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Record No. 5156

In the Supreme Court of Appeals of Virginia at Richmond

HAROLD G. BARNES

v.

EMILY M. BARNES CRAIG

FROM THE CIRCUIT COURT OF LANCASTER 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. 5156

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 1st day of March, 1960.

HAROLD G. BARNES, Appellant,

against

EMILY M. BARNES CRAIG, Appellee.

From the Circuit Court of Lancaster County

Upon the petition of Harold G. Barnes an appeal and *supersedeas* is awarded him from a decree entered by the Circuit Court of Lancaster County on the 27th day of August, 1959, in a certain chancery cause then therein depending wherein Emily M. Barnes Craig was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three thousand dollars, with condition as the law directs.

RECORD

* * * * *

BILL IN CHANCERY.

To the Honorable Lewis Jones, Judge of said Court:

The Plaintiff respectfully represents as follows:

1. Plaintiff and defendant who is a resident of Middlesex Co., Va., were formerly husband and wife, and of their marriage were born three children, Lanthe, Emily and John Barnes, all of whom are still infants and are in the custody of plaintiff.

2. In 1951 plaintiff brought a suit for divorce against defendant in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in which suit the defendant filed an answer. That suit was decided in favor of plaintiff and she was granted an absolute divorce from the defendant. A separation agreement had previously been entered into by the plaintiff and defendant dated June 14, 1951, a copy of which is attached to this complaint as Exhibit A, (the "Separation Agreement"), and in the final decree of divorce (the "Final Decree") the defendant was directed to perform the terms of the Settlement Agreement as the same relate to the custody of the minor children and as to the payments to be made by the husband for the care, support and maintenance of the plaintiff and of the said minor children. A certified copy of the Final Decree is attached to this complaint as Exhibit B.

page 2 } 3. Under the terms of the Settlement Agreement which was incorporated into the Final Decree, the defendant was required to pay to the plaintiff for her care, support and maintenance and for the care, support and maintenance of the three infant children the sum of $300 each month commencing on June 1, 1951, and continuing until the death of either of the parties or until the remarriage of the plaintiff. The Settlement Agreement further provided that upon the remarriage of the wife, the husband shall thereafter pay the wife, while any of the children are living with the wife, monthly payments on the basis of $50 per month per child living with her.

4. Plaintiff has remarried and the three children live and at all times material herein have lived, with her. In total disre-

gard of the Settlement Agreement and the Final Decree, defendant has failed to pay the sums of $50 per month per child during four months in each of the years 1952 to 1957, inclusive, and for three months in the year 1958. Accordingly, there is due under the terms of the Settlement Agreement and the Final Decree past due amounts totaling $4,050.

5. The infant children are now ages 17, 16 and 15, and the oldest child desires to enter college in the fall of 1959. Plaintiff expects the other children to start to college in the years 1961, and 1962, respectfully. The Settlement Agreement did not provide a specific amount of money to be paid by the defendant for providing the infant children with a college education, although it did provide in paragraph (2) thereof that "The husband will endeavor to provide a four-year college education for each of the three children."

6. The infant children are in need of the support money provided for in the Settlement Agreement and Final
page 3 } Decree and are also in need of college educations.
Defendant has substantial estate, a good income and is fully able to care for, support and educate his infant children.

WHEREFORE, plaintiff prays that:

(a) Defendant be ordered henceforth to comply with the terms of said Final Decree and Settlement Agreement therein contained, as modified and amended by this Court, as though same had been the original decree of this Court;

(b) Judgment be rendered against defendant for all monies due to plaintiff for the care, support and maintenance of the said children of plaintiff and defendant, pursuant to said Final Decree and Settlement Agreement;

(c) The Final Decree be amended and modified so as to require the payment by the defendant of such reasonable amounts from time to time as may be necessary to provide each of said infant children with college educations at appropriate colleges;

(d) Defendant be required to pay plaintiff's expenses in connection with this suit and to pay reasonable counsel fees to counsel for plaintiff; and

(e) Plaintiff may have such other and further relief as may be adapted to the nature of this case.

EMILY M. BARNES CRAIG
By C. J. SIMMONS
Of Counsel.

HUNTON, WILLIAMS, GAY,
MOORE & POWELL
1003 Electric Building
Richmond, Virginia.

DUNTON, McLEOD & SIMMONS
White Stone, Virginia
By C. J. SIMMONS
Counsel for Plaintiff.

Filed May 25, 1959 Clerk's Office Middlesex Co., Va.

J. M. REVERE, Clerk
By KATE M. FARMING, Deputy.

page 4 } EXHIBIT "A."

