately \$23,300, is that correct?

A. That's right.

George F. Hinshaw.

Q. Mr. Hinshaw, you have also testified that you have approximately \$15,000 in cash in a savings and loan association?

A. It is in three different ones.

Q. Are you in a position to break those down and tell us which ones they are in?

A. Well, I can tell you which they are in, but I couldn't tell you the amounts.

Q. Which are they?

A. First Federal. Now I cannot recall the other two names.

Q. Would it be the Richmond Federal?

A. Is that the one over here next to the Bank of Virginia on the corner there (indicating)?

Dep. Q. Yes.

12-5-57 A. Yes, sir; that's right.

page 35 } Q. Would the other one be the Franklin Federal Savings up on Broad Street?

A. That's right.

Q. Mr. Hinshaw, you also have a stock interest in Monacan Hills Country Club, is that correct?

A. That's true.

Q. What did you pay for that stock interest?

A. \$15,000.

Q. What would you say the value of it is today?

A. Approximately the same, if you could sell it.

Q. Do you own any other stocks or bonds?

A. No.

Q. Do you have any other cash in the bank?

A. No.

Q. Are there any funds owed to you by anyone personally that are covered by notes or open accounts, that is, other than your business?

A. Not that I can recall.

Q. Mr. Hinshaw, your home in Midlothian District, did you build that home?

A. No, sir. I had a contractor build it.

Q. When did that occur?

A. I think it was in 1953.

Dep. Q. What did it cost you to build it at that time, exclusive of the land?

12-5-57 A. I think it was right around \$18,000. It might
page 36 } be \$500 more or less on account of the weather.

Just one thing and another, but that is very close to it.

George F. Hinshaw.

Q. How much did you pay for the land?

A. Well, there are three and a half acres left there. I paid \$200 an acre.

Q. Now, sir, in your opinion, what is the value of that home today?

A. Well, I have to go along with Mr. Hopkins, his expert opinion. He said \$27,500. I have never tried to sell it. I have never had a price on it from anyone interested in buying it.

Q. In your mind what do you think the fair value of it is?

A. Well, judging by what it cost me to build it, I don't believe that the value—The value has certainly not increased over 10 or 15 per cent in the last four or five years.

Q. Have you ever had occasion to put a value on that home of approximately \$30,000, sir?

A. Never had occasion to do that.

Q. Have you ever had occasion to do that, sir?

A. No, sir; no.

Dep. Q. What is the mortgage on the home at the 12-5-57 present time?

page 37 } A. A little over \$8,000. I think it is about \$8,300, something like that.

Q. What was the original mortgage?

A. \$11,000, I think it was.

Q. Was that in 1953?

A. I think it was.

Q. You say the approximate unpaid balance on that is \$8,000?

A. I think it was \$8,300, if I am not mistaken.

Q. What value do you place on the remaining unsold lots in Arsenal Hills?

A. I am not qualified to put a value on them.

Q. You are the owner of them, are you not?

A. That's right.

Q. Anyone who sold them would have to meet whatever price you think they are worth, or you would not sell them, isn't that true?

A. That is very true.

Q. In your own mind, sir, what do you think they are worth?

A. I will have to go along with the approximate values that Mr. Hopkins put on them. We tried to sell them for a little

George F. Hinshaw.

bit more than he wanted to. We have not *shown*
 Dep. any out there this year, which indicates that his
 12-5-57 price was approximately right.

page 38 } Q. Is that why Mr. Hopkins stopped selling them
 for you, because you thought they were worth more
 than he thought they were worth?

A. That's true.

Q. Then if his testimony indicates that the remaining lots
 in Arsenal Hills sub-division would have an average sales
 value in the aggregate of \$43,000, would you agree to that?

A. I think that is just about right.

Q. What do you consider the ten acres on the CCC road
 off of U. S. 60 to be worth?

A. Well, it was offered for a sale, \$1,250. I have not had a
 taker on them. I paid \$450 for it, if you want to know what I
 paid for it.

Q. Would you accept Mr. Hopkins' evaluation of approxi-
 mately \$75 an acre?

A. I think that is pretty close to it, yes.

Q. Do you own any other real estate other than what you
 have testified to this morning?

A. No, I do not.

Q. Do you have any other assets other than that which you
 have testified to this morning?

A. Well, I have a couple of policies which are
 Dep. worth approximately \$2,000.

12-5-57 } Q. By that, are you stating the cash value of
 page 39 } those policies?

A. I would have to die for you to collect it.

Q. How much insurance do you have on your life, face value
 of the policy?

A. That is just about what I have, approximately \$2,000.

Note: Off the record discussion.

Q. What do you estimate your net worth to be, approxi-
 mately, Mr. Hinshaw?

A. I would say between \$70,000 and \$80,000.

Q. I might state to you, sir, that we accept the figures that
 you have already testified to this morning. And if my compu-
 tation of those figures is correct, then your net worth is ap-
 proximately \$124,550, exclusive of your insurance policies.



George F. Hinshaw.

Dep.
12-5-57
page 40 }

Q. Mr. Hinshaw, could you tell us approximately how much money you spend per year at Arthur Murray's Dance Studio?

A. Per year, you say?

Dep. Q. Yes.

12-5-57 A. Well, I bought a certain number of hours
page 41 } which will be used up over a period of about three
years.

Q. When did you buy those hours, approximately?

A. I think it was in June of 1956.

Q. When will your contract expire?

A. I do not have any contract. I just use the hours up as I see fit.

Q. What did you pay for them?

A. \$2,400.

Q. You have not used those up as yet?

A. No.

Q. Of your own knowledge, are there any other assets that we have not covered in this deposition, this morning, that you would have?

A. I think you have pretty well covered it.

Q. Are there any others you can think of?

A. No, sir.

Hearing

11-7-58

page 2 } Mr. Boston: Judge, when we were here on September 24th, the question was argued as to our right to file an amended cross bill, and as I recall you said that you would let us do so. That is our purpose in being here this morning, we have prepared that and an order filing the same.

The Court: Well now, of course, I would certainly permit you to file the amended cross bill.

As I recall the depositions, the 19th day of July was the very day you wrote the letter, Mr. Boston about discussing the situation.

Mr. Boston: The marital affairs.

Mr. Byrne: No, let's state what is in the record. You

advised in that letter "Your husband came to see me about a divorce." There are no marital affairs in it.

The Court: The question comes to my mind as to whether on the 19th day of July, I have considered that thing again on the question of whether there is any possibility of Mr. Hinshaw getting a divorce. I don't see where there is, because the first idea about a divorce, as it appears in the record, was that he had gone to see an attorney with reference to a divorce. Now, that was what was in her mind, I don't think that 19th day of July what she did then would constitute grounds for a divorce.

Hearing 11-7-58 We are going to come down to the question, and, of course, this thing is a bad thing any way you want page 3 } to look at it, for her to continue a marital relationship that lasted only four months and then to require the support for the rest of her life, it just doesn't seem right to me, but I don't see any grounds in the depositions that Hinshaw has for a divorce.

Mr. Boston: May I cover that for you? It is the same thing we talked about before.

On or about the 19th day of July, 1957, she alleges that the desertion took place; that is he left her marital bed. We say that on the 19th day of July that he, for one night after they had some little argument, and he did leave her room—

Mr. Anderson: For the purpose of getting some sleep.

Mr. Boston: That is right. The following night he came back and offered to resume marital relations with her and she said "To get the hell out and don't ever come back in here again."

The Court: When she said that she had just gotten that letter about consultation.

Mr. Byrne: Let's keep the record straight. All through this case my friend, Mr. Boston, has had a tendency to testify.

Hearing 11-7-57 The record, as I understand it, with reference to this incident he refers to is that she came upstairs and George Hinshaw was in the bed or on the bed reading a newspaper, and according to George Hinshaw page 4 } she told him to get out of there. There was no offer made by him to resume marital relations.

Mr. Boston: He was lying on the bed and he came back for the specific purpose of resuming marital relations, after having been *interrupted* for the space of one night, and she told him to get the hell out and don't ever come back. When she said get the hell out, that constituted desertion on her part, because that was the night after the night of the 18th. Do you remember that?

The Court: I remember the arguments and the dates and everything. I have got them pretty well in my mind.

Mr. Boston: In our cross bill we merely affirm or rather the pleadings now cover that.

The Court: They bring that 19th in as a ground for divorce.

Mr. Boston: Exactly so.

Note: At this point the Court made certain remarks, which were off the record.

Mr. Byrne: I don't want to be disrespectful in this case, but certainly I feel that the remarks that the Court has made at this moment should be made a part of this record, because we have sought, or I have sought as counsel for the Hearing complainant to present to this Court the authorities 11-7-58 for our position with regard to allowances.

page 5 } The Court: That is right. You have done it and done it very well.

Mr. Byrne: I don't want to feel that this Court is not going to give me that opportunity or that this Court feels that it is prejudging the issue of allowances.

The Court: I don't think anybody is prejudging anything in this case; it has been fully heard and I don't think there is any prejudging of it at all.

I am simply saying this: That I do not consider that it is equitable to require the defendant in this case to support the plaintiff for the rest of her life. Now, I just don't think that is fair.

Mr. Byrne: If it please the Court, so that we don't have any misunderstanding, we have not had an opportunity to present our authorities as to the question of allowances. We have set it up on two different occasions and on each occasion a discussion or colloquy has occurred between counsel and the Court with reference to some related points, but if the Court will recall on September 24, 1958, when we were present, I specifically requested an opportunity to present oral argument as well as a brief on the law in Virginia with reference to the support of a wife in such a situation.

The Court: I have read those cases and it seems Hearing to me that in those cases the background was that 11-7-58 the marital relationship had continued for, I think, page 6 } twenty years or more, and that is a different situation from this.

I think you will unquestionably have to come to the point that it is a question largely of discretion; while there are

certain legal rights that flow from the marital relations, of course, the question of amount and all those kind of things come within the discretion of the Court, it seems to me.

Mr. Byrne: Counsel for the complainant takes the position, if it please the Court, that the duty of support depends upon the marital status. We have no fault to find with the Court's opinion at this point. Were this a case for divorce, here this Court has not eliminated—that is not a very good word—you are not eliminating it, but certainly you are not terminating the marital status. It is our position that the amount of allowances is within the discretion of the Court but that since the complainant is not asking for a termination of the marital status that it would be an abuse of discretion to put a time limit on it, because the Supreme Court of Appeals has repeatedly held that this should be a flexible situation, and we ask the Court to remember that under any change of circumstances that the defendant can always come in and ask the Court to amend its order.

Mr. Boston: Now, if your Honor please, I would Hearing like to call to your attention again, sir, the thinking 11-7-58 on our last meeting, I think on September 24th. I page 7 } think you used this language:

“Well may be I made some error in judgment in reading the depositions on what took place on the 19th and 20th of July.”

Now, I would like to read this to you—

The Court: Is that Mrs. Hinshaw's testimony?

Mr. Boston: This is Mr. Hinshaw's testimony. This is on the morning of the 18th of July about 4 o'clock in the morning:

“She woke me squirming around in bed. I asked her, “Paula, what in the world is wrong with you?” And she said, “George, I am sick.” I said, “Are you seriously sick? Do you need a doctor?” She said, “Certainly, I don't need a doctor.” I said, “All right, what is wrong with you?” She said, “It is none of your God-damned business what is wrong with me.”

“I lay there another hour and a half probably and couldn't go back to sleep and finally I got up and dressed and went to work. The next night, in order to catch up on my sleep, which I had been losing, I went to the next room to go to bed. I went there and slept that night.”

Question: "Would that have been on Friday the 19th of July, 1957?"

Hearing Answer: "Yes, it was on the 20th of July I went 11-7-58 back to our room and was in bed in my pajamas page 8 } reading about 9:30, when I went to bed; about 10 o'clock Paula came up and stood there looking at me. I didn't say anything to her, finally she said, "I want you to get the God-damned Hell out of this room. I want to go to bed." I said, "Do you mean this is your room and you don't want me in here?" She said, "I certainly don't, I want you to get out and stay out."

"After that I went in another room and slept there until she went to the hospital, and I didn't leave on the 18th for any reason that I was deserting her."

All we are asking you to do is to consider that testimony, which she didn't deny, that is undenied, and I think the Court should consider it in this light; they had a little marital rift on the 18th, he couldn't sleep, he got up and went to another room; he came back on the 20th to resume marital relations and she said, "Get the hell out and don't come back." He got out and didn't come back.

If every couple that had some little argument and the husband went in the other bed room and went to sleep and she says that the nature of what happened on the 18th was such that I don't want you back in my bed again, there would certainly be a lot of grounds for divorce. That is the crux of the matter as we see it.

Mr. Byrne: I would like to point out to the Court Hearing that that evidence is contradicted; that is in direct 11-7-58 contradiction of Mrs. Hinshaw's evidence in regard page 9 } to the 18th of July incident.

The Court: Read what she said.

Mr. Byrne: On page 31 of Mrs. Hinshaw's deposition,

Question: "Do you recall the date of the following Thursday?"

Answer: "The 18th of July."

Question: "Do you recall anything of significance that occurred on the 18th of July?"

Answer: "That morning, well, I had been real sick during the night, nauseated. I got up, went down and got some milk; came back and I was real nauseated. I had to get up and go to the bathroom. And he says, "What in the Hell's wrong with you anyway?" I said, "I don't know, George. I'm so sick I can hardly stand it." He said, "Do you need a doc-

tor?" I said, "No, I don't think so." Well, God damnit, what do you need?" I said, "I don't need a damned thing." He said, "All right. All right Baby Doll, I'll see that you don't get a damned thing."

So, after he arose that morning and was dressing for work, out of the blue he says to me, "Paula, I want you to get some place for Stanley to stay. I don't want him around here any more. Now let that bother you."

I will ask the Court to remember that Stanley is her son.

Hearing

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page 10 } Question: "That was the first time he had ever told—

Answer: That was the first time he said anything against Stanley in any way, because he seemed to be very fond of him. They had gotten along fine up to that point, so far as I know.

Question: "Do you know of any reason that he would ask you to get Stanley out of the home?"

Answer: "No. He gave no reason, other than he just didn't want him around any more.

Question: "Mrs. Hinshaw, do you recall anything else that occurred on the 18th of July, 1957?"

Answer: "He came home from work, sat down, and after dinner went upstairs and dressed to go to the studio, as was the usual routine. When he came back through the kitchen, he said, "Paula, I want you to get some place for Stanley by Monday. I need that room." I said, "George, I don't have any place for Stanley." He said, "Well, God damnit do something until find out whether—" No, he said, "I went to see my lawyer today, and he thought that would be the best thing until we get this other straight." I says, "What other straight?" "Until you decide whether you want to take, whether you can take care of Becky or not." I said, "George, there hasn't been anything said about whether I wanted to take care of Becky or not." "Well, until you de-

Hearing 11-7-58 } "George, it hasn't been discussed one way or the other. I have been very happy taking care of Becky." "Well, then God damnit, do something." Then he turned around and walked out.

The Court: That was on the 18th?

Mr. Byrne: This is this incident we are talking about after the night he was upset because she woke him up.

Question: "What occurred, if anything, when he came home that night?"