THIS AGREEMENT, made this 14th day of June, 1951, by and between EMILY M. BARNES, hereinafter sometimes referred to as the "Wife," party of the first part, and HAROLD G. BARNES, hereinafter sometimes referred to as the "Husband," party of the second part, both of the town of Urbanna, Virginia;

WHEREAS, the parties hereto were heretofore united in the bonds of matrimony and three children have been born of said marriage; and

WHEREAS, certain differences have arisen between the parties which appear to be irreconcilable and said parties are now living separate and apart but without in any wise agreeing so to do; and

WHEREAS, it appears that said parties will hereafter live separate and apart; and

WHEREAS, the parties hereto without in any wise making any agreement to live separate and apart or without in any manner colluding to obtain a divorce, nevertheless desire to amicably adjust and forever settle and adjudicate all property rights of each of said parties in the estate and property of the other and to forever adjudicate and settle all legal claims of the Wife upon the Husband arising out of the marital relationship aforesaid and to make provision so far as said parties may legally do for the care, custody, support and maintenance of the infant children born of said marriage;

NOW THEREFORE THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual covenants, releases and agreements hereinafter contained as well as in consideration of the sum of One Dollar ($1.00) cash in hand, paid, by each of the parties hereto to the other, receipt of which is hereby acknowledged, the parties do hereby covenant and agree as follows; to-wit:

page 5 } (1) The Husband agrees to pay to the Wife in lieu of alimony for her care, support and maintenance and for the care, support and maintenance of the three children the sum of Three Hundred Dollars ($300.00) each month commencing on the first day of June, 1951, and continuing until the death of either of the parties to this agreement or until the remarriage of the Wife, whichever is first to occur. The foregoing provision for the payment of Three Hundred Dollars ($300.00) per month is expressly subject to the following conditions: (a) The payments of Three Hundred Dollars ($300.00) per month are based upon the support of the Wife and the three children and when each child shall cease to be dependent upon either of the parties for support, the monthly payments to the Wife shall be reduced by Fifty Dollars ($50.00), so that when no child is dependent the payments to the Wife, if she has not remarried, shall be One Hundred and Fifty Dollars ($150.00) per month; (b) While any child is living with the Husband, the payments to the Wife shall be reduced pro-rata on the basis of Fifty Dollars ($50.00) per month per child; (c) Upon the remarriage of the Wife, the Husband shall thereafter pay the Wife, while any of the children are living with the Wife, monthly payments on the basis of Fifty Dollars ($50.00) per month per child living with her; (d) No payment shall be made to the Wife on account of a child who is attending college while resident at the college if the Husband contributes as much as Six Hundred Dollars ($600.00) per year towards the cost of that child's attending college. For the purpose of this paragraph, a child who has married, a child who is gainfully employed, and a child who is over twenty-two years of age and not incapacitated shall not be considered as dependent.

page 6 } (2) The Husband agrees that he will keep in force hospitalization insurance upon each child until he or she reaches the age of twenty-one years or marries, whichever is first to occur. The Husband further agrees that should any child or children have a prolonged illness which the

hospitalization insurance does not fully cover then he shall pay the doctors' bills, hospital bills, nursing care, and all other expenses incident to that particular illness subject, however, to the age and marriage limitation stated heretofore. The Husband will endeavor to provide a four year college education for each of the three children.

(3) The Husband and Wife have agreed upon a division of the household furniture and equipment now in the home which they have occupied. A list showing such division and initialed by the Husband and Wife is attached. Husband, upon execution of this agreement, shall transfer to Wife the title to his 1950 De Soto automobile.

(4) The Husband agrees that as soon as reasonably possible after the execution of this agreement he will sell the property which has been occupied as the home of the parties hereto, situated in the Town of Urbanna, Virginia, being the same property conveyed unto the said parties by deed from Beulah P. Rucker, bearing date on the 15th day of May, 1943, and recorded in Deed Book 56, page 161, in the Clerk's Office of the Circuit Court of Middlesex County, Virginia. Upon the sale of such property Husband shall pay to John R. Marchant, as Trustee, an amount equal to one-half of the net proceeds of sale after deducting from such one-half Ten page 7 } Thousand Dollars ($10,000.00). The said Ten Thousand Dollars ($10,000.00) is to be paid to the Saluda Lumber Company, Inc. as payment in full for the house located at Rappahannock Avenue and Kent Srteet, Urbanna, Virginia, as hereinafter referred to. The Wife covenants and agrees that upon request she will join in any deed conveying such property to a purchaser provided the gross sale price is not less than Thirty Five Thousand Dollars ($35,000.00), provided, however, the Wife shall have the right to occupy said property until October 1, 1951, or until the dwelling at Rappahannock Avenue and Kent Street, Urbanna, Virginia, is completed and conveyed to Wife under paragraph (6) hereof, whichever is earlier.

(5) Husband further agrees that upon the execution of this agreement he will convey to John R. Marchant, as Trustee, with powers as hereinafter set out, the house known as the Parker property, situated on Masonic Avenue in the Town of Urbanna, Virginia, together with so much of the lot as lies between the Avenue and a line parallel to the Avenue thirty (30) feet in the rear of the house, being a part of the same property conveyed unto the said party of the second part by deed from Augusta L. Parker and J. R. Parker, bearing date on the 1st day of May, 1950, and recorded in Deed Book 63, page 227, in the Clerk's Office of the Circuit Court of

Middlesex County, Virginia. There shall be included with said property an easement six (6) feet in width from the east line of the lot for ingress and egress to and from the creek, also an additional strip of land six (6) feet in width along the entire western line of the property so that trucks can back into the property to deliver coal.

(6) The Husband will cause the dwelling on the page 8 } lot at the corner of Rappahannock Avenue and Kent Street, Urbanna, Virginia, to be completed on or before October 1, 1951, or as soon as possible thereafter and as soon as it is completed will convey the same to John R. Marchant, as Trustee, with powers as hereinafter set out, provided, however, that if said dwelling is not completed by October 1, 1951, Husband will pay to Wife Fifty Dollars ($50.00) per month thereafter until it is completed.

(7) Husband agrees to indemnify and save the Wife harmless against any and all claims against her as endorser of notes executed by Husband or as co-maker or joint maker of notes with Husband. However, the Wife agrees that when required by the holders thereof, she will execute renewals and extensions with the Husband of any notes on which she is now endorser, co-maker or joint maker with Husband.

(8) The Wife agrees that upon demand she will convey unto the Husband with General Warranty all of her interest in the following property which shall be and remain the property of the Husband free from all claims of the Wife as dower or otherwise: (a) the farm known as "Shooters Hill' situated near Healeys, in Pinetop District, Middlesex County, Virginia.

(9) While it is contemplated that for the immediate present the Wife shall have the care and custody of the infant children, the Husband shall have the full right at all times during reasonable hours to visit the children and take them on outings. Insofar as the parties have the right so to do, they shall from time to time make further arrangements as to the custody of the children so that, in the absence of a court order to the contrary, the Husband shall participate in the page 9 } care and custody of the children.

(10) The payments and conveyance to John R. Marchant, as Trustee, shall be in trust for the benefit of the Wife for life and at her death to be divided equally between the three children of the parties hereto. The terms of said trust shall be acceptable to the parties hereto, but shall include the power to use the principal in the case of emergencies. In trust, nevertheless, to hold and control the said property for the full benefit of my wife, Emily M. Barnes, for and during her life, to rent said property, make all necessary

repairs to same, to pay all of the net income derived from said rentals to said Emily M. Barnes during her life, to sell said property and convey same to the purchaser at any time the said Trustee in his discretion may deem it necessary for the benefit of the said Emily M. Barnes. At the death of the said Emily M. Barnes the said Trustee shall convey said property, if the same be then intact, to the children of Harold G. Barnes and Emily M. Barnes.

In further consideration of the foregoing, the parties hereto do hereby release and surrender all rights of every nature whatsoever against each other and the estates of each other which they might have by reason of any present or future law, including rights of dower and curtesy, distributive rights, and any other rights founded upon the marital relationship.

(11) The parties hereto agree that they will hereafter execute any and all such further deeds, release deeds, or other instruments as may be necessary or requisite to fully effectuate this agreement and to effectuate the mutual releases herein contained.

(12) The Wife agrees that she will not hereafter
page 10 } contract any debts for which the Husband or his
estate might be or become liable and that she will protect and indemnify him against any claim based upon debts of this nature.

(13) In any proceedings hereafter instituted for divorce by either of the parties hereto, they agree to request the court to include in any decree this agreement as the judgment of the court respecting the property rights of the parties in the estate and property of each other and as an adjudication of all rights of support and alimony. The Husband shall not be required to pay to the Wife or to her attorney any amount on account of court costs or counsel fees which may be incurred in any such proceedings.

(14) Each of the parties hereto agrees that this agreement has been entered into voluntarily without compulsion and represents the deliberate assent of each of said parties, freely arrived at after having sought the advice of counsel.

WITNESS the following signatures and seals:

s/ EMILY M. BARNES (Seal)
s/ HAROLD G. BARNES (Seal)

State of Virginia,
County of Middlesex, to-wit:

I, L. Ruth Barese, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that HAROLD G. BARNES and EMILY M. BARNES, whose names are signed to the attached writing bearing date the 14th day of June, 1951, have acknowledged the same before me in my County aforesaid.

Given under my hand this 14th day of June, 1951.

s/ L. RUTH BARESE, Notary Public.

NOTARIAL SEAL

My Commission expires August 23, 1954.

page 11 } THIS AGREEMENT, made this 14th day of June, 1951, between the Saluda Lumber Company, Inc. of Saluda, Virginia, party of the first part, and Emily M. Barnes of Urbanna, Virginia, party of the second part,

WITNESSETH:

That for and in the consideration of the sum of One Dollar ($1.00), receipt of which is hereby acknowledged, and other valuable consideration, the parties hereto mutually agree that:

WHEREAS the Board of Directors of the Saluda Lumber Company, Inc. did on June 14, 1951, at a meeting adopt the following resolution;

WHEREAS the Saluda Lumber Company, Inc. is the owner of a lot in the town of Urbanna, Virginia, at the corner of Rappanannock Avenue and Kent Street, recently purchased from C. W. Eastman, on which a dwelling is being erected, it was resolved that the President and the Secretary of the Saluda Lumber Company, Inc. be authorized to enter into a contract with Emily M. Barnes for the completion of the said dwelling by October 1, 1951, and upon such completion to execute a deed conveying the said property to John R. Marchant, Trustee for the benefit of Emily M. Barnes, upon the execution by the said Trustee of a deed of trust on the said property to secure the said Saluda Lumber Company, Inc. in the payment of Ten Thousand Dollars ($10,000.00), without interest, which Ten Thousand Dollars ($10,000.00) is to be paid when the home place of Harold G. Barnes and Emily M. Barnes in Urbanna, Virginia, is sold;

WHEREAS the parties to this agreement mutually agree to be bound under the terms and conditions as here-
page 12 } tofore set out in the resolution adopted by the Board of Directors of the Saluda Lumber Company, Inc.