Answer: "That was the night he moved his bedroom into the other room."

Question: "To which room did he move?"

Answer: "The adjoining room. He shared the bedroom with his mother and daughter."

Question: "Have you continued to live separately and apart since the night that he moved from your bedroom into another room in the house?"

Answer: "Yes."

Question: "Do you recall anything else that occurred between you and your husband subsequent to July 18th?"

Answer: "No."

Question: "Were there any more discussions with reference to removing your son, Stanley, from the home?"

Answer: "On July the 6th, he called me from the office. I was getting dressed to go to the doctor. He says, "Paula, don't plan on taking Becky out any place today. Hearing I am taking her out." He said, "If you don't 11-7-58 mind, you can lay her things out."

page 12 } "I went to the doctor and when I came back home about 1:00 o'clock, or a little after, he was getting Becky's things together. I says, "George, where are you taking Becky?" "I am taking her back over to Effie's."

Question: "Who was Effie?"

Answer: "That was the lady that had kept her from the time his former wife passed away, up until we were married, up until she came to live with us on June 2nd."

Question: "Had there been any discussion with you with reference to removing his daughter, Rebecca, from the home?"

Answer: "No, there hadn't been anything said, one way or the other."

Question: "What if anything was said at that time when you came home and he was in the process of removing the child from the home?"

Answer: "He turned around to go upstairs, he said, "Do you mind telling me where the rest of her things are?" I said, "No, I will be glad to get them for you." I went up, helped pack her things, and never a word was said. When he came back downstairs, he picked up the things and the baby, stopped in the kitchen and told her to tell us goodbye. Stanley and I were sitting in the living room. She came Hearing in, told us goodbye. Every word. It hasn't been 11-7-58 mentioned since."

page 13 } Question: "Did he discuss with you prior to that his plans to take the baby from you?"

Answer: "Nothing was said one way or the other about taking the baby away."

She says nothing occurred subsequent to July 19th. He said he was lying on the bed.

The Court: She didn't deny that?

Mr. Boston: She didn't.

Mr. Byrne: Let me finish, Mr. Boston. His testimony is that he was lying up on the bed, but he didn't say anything to her. I maintain that just by lying on the bed in his pajamas reading the paper is no offer to resume marital relations. I submit further that this is no little argument; he had taken this baby child out of the home without any explanation whatsoever. The child he knew, and admitted in his depositions, that she was taking care of properly and was very fond of. He also told her on the morning of the 18th after this incident, just out of the blue, and he admitted on cross examination that he *gav* her no explanation, that she would have to get her son out of the home, that he wanted that room. I suggest that that is no little small argument between a husband *an* wife whereby the husband just can go jump back in the bed any time he wants to and say that he is resuming the marital relation. I submit that it suggests a definite state of mind on the part of this man to terminate this relationship.

The Court: I think that is quite obviously right. At that time he consulted counsel for the purpose of getting a divorce.

Mr. Byrne: I think it would be ridiculous to state that this man was offering to resume marital relations, when all he did was to jump back in the bed or because he was lying on the bed in his pajamas and when he made no statement to her after all these things had taken place.

Mr. Boston: Let me say this: There was not a word of denial about what was said by him about what happened on the 19th. He said:

"The next night in order to catch up on sleep I had been losing I went in the next room to go to bed. I went in there and slept that night."

Question: Would that have been on Friday the 19th of July?"

Answer: "Yes, it was,—"

Now, listen to this:

"On the 20th of July I went back to our room and was in bed reading about 9:30, Paula came up about 10 o'clock, and

stood there looking at me. I didn't say anything to her, finally she said, "I want you to get the God-damned Hell out of this room. I want to go to bed."

Hearing

11-7-57

page 15 } Mr. Byrne tells you that she made no response to his offer; he was physically in the bed. What was her response? I want you to get the God-damned hell out of this room." Didn't she respond to him? "I want to go to bed." Continuing the testimony:

"I said, do you mean this is your room and you don't want me in here?" She said, "I certainly don't—"

Have you heard anywhere that she contradicted that.

"I want you to get out and stay out."

Now, have you heard anything this morning that is a denial of that. It went off on the trend of her child and another child, and I say to the Court that that was a *bona fide* offer of reconciliation, if there had been any rift of any consequence and we don't think there had been.

The Court: What she did then was immediately following the receipt of that letter.

Mr. Boston: All right let's get the letter.

Mr. Byrne: The letter is in the evidence.

The Court: This is the letter addressed to Mrs. George Hinshaw:

"Dear Mrs. Hinshaw: Mr. Hinshaw has employed me to represent his interest in divorce proceedings, but before taking any action I would like to discuss the matter with you or your legal representative."

That was dated July 19, 1957.

Hearing Mr. Boston: Now, recall that was on the 19th.
11-7-58 On the 20th he went back to her bed room and put
page 16 } on his pajamas and got in the bed in an attempt to
effect a reconciliation.

Mr. Byrne: That was the night she got that letter.

The Court: She probably received the letter on the 20th.

Mr. Boston: It was on the night of the 20th, it was subsequent to that letter.

The Court: What would a wife think having got that letter

and then go up there? Wouldn't that letter color what she did on the night of the 20th?

Mr. Byrne: Absolutely. Mr. Boston has said that there is no denial on this incident of the 20th. I specifically asked Mrs. Hinshaw, "Do you recall anything that happened between you and your husband subsequent to the 18th?" And she said, "No." If that is not a denial—

Mr. Boston: Your question is a blanket one. That could cover anything at all. Why didn't you ask her specifically whether he undertook to effect a reconciliation?

Mr. Byrne: Mr. Boston, you had an opportunity to cross examine Mrs. Hinshaw with reference to that question and you peculiarly had knowledge of that situation.

Mr. Boston: Why should I cross examine Mrs. Hinshaw on a matter she didn't deny and why didn't she deny it? She didn't deny it.

11-7-58 The Court: Here is a wife that got a letter, which page 17 } indicated to her, it is bound to have indicated to her that divorce proceedings were imminent. What would she have done other than what she did do that night?

The question comes to my mind as to who precipitated this rift. I don't know that what happened on the 18th was sufficient to bring about a termination of marital relations, but when she received that letter she is bound to have considered that he intended that 18th proposition to mean an end of marital relations. I don't see that she has been guilty of desertion on that proposition.

Mr. Boston: All right then, suppose then you enter a decree, you indicated that you would allow us to file this amended cross bill?

The Court: I will do that.

Mr. Boston: You make your decision and whatever it is we will have to take it from there.

Mr. Anderson: I would like to make this observation, and this need not be on the record.

Mr. Byrne: I want it on the record because the last time we were here you stated at that time—

Mr. Anderson: Do you object to me getting in the case?

11-7-58 Mr. Byrne: No, sir. I just want to clear up Hearing whether you represent Mr. Hinshaw. The last time page 18 } we were here you advised the Court that you did not represent Mr. Hinshaw in this matter but represented him in a collateral matter. If you are in the case I certainly want any statement you make on the record.

Mr. Boston: As of this morning Mr. Anderson is associate counsel and the record so indicates.

Mr. Byrne: I want the record to show any statements that he makes.

Mr. Anderson: What I intended to say is not too relevant to this case, but is more in the nature of an academic question about policy in divorce cases.

When two people are irreconcilably alienated is there any point in keeping them married? The Court can preserve the legal or technical marriage bond, which as far as the relationship, itself, is concerned, it is gone, if they are irreconcilably alienated.

In this case Mrs. Hinshaw is not asking for a divorce, she doesn't want a divorce, she wants to be supported for the rest of her life, and yet I ask the Court, do you feel there is a chance of reconciliation? Are these people to go back and live together or what are they to do?

The Court: That is exactly what worries me in this matter.

Mr. Anderson: It seems to me the Court ought to have some authority or some place in its realm of dis-
Hearing 11-7-58 } cretion when it sees that a marriage is finally and
page 19 } definitely and irrevocably terminated to go ahead
and dissolve those marriage bonds.

The Court: Is there any law on that?

Mr. Anderson: I do not know, your Honor.

The Court: Would you gentlemen like to look into that?

Mr. Byrne: If your Honor please, if you will permit me to say so, I have examined the authorities and I don't think this Court or any Court in this great land has such authority.

The Court: I rather agree with you, but I would like to see an examination of the authorities on that point.

Mr. Anderson: I will be glad to check it. I have not checked it, and I don't pretend to say that is the law, but it seems to me that you have a blank wall staring two people in the face unless you have that authority.

I have said what I have said because of the interest I had in this case originally, and I am not trying to crawfish out of representing Mr. Hinshaw to the full limit of my capabilities, I have said that because it has a bearing on my primary interest in Mr. Hinshaw about his future business, about which I have undertaken to advise him.

The Court: I have entered this decree filing the amended cross bill.

Hearing 11-7-58 } Mr. Anderson: Let me ask this: If what I am
page 20 } speculating on isn't the law, how can you ever deny
this woman a monthly check for the rest of her
life, if she lives a thousand years? If she is his
wife, doesn't the law compel him to support her?

The Court: That is exactly what bothers me in this matter.

Mr. Anderson: It seems to me if that is the status of that that she has got to come back out there and start washing and cooking and sleeping in the bed.

The Court: He hasn't asked her for any reconciliation.

Mr. Anderson: He did on the 20th.

Mr. Byrne: He didn't ask for any reconciliation on the 20th. He said, "I didn't say anything to her."

Mr. Anderson: Do you want it in writing, Mr. Byrne? Isn't the fact of getting in the marital bed an offer of reconciliation?

Mr. Byrne: Mr. Anderson, laying on the bed in your pajamas reading the paper doesn't indicate to me any offer of reconciliation.

I don't know how often these gentlemen have ever slept on the sofa either by choice or by choice of their wives, but I submit that simply by crawling on top of the bed the next night with pajamas on, reading the paper, that this Court or any other Court would not consider it a *bona fide* Hearing offer of reconciliation.

11-7-58 The Court: I think her actions on the 20th must page 21 } be considered in connection with the letter suggesting the imminence of divorce proceedings. Since that time there has not been any offer by Mr. Hinshaw of a reconciliation. I do not believe that that is a sufficient offer of reconciliation.

Mr. Byrne: In reply to Mr. Anderson, Judge, I would like to make this statement:

In the first instance I have a great deal of professional as well as personal respect for Mr. Anderson. I don't feel that counsel at this point desires to have his statement construed that he is overlooking the public policy of the family relationship, which is the very foundation of the life that we live in or the age we live in in this country. I believe Mr. Anderson on reflection would admit that there are abundant authorities to the effect that if a wife is caused by the misconduct of her husband to leave the home that the law does not impose upon her the duty to return, and I submit, and I agree with Mr. Anderson—

The Court: She doesn't have to return certainly if there is any danger of physical violence, but there is no suggestion of that here.

Mr. Byrne: I suggest that the Supreme Court doesn't rely completely on physical violence.

The Court: I realize that too.

Hearing 11-7-58 page 22 } Mr. Byrne: I agree with Mr. Anderson that if two parties find themselves in an intolerable situation, which for the purposes of my argument we will say was created by the husband, that the wife is not required by law to obtain a divorce from the husband and give him his freedom, nor has any court in this Commonwealth the authority to require her to obtain a divorce and permit him to just walk scot-free out of the marital relationship; and, I agree or it is our contention that until you terminate the marital status that some provision has to be made for allowance for the wife.

The Court: Gentlemen, I have entered the order filing this amended cross bill.

Mr. Byrne: I don't mean to *interrupt*, but could I finish?

Even if the Court in the exercise of its discretion entered an order granting allowances for the wife, that doesn't impose any duty on the wife to go back to that house to cook, to clean up and sleep in bed with the defendant as indicated by Mr. Anderson.

Mr. Anderson: I think it is passing strange, if your Honor please, that this lady of a very short acquaintance with this man, is married to him and in less than four months the marriage is wrecked and she don't want to divorce him, she wants to hold on to his pocketbook; she don't want him but she wants that pocketbook and she doesn't want that relationship dissolved. It seems to me it is passing strange that she doesn't want a divorce.

Hearing 11-7-58 page 23 } Mr. Byrne: Of course, your Honor realizes that this statement by counsel for the defendant as to holding on to the pocketbook is purely his own opinion, based on conjecture. There is no evidence that this woman wants to hold on to this man's pocketbook for the rest of her life.

The Court: Gentlemen, I would like for counsel, viewing this peculiar situation, to see whether there is any authority on the part of the Court to terminate marital relations under these conditions.

Mr. Anderson: All right, sir.

Mr. Byrne: Let me understand the Court. Is the Court saying that it is of the opinion, this morning, that the defendant is not entitled to a divorce on his cross bill?

The Court: That is my opinion based on the occurrences of the 18th, 19th, and 20th of July, 1957.

Mr. Byrne: Or based on the evidence in the case at this point.

The Court: That is right. The question comes to my mind as to whether there is any duty on her part to perform

any of the marital obligations following that, or whether she is *ipso facto* entitled to allowances for her own support all the rest of the time.

Mr. Boston: Let me say this: I believe on Hearing several occasions you have stated that it was your 11-7-58 opinion that she was not entitled to permanent support page 24 } port. I think the last time we were here you said that you thought it was your opinion to allow some rehabilitation money, that you would allow her \$50.00 a week for a period of six months, that is what you stated, sir, and Mr. Byrne, I have that in my notes, which will confirm that.

Mr. Byrne: Would you let me read the whole thing?

Mr. Boston: I don't care, just so that is included.

The Court: Gentlemen, this is a very difficult proposition, to me it is difficult. What I want to find out, and I am not interested in altercations between counsel, I just don't think that is—both counsel are representing the interest of their own clients, which I think they are under a duty to do, but I don't think individual statements of counsel as to the part any of you have taken is conducive to wholesome settlement of the issues here.

As I stated I am of the opinion that for her to recover for the rest of her time support from this defendant is inequitable, I don't think it is equitable and what I want to find out is not the equitable situation, I have got pretty strong opinions as to that, I want to find out the legal situation with reference to matters of this kind. Now, I have read a lot of cases, but everyone of the cases I have read are based on long continued marital relations, which to my mind is Hearing different from this kind of proposition. I have 11-7-58 rather strong views as to the equitable situation page 25 } here. It is a matter of first impression to me in the actual legal requirements of the situation, that is what I want to hear from counsel on.

Mr. Anderson: Judge, I will make a search on that.

Mr. Byrne: I assume I will have an opportunity to reply.

The Court: Of course, you will have ample opportunity to reply.

Usually in these matters the Court would like to state informally what its views are and my views are this:

That the defendant has not shown by the evidence grounds for divorce from the plaintiff. The plaintiff has not asked for a divorce from the defendant. The question is what is the law with reference to the requirement that the Court allow separate maintenance. There is the situation.

Mr. Byrne: That is just a little different from the way Mr. Anderson stated it.

Mr. Anderson: I think, Judge, you have to include in your statement that there is no threat of violence. I think separate maintenance is justified where there is any danger to the parties personally.

The Court: I think that is correct, taking into consideration the peculiar situation as shown by the evidence Hearing in this case.

11-7-58 Mr. Boston: I would like to say this: That all page 26 } through these depositions there is absolutely no threat of violence.