WITNESS the following signatures and seals:

s/ H. G. BARNES (Seal)
President, Saluda Lumber Company, Inc.

s/ WALTER R. MAJOR (Seal)
Secretary, Saluda Lumber Company, Inc.

s/ EMILY M. BARNES (Seal)

page 13 } EXHIBIT "B."

Filed on the 23 day of August, A. D. 1951.
Recorded this 24 day of Aug. A. D. 1951.
In Chancery Order Book 1001, on page 212.

E. B. LEATHERMAN
Clerk Circuit Court
By S. E. DOUGHTY, D. C.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA IN CHANCERY.

No. 142,562.

EMILY M. BARNES, Plaintiff,

v.

HAROLD G. BARNES, Defendant.

FINAL DECREE OF DIVORCE.

THIS CAUSE coming on for final hearing before me this day upon the pleadings and proceedings herein, including the Bill of Complaint, Defendant's Answer thereto and the report of testimony and findings of the Special Master herein, and this Court being otherwise fully advised in the premises, it is

ORDERED, ADJUDGED and DECREED as follows:

1. That this Court has jurisdiction of the parties and the subject matter of this suit; and that the equities of the cause are with the Plaintiff.

2. That the report of testimony and findings of the Special Master heretofore appointed in this cause be and the same hereby is ratified, approved and confirmed.

3. That the Plaintiff has sustained the material allegations of her Bill of Complaint by competent proof; that the Plaintiff is and has been a *bona fide* resident of the State of Florida of the character and for the period required by law for the prosecution of this suit; that the Defendant has been guilty of extreme cruelty to the Plaintiff.

4. That the bonds of matrimony heretofore and now existing between the Plaintiff, EMILY M. BARNES, and the Defendant, HAROLD G. BARNES, be and the same hereby are dissolved, and the said Emily M. Barnes and Harold G. Barnes are, and each of them is, hereby forever divorced each from the other, a *vinculo martimonii.*

5. That the separation agreement between the parties dated June 14, 1951, the original or signed copy of which was introduced into evidence before the Master, is approved and made a part of this decree by reference, and the Defendant, Harold G. Barnes, is directed to perform the terms of said agreement as the same relate to the custody of the minor children, Lanthe, Emily and John, and as to the
page 14 } payments to be made by the husband for the care, support and maintenance of the Plaintiff and of the said minor children; and the custody of the children is hereby awarded to the Plaintiff in accordance with the terms of such agreement.

DONE AND ORDERED in Chambers at Miami, Florida, this 23rd day of August, A. D. 1951.

VINCENT T. GIBLIN, Circuit Judge.

* * * * *

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* * * * *

AMENDED ANSWER.

The defendant, Harold G. Barnes, for answer to the bill

of complaint filed against him in this court by Emily M. Barnes Craig, comes and says:

1. That he admits the allegations of the paragraphs of the said bill of complaint numbered 1, 2 and 3;

2. That, with respect to the allegations of the paragraph of the said bill numbered 4, he denies that the three (3) children of the parties have at all times lived with the complainant and that there is due to the complainant the sum of $4,050.00; and here avers that, in accord with the terms of the separation agreement and the decree incorporating the same, it was agreed between the complainant and himself that he was to have the custody of the three children during three (3) months of each year, during the summer time and that no payments were to be made to the complainant for the support of the said children during these periods; that this defendant has had the custody of the children, or some of them, during some of these periods; but that the complainant has made it impossible for this defendant to make any satisfactory arrangements to have the children with him during the greater portions of these summer periods; and has preferred to waive any claim for support money during these periods rather than to permit the children to be with this defendant; so that this defendant is not indebted to the complainant under the terms of the said separation

page 23 } agreement;

3. That, with respect to the allegations of the paragraphs of the said bill numbered 5 and 6, this defendant desires *to prosuch* educational opportunities for his children as he can afford, and is willing to do so; and, in fact, he has heretofore conveyed property to John Marchant, Trustee, for the purpose of providing for the education of the said children; but, if the court should hold that this property should not be used for their education, this defendant is willing to pay for the schooling for the children Lanthe and Emily at Mary Washington College of the University of Virginia, or at some other institution or institutions to be selected by said children, with the consent of this defendant, at which the costs of such schooling are not materially more expensive than at the said Mary Washington College and the University of Virginia, provided the said children shall maintain at least a "C" average in their work in said colleges, and provided that this defendant's income is sufficient to pay the costs of such education; but it was never the intent of the separation agreement that the complainant could arbitrarily determine that the children should have a college education, choose a college for them to attend and, thereafter, ask a

court to require this defendant to pay the costs thereof; and this defendant does not believe that it is within the jurisdiciton of this court to enter a decree requiring him to pay for college education for the children; and,

4. That, for further answer to the said bill, this defendant says that he is willing to do for his children everything he can afford and which is conducive to their best interests, but that he feels that the support money which he has been paying has provided adequately for the said children; that at least one and, he believes more of the said children have not actually been entitled to the said support money during certain periods of the past several years, for the reason of having been gainfully employed during such periods; that he desires that his children have such educational page 24 } opportunities as he can afford and is willing to make such provision as he is able toward such education, but respectfully submits that this honorable court is without jurisdiction to require him to pay for college education; and that the complainant is not entitled to have this defendant required to pay her expenses and counsel fees in connection with this suit.

HAROLD G. BARNES
By Counsel.

DABNEY OVERTON
Warsaw, Virginia, p. d.

Filed August 13, 1959.

Teste:

O. B. CHILTON, Clerk.

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* * * * *

DECREE.

This cause, having been removed to this Court from the Circuit Court of Middlesex County by order of Judge Lewis Jones entered August 7. 1959, in accordance with Section 8-158 of the Code of Virginia of 1950, and having been regularly matured, set for hearing and docketed, came on this day to be heard upon the bill of complaint and exhibits there-

to; upon the order of said Judge entered in this cause on the 7th day of August, 1959; upon consent of opposing counsel granting leave to defendant to file his answer late; upon such answer; upon the defendant's amended answer which was filed this day by leave of court with consent of counsel for the plaintiff, upon evidence given *ore tenus* in open court by leave of court; and was argued by counsel.

In consideration whereof, the Court is of opinion that the final decree of divorce (and the separation agreement between the parties dated June 14, 1951, which was made a part of said decree) entered in the suit of Emily M. Barnes *v.* Harold G. Barnes in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, on
page 26 } August 13, 1951, (which decree and agreement were filed in this suit by the plaintiff as a part of her bill of complaint) are not contrary to any public policy of the State of Virginia, and, since the defendant is a resident of Virginia and all parties are before this Court, such decree should be established and adopted as and for the decree of this Court.

It is accordingly ADJUDGED, ORDERED and DECREED that said Florida decree of divorce (and specifically the separation agreement between the parties dated June 14, 1951, which was made a part of said decree by reference) is hereby established and adopted by this Court as its own decree with the same force and effect as if it had been entered in this Court initially, and the defendant Harold G. Barnes is directed to comply with and perform the terms thereof as hereinbelow amended.

On further consideration, the Court having heard all of the testimony, including the testimony of the three infant children of the marriage of the plaintiff and defendant: Lanthe Barnes, age 18; Emily Marchant Barnes, age 16; and John L. Barnes, age 15; and having also heard the evidence of the financial status of the plaintiff and the defendant and upon consideration by the Court of the needs of the aforesaid infant children, it is ADJUDGED, ORDERED and DECREED that said Florida decree, which is established and adopted by this Court as its own decree, and said settlement agreement which constituted a part of said decree, are hereby modified in the following respects:

(a) Effective September 1, 1959, defendant, Harold G. Barnes, is ordered to pay to Emily M. Barnes Craig on the first of each month (including the summer months)
page 27 } the amount of $75 for Emily Marchant Barnes and $75 for John L. Barnes, to be applied by said Emily

M. Barnes Craig against the cost of the support and maintenance of said children, such amounts to continue to be paid each month so long as said children are dependent on the plaintiff for support or until they reach 21 years of age, or marry, or until such time as such amounts shall be changed by the further order of this Court.

(b) Effective September 1, 1959, the defendant Harold G. Barnes is ordered to pay to the said Emily M. Barnes Craig on the first day of each month (including the summer months) the amount of $300 to be applied by said Emily M. Barnes Craig against the cost of the support and maintenance of Lanthe Barnes and for application towards the expenses of the attendance by Lanthe Barnes at such college as shall be selected for Lanthe Barnes by the said Emily M. Barnes Craig, such amount to continue to be paid each month so long as said child is dependent on the plaintiff for support, and so long as she is maintaining satisfactory record in college, or until such time as she reaches 21 years of age, or marries, or until such time as such amount shall be changed by this Court.

(c) By September 1, 1959, the defendant Harold G. Barnes is ordered to pay in advance to the plaintiff the first four months of said total amounts of $450 per month referred to above and, after the expiration of such four months' period is ordered to make such payments monthly thereafter on the first day of each month.

(d) By November 1, 1959, the defendant, Harold G. Barnes, is ordered to pay to the plaintiff the sum of $3,000 representing all accrued and unpaid payments for support
page 28 } money for said children under the Florida decree through August, 1959, with legal interest from September 1, 1959.

(e) By September 1, 1959, the defendant Harold G. Barnes is ordered to pay to counsel for the plaintiff a fee in the amount of $500 to be applied against the fee of said plaintiff's counsel.

The Court hereby expressly reserves the power at any time in the future to modify and change the amounts to be paid by defendant to plaintiff for the support, maintenance and education of said infant children and to enter such other orders or decrees authorized by law as shall be necessary for the welfare of such infants and to that end, it is further ADJUDGED, ORDERED and DECREED that this cause shall remain on the docket of this Court subject to further consideration by this Court as stated above and specifically for further consideration at such time as any other of the children of plaintiff and defendant intend to enter college

and for determination by this Court at that time of the needs of the children and the circumstances of the defendant.

We ask for this:

LAWRENCE E. BLANCHARD, JR., p. q.

Enter—Chcy. August 27, 1959.

DANIEL WEYMOUTH, Judge.