The Court: I agree there, I don't think there is any threat of violence anywhere.

Mr. Boston: There is no offer of physical violence, and I have failed to see that the plaintiff has offered any proof of mental anguish by reason of anything that the defendant said or did.

Mr. Anderson: You might add that the profanity on both sides was equal.

The Court: I think so, too.

Mr. Boston: One cancelled the other.

Mr. Byrne: Let me have this to say, if you will please:

The Supreme Court has held no later than at its last term in the latest volume of the Virginia Reports, that there does not have to necessarily be physical violence or threats of physical violence in these cases.

The Court: I realize that.

Mr. Byrne: This continuous testifying by counsel for the defendant as to the amount of profanity in this thing, I ask you to refer to the case as a whole, not only to the profanity, there is more than just profanity.

Hearing The Court: I don't think that anyone has indi- 11-7-58 cated that the profanity is the controlling question.

page 27 } Mr. Anderson: Will you excuse me, I have another engagement—

Mr. Byrne: Wait just a minute. I don't mind your leaving, but I want to represent my client properly. I want to understand the issue that the Court wants us to write this brief on.

The chief issue I thought that the Court was interested in was whether or not it had any authority to terminate the marital relationship, recognizing that the defendant had no grounds for divorce, but possibly the other party has.

The Court: I have been trying to say that this is a very peculiar case, and I want to see some authority or whether

there is any authority on matters somewhat similar to this, taking into consideration the limited time in which they lived together, taking into consideration all the facts involved in this case, what is the law on that.

I am rather of opinion, though I don't know whether the limit of marital cohabitation has anything to do with either the amount of separate maintenance or the fact of the necessity of granting it.

I am saying this; and I want this to be understood: I do not believe it is equitable to require a large amount of separate maintenance in this case. Whether it is legally Hearing required and incumbent on me, that is a different 11-7-58 thing. I am going to try to carry out what is the page 28 } legal situation.

I think under the legal situation that I cannot grant a divorce to Mr. Hinshaw. I think under the equitable situation that it would not be equitable to require a long term separate maintenance at a large amount. I want to find out what is my duty under the law, taking into consideration those equitable conclusions, which I think are inherent in this case.

Mr. Boston: That is succinctly stated, and I think we should stop there.

Mr. Byrne: Before we leave, I would like to submit to these gentlemen a stipulation of what has transpired at our previous hearings. I want the record to show certain motions that were made in this case and denied and just what has occurred up to this point.

The Court: Doesn't the record show that?

Mr. Byrne: We don't have any record of it, other than our meeting here.

Thereupon, the hearing was concluded.



Hearing
1-27-59

page 2 } Mr. Byrne: If Your Honor please, the Court will recall on November 7, 1958, we appeared out here. The defendant was permitted to amend his cross-bill. Such cross-bill as amended was filed with leave of court and counsel argued the issues raised by such cross-bill. At the conclusion of the argument the Court said it would deny the cross-bill for divorce and dismiss it.

On November 14th my file shows that I mailed an order out here to the court. Whether it got here or not I do not

know, sir, but the Court will recall that I have checked once or twice and the order had not been entered and at this time I would like to present this order to counsel and the court, and ask that it be entered first this morning and then proceed.

Mr. Anderson: We will endorse it: "Seen and objected to."

Note: Order endorsed by counsel.

Mr. Anderson: If Your Honor please, you likewise indicated that your thinking about this case was that the complainant was not entitled to any further support. Now we have done a good deal of work here in support of that position and I would like to direct my argument to that point. We have prepared an order in which we are setting out certain findings of the court that very fully and completely support the court's position in that and I know of no better way to get that before the court than to just read these findings that have been put in the order.

"This cause came on to be heard this day upon the depositions heretofore taken, arguments of counsel on several occasions, and on the motion of the defendant to deny any further payment of alimony and support and was argued by counsel. The Court having denied the defendant's crossbill for a divorce from bed and board from the complainant and the complainant having sued herein for a decree of separate maintenance, and it appearing to the Court from the evidence that the complainant had been previously married for a number of years and that she has a child by said former marriage and that the complainant had heretofore supported herself and that her said child was, and still is, as a matter of law, entitled to support from his father and that the defendant herein has never been legally obligated to support her said child, and it further appearing to the Court that the complainant and defendant only lived together as man and wife for three months and that the defendant has paid to the complainant the sum of Three Thousand Six Hundred Dollars to this date in accordance with the order of this Court as temporary alimony and support;

Hearing "On consideration thereof, the Court doth adjudge, order and decree that the defendant be relieved, after this date, from the further payment to the complainant of any sum whatever for alimony or support. And it is further adjudged, ordered and decreed

that the defendant pay to L. Paul Byrne, Esq., counsel for the complainant, the sum of _____ Dollars as his fee herein.”

In the case of *Baytop v. Baytop*, 199 Va. 388, decided in 1957—this is a divorce case which was very similar to this one right here. In that case it was a colored school teacher—woman and man. They met up in Delaware in school up there and finally married and lived together for a number of years, in such manner as people teaching at two different places might do; that is, visiting each other on week-ends and visiting their parents at a common home, in a different home up here in Northern Virginia, and finally the husband strayed off and got entangled with another woman. But that was condoned by intercourse later on.

He lost complete interest in his wife, very cruel to her and the thing finally came to a termination up here in Northern Virginia when he was in a beer parlor one Saturday night and she came after him and of all the cussing and talking in the way of insults that is set out in this Hearing report here you could well imagine two colored 1-27-59 people pretty well, mad with each other.

page 5 } Now they brought a suit. She filed a suit for divorce and he filed a crossbill, and the court found that it would dismiss his crossbill—just exactly the same situation here—and decided to give her a divorce *a mensa et thoro*. Mind you now, bed and board; as you see, just separation, separate maintenance—exactly the same situation as we have here—and she was applying for alimony. She had been awarded temporary alimony of about—I have forgotten exactly the amount; anyway, awarded temporary alimony, I believe it was \$100 a month, and it came up on this question of whether she would get permanent alimony or support.

Now she had been a school teacher. She was educated to be a school teacher. She had been teaching up until the time she and her husband got in this difficulty. Then she got nervous.

Now I want to read you just what they say because it is very similar to the situation that Mrs. Hinshaw—

The Court: That was decided in 1957?

Mr. Anderson: Yes, sir. Here is what they say happened to her in the way of that.

Her testimony and that of members of her family Hearing was that she at times had spells of crying and pro- 1-27-59 longed nervous tension, lost weight. had to seek page 6 } medical aid for her condition. The testimony also shows that the man was rude to his wife, cold, in-

different to her condition and would not establish a home so that they could live together normally.

Her sister described her condition as follows: "Well, I would say that as time goes on she seems to be more nervous and upset, just under a nervous strain all the time and so much so we would ask her, 'Are you feeling well?' She would say, 'Oh, yes, I feel all right' and then she would break down and cry, but she wouldn't say why she was crying."

"Q. You say that she had not always been nervous. When, if at all, did you observe any particular change in her in that regard?

"A. Well, I would say from the past three to four years she has been excessively nervous and as time went on more so.

"Q. You say she has lost weight gradually since 1953?

"A. Yes."

Her brother, Raymond L. Holmes, in describing her condition, said that she was "quite nervous and upset * * * would break down and cry at times, and not have much Hearing to say to anybody," but after April 1, 1956 there 1-27-59 had been a noticeable change for the better and she page 7 } was not "nearly so nervous as she was maybe six months ago."

On March 31, 1956, while they were on a week-end vacation with appellant's parents in Middlesex appellant left about 11 a. m. About midnight appellee found him at a nearby beer parlor. She insisted that he leave; they became incensed with each other, and they cursed and abused each other.