Seen and objected and excepted to for the reasons set out below:

DABNEY OVERTON, p. d.

Reasons:

(1) The increase in support payments for Emily and John L. Barnes was not prayed for, was not supported by the evidence, and is excessive;
(2) The payment of 300.00 per month for Lanthe was not supported by the evidence and is excessive;
(3) The judgment for $3,000.00 is not supported by the evidence; and is contrary to the law and the evidence; and
(4) The defendant should not be excluded from participation in the choice of the school to be attended by Lanthe, contrary to the law and the evidence.

* * * * *

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* * * * *

Filed August 27, 1959.

Teste:

BERTHA G. ABBOTT, Dep. Clk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE OF APPEAL.

To: O. B. Chilton, Clerk:

The defendant, Harold G. Barnes, hereby gives notice of his appeal in this case and that he will apply to the Supreme Court of Appeals of Virginia for an appeal and *supersedeas.*

ASSIGNMENTS OF ERROR.

The defendant, Harod G. Barnes, assigns as error the action of the court in the following:

1. In increasing the support payments for the children, Emily and John L., which was not prayed for, was not supported by the evidence, and is excessive:
2. In requiring the payment of $300.00 per month for the child, Lanthe, which was not supported by the evidence and is excessive;
3. In excluding this defendant from participating in the choice of the college to be attended by the child, Lanthe; and
4. In entering up judgment against this defendant for the sum of $3,000.00, for arrears of support money, which was not supported by the evidence and contrary to the law and the evidence.

HAROLD G. BARNES
By Counsel.

DABNEY OVERTON
Warsaw, Virginia,
Attorney for Harold G. Barnes.

I hereby certify that a copy of the foregoing
page 30 } notice of appeal and assignments of error was mailed to Lawrence E. Blanchard, Electric Building, Richmond 12, Virginia, and C. Jackson Simmons, White Stone, Virginia, on the 25th day of August, 1959.

DABNEY OVERTON.

* * * * *

Transcript of all the evidence and other incidents of the above when heard on August 13, 1959, before Honorable Daniel Weymouth, Judge.

Appearances: Mr. C. Jackson Simmons and Mr. Lawrence E. Blanchard, Jr., counsel for the plaintiff;
Mr. Dabney Overton, counsel for the defendant.

* * * * *

page 3 } Note: Court convenes at 10:00 a. m., the witnesses and the Court Reporter are sworn, and

the witnesses are excluded upon motion made by Mr. Simmons.

Thereupon opening statements are made to the Court and the hearing begins as follows:

EMILY M. BARNES CRAIG,
the plaintiff, introduced in her own behalf, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Simmons:

Q. Your name is Emily Craig, and you are the plaintiff in this case, are you not?

A. Yes.

Q. Where do you live, Mrs. Craig?

A. Naples, Florida.

Q. How long have you lived in Naples?

A. Permanently since 1952.

Q. You are married to Dr. Craig, are you not?

A. Yes, I am.

Q. How many children does Dr. Craig have?

A. He has one daughter.

page 4 } Q. What is her name?

A. Barbara.

Q. How old is she?

A. Fourteen.

Q. Have you or not adopted his daughter?

A. I have.

Q. Has Dr. Craig adopted your three children?

A. No, he has not.

Q. Have your three children remained in your custody since your separation from Mr. Barnes?

A. Yes, they have.

Q. Have the matters which we are now discussing ever been the subject of any other law suit between 1951 and now, that you know anything about?

A. No, sir.

Q. Have there been any agreements reached between you and Mr. Barnes as to these matters of custody of these children, other than contained in the pleadings which you heard me read to the Court?

A. There has never been any concrete agreement. We

have talked about it on several occasions, but that was the extent of it.

Q. What have you talked about?

A. We have talked about the cost of educating the children and we have also discussed their visits to Virginia page 5 } on various occasions.

Q. Would you tell the Court what conversations took place between you and Mr. Barnes on these subjects? Just talk so His Honor can here you, and tell him exactly what has gone on.

A. Well, the children have, just in the last two years, reached an age that I feel they are old enough to travel alone, and I certainly wouldn't give my consent to them being put on the train, or plane, or bus to come twelve hundred miles unattended when they were eight, nine, ten; nine, ten, eleven and up, until this year. And Mr. Barnes never made an effort to pick them up or return them. I believe he picked them up one year. I think it was in '53 or '54. And I came to Virginia at the request of my oldest daughter and took them home at the end of their visit.

Q. Did you cut short that visit?

A. No, we did not.

Q. Have you ever discouraged your children in anyway from coming to Virginia to see Mr. Barnes when they wanted to?

A. I certainly have not. I like to come to Virginia myself.

Q. Can you tell us how many years in point of fact Mr. Barnes has provided for their coming to Virginia?

A. Mr. Barnes provided this year. He sent a page 6 } check for $67.00 to each child to pay their round trip fare.

Q. When was that?

A. That was approximately the second week of June, this year.

Q. Shortly after the filing of these proceedings?

A. Yes.

Q. Is that the only time Mr. Barnes has ever sent any checks to you for this purpose?

A. It is the only time he has ever paid their transportation to or from Virginia.

Q. Has Mr. Barnes ever complained to you that you were withholding the custody of these children from him during the summer months?