It was \$150 a month alimony awarded.

Now the court decided that because she was 40 years of age—Mrs. Hinshaw is 40 years of age—she had previously been gainfully employed; she had been able to make her own living before she was married and even after she was married she and her husband had both decided to keep on working—no children of their own at all—keep on working to save money to build a home. When she got this nervous condition she gave up her teaching, quit, and the court awarded her this temporary alimony—the identical situation you have here.

Then when it came on to the Supreme Court—I believe the trial court allowed \$150 and when it came on to the Supreme Court her attorney offered to take \$75.00 a month, cut it in half if they would just drop the appeal and voluntarily pay that. They did not do that. It went on to the Hearing Court of Appeals, and the Court of Appeals in 1-27-59 deciding as to whether or not she was entitled to page 8 } alimony said this:

“It must be borne in mind that appellee is a young woman, only 28 years of age” quoting from another case. “In *Barnard v. Barnard*, decided in 1922, we refused to increase the award of \$100 a month for support and maintenance of Mrs. Barnard and her child, whose custody she had.”—in that case even had a child.

“Upon refusing to increase this allowance we said: ‘It must be borne in mind that appellee is a young woman, only 28 years of age, and that under modern conditions there is open to her practically every avenue for making money that is open to her husband, that by the decree of the court she is released from her former household duties, that her time is her own, and that she had no right to remain idle at the expense of her former husband, and that it is her duty to minimize his loss, albeit it was through his fault that she was compelled to ask that the contract of marriage be rescinded.’”

Now Code Section 20-107 provides that “upon decreeing a divorce the court may make such further decree as it shall deem expedient concerning the estate and maintenance of the parties, or either of them. The allowance of alimony, if any, and if awarded, in what amount, are matters within Hearing the sound discretion of the court. In exercising his 1-27-59 discretion, the Chancellor should not award alimony page 9 } as punishment to a transgressor husband or as a reward to a wronged wife.

“So much of the decree of July 26, 1956, as granted a divorce *a mensa et thoro* will be affirmed”—just what you have done here—“but the part that awarded alimony will be reversed, and the cause remanded for such further proceedings therein as may be proper and not in conflict with the views herein expressed. Counsel for appellee will be allowed a fee of \$200.”

Now, if Your Honor please, there was dissent in here by Judge Spratley and Judge Buchanan in which they said that they thought that—this is Mr. Byrne’s argument; you will hear this in just a minute, but I will give a preview of it—“A decree for alimony is something more than an order for the payment of money. A husband who has wronged his wife must continue to contribute to her support. A decree for alimony ‘is an order compelling a husband to support his wife, and this is a public as well as a marital duty—a moral as well as a legal obligation.’ *Branch v. Branch*.

“Alimony stems from the common law right of the wife to support by her husband, which right, unless the wife by her

own misconduct forfeits it, continues to exist even after they cease to live together.

Hearing 1-27-59 page 10 } “Where the delinquency of the husband has been established and the wife has been compelled to seek a divorce on account of his misconduct, while alimony is not to be used as a method of punishment, the court will not seek to find how light the burden may possibly be made, but what, under all the circumstances, will be a fair and just allotment.”

Then Justice Spratley said he would have allowed \$75 a month, which she had offered to take in lieu of the \$150.

But that gives you the other side of it. In this case right here our investigation shows and the evidence before this court is that Mrs. Hinshaw was previously married. Her first husband was a guard in a road camp, guard on the chaingang, something of that sort. In any event, this boy she has is his child—no, he was sentenced to the road to make him support the child; that is what it was.

She was gainfully employed. We found out she is one of these very skillful alterers or seamstress. She had a job in one of these exclusive West End shops. After she got married she thought she had married a rich man; gave up that work and stayed at home. She had this difficulty and she left. She got nervous, went to the hospital.

Hearing 1-27-59 page 11 } Just exactly the same thing that happened in this other case here. Now she was so nervous that when she got a lawyer and got this suit filed and everything she couldn't go back to work, so it was said.

Now the Court directed she be paid \$50 a week and from the time you entered that order up until the end of this month this man has paid her \$3,600 for her support. In the meantime we found out that she is taking in this altering work or making suits and dresses and things of that sort in her own home where she is earning at least or more than the \$50 a week that he is paying her.

Mr. Byrne: I am going to object to counsel arguing the case and presenting evidence which is not before this court.

The Court: I don't think that is evidence, of course.

Mr. Anderson: That is something to be considered, if Your Honor please. It is something to be considered on the issue which is before you right now.

Now I forgot my train of thought here. She is thoroughly able to earn her own living. Alimony or support is not to be used as punishment, even if you consider Your Honor has found that the man was in fault to the extent of not allowing him to have a divorce. She has sued for separate mainten-

ance, which is nothing more than a bed and board
 Hearing proposition. She is able to earn it. She was only
 1-27-59 married three months.

page 12 } Your Honor has determined or has informally
 stated in our sessions heretofore you cannot make
 people live together; you cannot force one of these happy
 unions, and whether Your Honor has or not determined he is
 not entitled to any divorce she is fully able and is, in fact,
 earning her own living now as the result of three months of
 married life and no children involved as between these two
 people at all.

We have earnestly submitted to you in this Baytop case
 here the age of the woman is exactly the same as the age
 of Mrs. Hinshaw, 40 years of age, both exactly the same
 age; and the court in this case found, as a matter of law that
 she is fully able to go back and make her own living. We be-
 lieve that this Mrs. Hinshaw is fully able—not only fully able,
 but is, in fact, earning her own living.

Now under those circumstances if she does not want a
 divorce, trying to preserve the marriage bond, then we think
 the fact she is not living with the man, only lived with him
 three months, and there is no child obligation there at all—as
 this order states here, this man is under no obligation of sup-
 port to her boy, that the boy has, as a matter of law, the
 right of support from his natural father, and under
 Hearing those circumstances, sir, we think this order is ap-
 1-27-59 propriate to terminate this temporary support
 page 13 } now.

Mr. Byrne: If it pleases the Court, first I would like to
 say it was my understanding at the previous hearing before
 this Court when we left that Mr. Anderson was to make a
 search of the authorities for the benefit of this Court to see
 whether or not this Court had the power to terminate a
 marital relationship where the defendant has no grounds and
 where the wife does not desire a divorce.

I state further that such memorandum was to have been
 submitted to counsel for the complainant and an opportunity
 given for him to reply.

Counsel for the complainant must object this morning to
 this proceeding in the manner in which it is conducted on the
 ground, first, that ordinarily in these cases counsel for the
 complainant would be permitted to argue the case for sup-
 port and allowances on behalf of the complainant and the
 defendant would be in a position of replying to such argu-
 ment, with the right of rebuttal for the complainant.

We object further on the ground that although I do not

Hearing 1-27-59 page 14 } question the discretion of this court to make amendments in its order, that this is a little unusual procedure to ask for an amendment of an order without any evidence warranting such a change, which I believe is the usual manner in which we reach the point that counsel for the defendant has argued this morning.

Now with regard to the argument with reference to the allowance for the support of a wife in a suit for separate maintenance I would like to just briefly review for the Court the complete facts in this case as disclosed by the evidence, and not as what I think, but which the Court will find in the depositions.

In the instant case the Court will recall that the complainant, Pauline Long Hinshaw, filed a bill of complaint on or about August 16, 1957, in this court against the defendant, George F. Hinshaw, her husband, alleging desertion on July 18, 1957, and asserting misconduct on his part and praying, among other things, for a decree of separate maintenance and allowances for support money, counsel fees and costs.