A. No. Several years ago one summer he intimated that he was unhappy that the children were not staying with him.

Emily M. Barnes Craig.

I had forced the children to stay prior to that, and I realized I was doing an injustice, and they were emotionally upset and were not old enough to understand, and I thought as the years went by and they matured that they would be more prone to go on their own and it would be a much happier situation for him and for them.

Q. You mean you forced them to go there on prior occasions?

A. They were staying at my mother's. He invited them to visit him. They didn't want to go, and I made them
page 7 } go; and they were most unhappy, and I realized I wasn't being fair to them. It upset them.

Q. How close does your mother live to Mr. Barnes' house?

A. Approximately 150 yards, something like that.

Q. Directly across the street?

A. Yes, sir.

Q. When the children have come to Virginia, where have they stayed? At Mrs. Marchant's, your mother, or with Mr. Barnes?

A. They have stayed at my mother's house for the greater part and visited over at Mr. Barnes.' They run back and forth from house to house, and they have been free to stay at either place.

Q. Have you placed any restrictions in their way, any instructions for them to stay with your mother or Mr. Barnes?

A. No, sir.

Q. You mean you left it up to them, to the children?

A. Entirely.

Q. Mrs. Craig, while they were staying with your mother, did you have any, did you support them while they were there, or did your mother, as grandmother, take over the cost?

A. I supported them, and I also give a portion
page 8 } of support to my parents, so they couldn't very well support my children.

Q. In other words you supported your children during the summers while staying at Mrs. Marchant's?

A. Yes.

Q. Mrs. Craig, can you tell us how many times during the period we are talking about your daughter Lanthe, the older daughter, has spent with Mr. Barnes during the summers?

A. She hasn't visited there until this summer, as I know of. She hasn't stayed at all during the summer months. However, I was trying to remember and I talked it over with her yesterday and asked her if she could remember. She

said she had never stayed there until this summer, except maybe one night.

Q. How long has Emily, the other daughter—How much time has she spent with Mr. Barnes?

A. Emily has spent more time. She has spent approximately three weeks, I would say, each summer under the roof. She has slept there and taken some of her meals at my mother's. The other two preferred to sleep at my mother's and take some meals over there.

Q. Visit back and forth.

A. Yes.

Q. How much time has John spent with Mr. page 9 } Barnes during this period?

A. John has not stayed until this summer.

Q. This summer?

A. This summer. My mother is not well, and Mr. Barnes paid for their transportation up, and we decided, we discussed it, I told them that I felt it would be nice if they would stay there if they wanted to come to Virginia and see their father and grandmother; that that was the most sensible arrangement. My mother is not well enough to have them this year.

Q. Did you or not have any oral agreement with Mr. Barnes that these children should and would stay with him during the entire three months of the summer?

A. The only agreement we ever had, I believe, I understood from our contract was that he would visit them or they would visit him whenever it was convenient.

Q. You mean according to the contract that I have read?

A. Yes.

Q. There have been no other agreement?

A. No.

Q. Mrs. Craig, at the time this agreement was drawn up, who drew up this agreement?

A. Mr. Barnes' lawyer in Richmond. I don't page 10 } know his name.

Q. Did he represent you at that time?

A. No. I had no representation.

Q. Now, turning to how much time your children have spent in Florida each year; can you tell us how much time they have spent there?

A. In Florida?

Q. Yes, ma'am.

A. Well, they are there all year, except for the period of time they are in Virginia, and that depends on whether we can get two weeks vacation, or three weeks, or a month.

Emily M. Barnes Craig.

They have been to camp. I have sent the three children to camp, I believe they went two summers. But this year, financially, we couldn't send them back. They hope, the two older girls hope to go back as counselors next year; but whether that will work out for them, I don't know.

Q. Have you had any occasion to discuss with Mr. Barnes this question of the college education of your children prior to right now?

A. Well, I think Mr. Barnes has been very well aware through these years that they were going to reach college age, and in June he came down to Florida and attended Lanthe's graduation, and he asked me had Lanthe made plans for college this year? And I told him yes, that—Tentatively, yes, at the University of Florida, though she is not very interested in going there. But being a state school page 11 } she can go for a lot less money. We have gone into it thoroughly, no less than ten or twelve schools, both from a scholastic and financial view point. If she gets a diploma from there, certainly it isn't very valuable from a girl's standpoint. They have a fine Engineering School, Medical School, but their Liberal Arts and Liberal Sciences are very weak. And he made the remark that if she would like to go to another school that he would be glad to pay for part of her, or do what he could toward her expenses, but you can't—

The Court: He would like to do what?

Mr. Simmons: He would like to pay part of it.

A. Part of what he could pay on the expense.

Q. Could you ever pin him down to precisely what he would do?

A. We never got down to what he would do, or what we could depend on. I cannot let the child build up her hopes and then at the last moment be disappointed.

Q. Now, Mrs. Craig, what other choices has your daughter made with respect to college?

A. She took her college boards and sent her application fee to several schools. We sent to several knowing full well she couldn't get in all, but I wanted to see if she had done well scholastically. She was admitted into Smith, Wellesley, Marymount, I believe Northwestern—I'm not sure page 12 } on that one, but she was accepted into all the schools that she applied to.