I ask the Court to bear that in mind because counsel for the defendant's argument in all of these cases has been based upon a divorce situation and not a decree for separate maintenance and support.

Hearing 1-27-59 page 15 } The defendant filed an answer and crossbill on or about the 31st of August, 1957, denying the pertinent allegations as contained in the bill of complaint, and alleging desertion on the part of the complainant on August 16, 1957, and praying that he be granted a divorce from bed and board. The depositions of all the parties had been taken after proper notice, including the defendant's and complainant's deposition, and filed with the court. They were filed, I believe, on May 8, 1958. At that time counsel for the complainant moved the Court to strike the evidence relating to the defendant's crossbill for divorce on the grounds that it lacked corroboration as required by law and was insufficient to justify a divorce. The Court heard the argument of counsel with regard to this question and denied such a crossbill on that date, but withheld its decision on allowances for support and counsel fees on behalf of the complainant.

Now after that, of course, the Court will recall on November 7, 1958, he permitted the defendant to file an amended crossbill over the objection of counsel for the complainant, which was argued and denied on that date and which was the subject of the decree entered by this Court this morning, denying said crossbill and dismissing it.

Now these parties are both members of the white race. Mrs. Hinshaw is approximately 41 years of age and Mr. Hinshaw is approximately 47 years of age. They were married in Richmond on April 19, 1957, and no children were born as a result of this marriage. The complaint has a son approximately 16 years of age by a previous marriage. The defendant has a daughter approximately 3 years of age by a previous marriage. They last cohabited as husband and wife in Chesterfield County on July 18, 1957.

Prior to her marriage to the defendant the complainant was employed as a seamstress for Town & Country Dress Shop, I believe; not such an exclusive salon as counsel for the defendant would have the Court to believe. It is a small dress shop located in one of the West End shopping centers. At the defendant's insistence she gave up that job, if the Court will recall from the evidence, because it was his desire that they make a home for both of their children and for themselves, and he didn't want his wife to work, he being a man of considerable means. There is no place in the evidence that based upon her belief that she had married a rich man she quit her job.

If the Court will refer to the evidence, it will also disclose at the defendant's insistence Mrs. Hinshaw disposed of the greater portion of her personal property and household furniture at that time and moved into his home.

Now the evidence shows since this marriage Mrs. Hinshaw or soon after this marriage Mrs. Hinshaw was and has been constantly under the care of a qualified physician, Dr. Gilman Tyler, and because of such health and on the advice of such physician she has been unable to return to work. There is no evidence before this Court other than by the word of mouth of defendant's counsel that Mrs. Hinshaw is engaged at this time in any gainful occupation. I submit that such statement should not be considered by the Court. There is a proper method for counsel for the defendant to bring such evidence before the Court—

The Court: I will say this. The Court is not considering that if it is not evidence and, of course, the Court will not consider it.

Mr. Byrne: The evidence will disclose the defendant is a man of considerable means, sole proprietor of the Capitol Awning Company, and the owner of several valuable parcels of real estate. The evidence discloses that by the defendant's own admission he has an admitted net worth of approximately \$124,550, consisting of personal property of the value of \$53,-

300 and real estate of the value of \$71,250. The evidence before the Court shows the defendant has a net income from his business by his own admission of approximately \$9,600 per year before taxes, and in addition, in the year 1955 he sold various parcels of real estate for a gross sales price of approximately \$13,050 and in 1956 such gross real estate sales amounted to approximately \$20,750, this net worth, excluding the value of his home which he placed at \$27,500, consisting primarily of assets of the value of \$97,050 held for the purposes of resale and production of income.

The issues to be determined by the Court are not simple issues, but certainly they can be simply stated; that is, what is a reasonable allowance for the support of the complainant under the circumstances in the *insane* case, and what is a reasonable allowance for counsel fees and court costs.

In my argument, if it pleases the Court, I wish to confine myself primarily to the issue of a reasonable allowance for the support of the complainant. It is submitted that the Court by denying the relief sought by the defendant in his crossbill had to find, as a matter of law, that the complainant was justified in failing to return to the home of these parties upon her discharge from the hospital on August 16, 1957, upon the advice of her physician that it would be detrimental to her health and because of such conduct on the part of the defendant.

The Court: That is certainly true as of that particular time. Whether it would be true now and if she would be justified in continuing to remain away and not performing any duty, that is a difficult question.

Mr. Byrne: There is no evidence before the Court at this time of any offer of reconciliation having been made by Mr. Hinshaw since August 16, 1957.

The Court: Nor by her.

Mr. Byrne: Right. Neither of the parties has contacted each other since that date.

We submit that the law recognizes the marital relationship as one founded in contract, the consideration therefor being the mutual exchange of promises between husband and wife in the marriage ceremony and the ultimate consummation of the marriage. Thus, when a man marries a woman he contracts to support her as a wife and his duty in that respect is a continuing one, particularly in the sense that such duty continues to exist so long as the marital relationship remains legally in existence and cannot be avoided by the husband

unless the wife commits some matrimonial offence, recognized by the law as such, which defeats her right to support.

Further, the duty of support imposed by law upon the husband continues notwithstanding a physical separation of the parties if the separation is with the husband's consent or due to his fault or is without substantial fault on the part of the wife.

Hearing 1-27-59 } In Virginia the law is well settled by numerous
page 20 } decisions that a court of equity, independently of
proceedings for divorce, on the ground of inadequate remedy at law, has jurisdiction to decree separate maintenance to a wife who has been wronged by her husband.

I ask the Court to refer to *Montgomery v. Montgomery*, decided by the Supreme Court of Appeals on September 6, 1944, contained in and reported in 183 Va. 96. The court is not deprived of such jurisdiction by the statutes providing punishment for the desertion and non-support of the wife. Here we refer the Court to *Heflin v. Heflin*, decided April 21, 1941, 177 Va. 385.

Should the husband's treatment of the wife, though unaccompanied by actual violence, amount to such cruelty that to live with him longer would mean the permanent impairment of the wife's health, if not the loss of her mind, then the wife is justified in changing her domicile. See *Humphreys v. Humphreys*, decided June 12, 1924, 139 Va. 146.

Now in the instant case I ask the Court to refer to the evidence of Dr. Tyler, which has not been contradicted by the defendant, that it was his opinion that should she return to live with her husband in the condition that he found her when that evidence was taken that it was detrimental to her health.

Hearing 1-27-59 } The Court: That was August 16th. That applies when she left the hospital.

page 21 } Mr. Byrne: We took his deposition sometime after August 16th. I don't recall the exact date, but I think the record will disclose it. The evidence was taken and at that time she was still under his care.

Although it is felt that the Court has decided the issue of justification for the wife's action in not returning to their home in Chesterfield County, we refer you to the uncontradicted evidence of Dr. Tyler in this connection.

Now the law in Virginia is well settled that it is the duty of the husband to support his wife. This principle was stated in Virginia law as early as February 1810 in the case of *Ann Purcell v. Charles Purcell*, reported in Hen. & Mun., 14 Va. 507. This principle has been restated time and time again

by the Supreme Court of Appeals of the State of Virginia and I submit to this Court that no finding in the Baytop case has voided this principle of law, that this duty continues.

Now in the Baytop case I would like to point out to the Court this fact which counsel for the defendant inadvertently failed to advise the Court of. Mrs. Baytop had returned to her gainful employment before the decree of divorce was ever entered. There was no finding by the Supreme Hearing Court as a matter of law that she was able to work. 1-27-59 She had, in fact, and the evidence before the trial page 22 } court was that she had, in fact, returned to her teaching job before the decree was ever entered.

Now bear in mind, please, that the Baytop case is a divorce case. There the trial court was extinguishing the marital relationship and that is the entire basis of our argument—

The Court: But it was not extinguished by an *a mensa* decree, the marital relationship.

Mr. Boston: That is right.

Mr. Byrne: But the parties were in a position that either party could extinguish it by a further act in accord with the statute. Whether Mrs. Baytop chose to take the step to extinguish it or not, her husband by statute is given the right to apply as the guilty party to extinguish it. But in any event, it was a divorce case and it certainly must be recognized that it could be contemplated an extinguishment of the marital relationship.

Now as to Section 20-107 of the Virginia Code, I submit to the Court that that is not applicable in this case. It is only applicable in a divorce case. The Supreme Court as late as the case of *Smith v. Smith* in discussing the meaning of the language contained in Section 20-107 had this to say, and I

think it is very important because you draw an Hearing analogy from this statement of the Supreme Court 1-27-59 to support our position.

page 23 } In that case, which was decided on June 16, 1958, last year, reported in 200 Va. 77, at page 83 the court had this to say in dealing with 20-107: "However broad an interpretation may be placed upon it (estate of the parties); it is clear that when a divorce is not decreed the power of the court to consider in any respect the estate or property rights of the parties, whether between themselves or otherwise, is non-existent."

Based on that statement, I submit to this Court that counsel for the defendant would have you abuse the discretion of this Court by terminating the allowance for separate maintenance. I submit that separate maintenance is based upon the marital relationship, that this Court has the discretion to fix an

amount or to determine that none is allowable. Beyond that it has no discretion because it does not terminate this marital relationship upon which the allowances are based and the duty of support is based. With this Court in the position that counsel for the defendant would have you believe the status of the law to be, then it is clear that in a decree for separate maintenance this Court could also dispose of the property of the parties, and I think we will all admit that it does not have the power to do that.

Hearing 1-27-59 } Now there are numerous cases dealing with the
page 24 } duty of the husband to support his wife. For the
purpose of brevity I will only cite various cases
and—

The Court: I have got a criminal case set here right now.

Mr. Byrne: Would the Court like for me to come back and complete my argument at a later date?

The Court: You concede that the matter is discretionary with the Court.

Mr. Byrne: I concede the Court has no discretion except to fix the amount.

Mr. Boston: How do you dispose of the holding in the Baytop case? Now in your case there is no severance of the marital relationship, is that true?

Mr. Byrne: That is right.

Mr. Boston: In the Baytop case the parties remain husband and wife, yet the court said, "We can and we will extinguish the temporary allowance which was made in the very beginning of the case."

Note: Discussion off record.

The Court: Let me see how long it will take.

Mr. Boston: I think the Court has enough here to make the decision.

Hearing 1-27-59 } Mr. Byrne: I don't think so. I have about
page 25 } fifteen or twenty pages of cases I would like to cite
to the Court on the duty of support and the amount.
I think that is very important and I don't think
I should be cut off at this point.

The Court: I don't want to cut anyone off.

Mr. Anderson: See how long it will take you. Better to do it while we are out here.

Note: Off record discussion.

The Court: I can say this, that I am pretty much of the

opinion that the man has paid to this woman just about what she ought to get.

Mr. Anderson: \$3,600.

The Court: I don't think she has undertaken in any way in the world to perform any of her duties since that time.

Mr. Anderson: Has not even offered to.

The Court: No, has not even offered to.

Mr. Byrne: The law does not impose any duty on her to make any offer to.

The Court: The marital proposition is certainly not a one-way street. I rather think she has received all she is entitled to.

Mr. Byrne: Is the Court going to decide the case before I have a chance to finish my argument and submit any memorandum?

Hearing 1-27-59 The Court: I am just telling you the way my thought is proceeding on the matter.

page 26 } Mr. Anderson: I think, if Your Honor please, without being short with Mr. Byrne at all, that the case will probably inevitably go up to the Court of Appeals and the sooner it goes on up the better.

The Court: I think so, too.

Mr. Anderson: We are just killing time. The trouble about it is, if Your Honor please, as long as this thing is delayed and the temporary order is outstanding here this man is paying out this money. Now if you stop this money payment right now temporarily and let him take six months to write a brief if he wants to, it is all right with me, but this thing of waiting and him paying every week when he has a daughter to support and has to hire a woman to look after the daughter while he is working—

Mr. Byrne: That existed before he ever married her.

The Court: The depositions could not have been more fully done and the facts are beyond any dispute. My view of the matter is that she has received from him all that in equity she ought to receive and I am perfectly willing to let that go on up to the Court of Appeals and let the Court of Appeals go over it. It is a novel sort of proposition; going to have to be decided.

Hearing 1-27-59 Mr. Boston: We ought if we have to go up with it let him go with us. We have to do that.

page 27 } Mr. Byrne: I take issue with the statement this matter has been argued over and over again. Over and over I have been here to present this argument on the question of allowances and support. In each instance, if the Court will recall, I was put in the position of having to argue the crossbill for divorce on behalf of the defendant on three

or four different occasions; on two occasions after the Court had indicated that it was denying that crossbill and each time that I came out here prepared to argue support and allowances I was put in a position to argue—

The Court: Is there any doubt about the fact that the Court has discretion on these allowances?

Mr. Boston: You have that in the Baytop case. It very clearly states it.

The Court: It is a question that comes down to—it has an element of equity in it rather than a rigid question of law.

Mr. Boston: That is right.

The Court: As I see it, I don't think there is much question about the law on the matter. I don't think that there is any law which requires even equitably to continue alimony or support under separate maintenance indefinitely. I don't think there is any such law.

1-27-59 Mr. Byrne: I submit to the Court it is the law page 28 } of the State of Virginia from numerous cases.

The Court: I would like to see the Court of Appeals decide that point.

Mr. Byrne: The Court of Appeals has already decided the point, if the Court will let me submit the authorities to you.

The Court: I will be glad for you to do that.

Mr. Anderson: Will you give us an understanding right now that he can hold up the payment until Mr. Byrne finishes all this, and get the order in?

Mr. Byrne: On the basis of what evidence? The Baytop case is not evidence.

Mr. Boston: It is authority for the position we take.

The Court: There is no doubt about the status of these parties. Not a single one of them has undertaken to reestablish the marital relation. It is a question of equity, to my mind; mutual equity.

Mr. Anderson: Not a one-way street, as you said.

The Court: Not a one-way street.

Hearing 1-27-59 Mr. Byrne: Do I understand the Court to say page 29 } you will enter an order today abating the payment of support just on the statement of counsel for the defendant?

The Court: I will enter an order today cutting it down to \$15.00 a month.

Mr. Anderson: \$15.00 a month. All right, sir.

Mr. Byrne: I object and except to the ruling of the Court.

The Court: I want you to except to it and carry it to the Court of Appeals. I want you to do it. If I am wrong on this thing, I hope the Court of Appeals will reverse me, but I don't feel it is equity to continue this proposition. Now

that is my feeling about it upon the facts and I think the discretion in the matter is up to the Court and the duty is on the Court to determine the thing from the equitable consideration, as I see it. Now if there is a definite law in Virginia that requires the continuation of this, I think that it should go to the Court of Appeals and they should decide it. I do not so consider it is the law.

Mr. Anderson: We will draw the order right over here.

Mr. Byrne: We object and except to the action of the Court on the ground there is no evidence to support such decision of the case; that is ground No. 1. 1-27-59 No. 2, on the ground the decision of the Court is page 30 } arbitrary and an abuse of its discretion and that such allowance is grossly inadequate.

No. 3, on the ground that counsel for the complainant has not been permitted an opportunity to argue the question. On the further ground, that no notice of such a hearing for a reduction in support money has ever been given to the complainant.

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A Copy—Teste:

H. G. TURNER, Clerk.

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