Q. Did she apply to Randolph-Macon?

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A. She has applied to Randolph-Macon since she has been here. Now we feel, the Registrar doesn't give too much encouragement. She thinks, unless there is a cancellation, that she won't be able to get in until next September.

Q. She was accepted on her academic record?

A. Yes. She has been president of the Student Government, and president of her class and for her social activities.

Q. Mrs. Craig, in your conversations with Mr. Barnes on the subject of the college education, has Mr. Barnes ever, before today, suggested to you that the property which is held in trust by your brother under this contract was to be used for the college education of your children?

A. No. We never discussed anything about it being used for any type of education—elementary or college.

Q. Did he mention that he had any other sort or particular source out of which he could provide for Lanthe's college education?

A. No. He said on several occasions when the time came he would work something out.

Q. Do you know whether he had any conversation with Lanthe this summer in which he talked about paying for her college education out of a particular piece of property, other than this trust property?

page 13

A. There was a piece of timber I believe in Gloucester County, and I had understood that Mr. Barnes' mother had bought it, but apparently Mr. Barnes did. I think Lanthe was two or three years old. I know his mother used to say that was to educate Lanthe. And since that time I understand that Mr. Barnes bought it and he did intend it to be spent for he education. but nothing has been done about getting any money from the property as far as I know.

Q. Has Mr. Barnes ever told you that he was financially unable to provide this college education for Lanthe?

A. Last summer I talked to him one day and he mentioned expenses for the children. He said, "I don't see how you do it," and I said, "Well, it's because I work." And I brought the fact up that he owed me some money, and he said, well, he intended to do more and he would do more, and he knew he should have done more and that the money was not the question. That was his answer to me. I said, "If you don't have the money, then it's different." He said, "Well, money is not the question."

Q. So that you had on prior occasions discussed these questions with him?

A. That was the only time we have gone into actual educa-

Emily M. Barnes Craig.

tion. I'm not sure that that particular day we were
page 14 } talking about the general care of the children, and
they have been going to school, and they have been sent to camps.

Q. Tell us something about where the children have been going to school, Mrs. Craig?

A. The two older girls have been attending Rosarian Academy, which is in West Palm Beach. Our high schools were not accredited until this year. As a matter of fact they don't offer sciences or languages, and if the girls graduated from our public schools they could not have taken college boards, I don't believe, or had they taken them it would be the fact they could not have passed them.

This year when the boy reached high school age we sent him to St. Bernard's, which is up in Alabama.

They are all, both Catholic schools. We are not Catholic; we are Episcopalians.

We also have gone very thoroughly into which would be the proper private school to send them. We felt that they had the best educational system. They have in no way tried to indoctrinate the children in the Catholic religion.

Q. How have your children done in these institutions?

A. They have done extremely well. When they went to Rosarian—the girls had been in public schools and naturally thought they were pretty smart—when they went to a school
that they should have been in they were low D
page 15 } students. They had to work very hard for two
years. They are both now honor roll students again, at a much higher level. John suffered through the same thing. This year he is pulling out of it and he should be a B student this coming year.

Q. Now what has been the cost, Mrs. Craig, of sending your three children to these institutions, these private schools?

A. This past year I have kept a sort of a record on the tuition, transportation, part of their clothing, and I spent $7.000.00 on the three children.

Q. $7,000.00 on the private schools for the three children last year?

A. Yes. This is the past school term.

Q. John, you said, just entered last year; how long has Lanthe been in Rosarian Academy?

A. Lanthe has been in *Rasrian* three years and Emily has been in four. She went in one year before high school because she has a very brilliant mind, and the educational setup there in the county had suggested we put her into a better school.

Emily M. Barnes Craig.

Q. Did you use any of the money received from John Marchant, trustee, for the purpose of sending these children to these private schools?

A. In June of this year I had both schools to forward him one bill from Rosarian, I think, half a term for page 16 } Lanthe and Emily, and half a term for John.

Q. In other words, out of the trust proceeds from the sale of the Parker House or Masonic Street property—

A. Yes.

Q. —you used that money that you got for that purpose?

A. Yes.

Q. And was that in the neighborhood of $2,500.00?

A. I believe so. It sounds about right.

Mr. Simmons: I believe it is shown on the statement, Your Honor.

A. I got a receipt from the school saying that my brother had sent the money in and I didn't actually get the bill.

The Court: Mr. Simmons, at that point, is it your contention that that was her own money she was using?

Mr. Simmons: Your Honor, she testified that there has not been any change in the contract. The trust fund is under the discretion of the trustee to hold and control, except that the income off of it was Mrs. Craig's, personally. The trustee had a right, in his discretion, to invade the corpus of that fund in emergencies for the benefit of this page 17 } lady. This lady assumed that this was an emergency. She couldnt carry on for her children. It wasn't for herself. She exercised the emergency powers and invaded the corpus solely for the benefit of the children.

The Court: All right, sir.

Mr. Simmons: She couldn't have kept the children in school unless she had.

By Mr. Simmons: (Continuing)

Q. Mrs. Craig, are you aware of any $4,000.00 that was paid to Mr. Marchant for the residence property in Urbanna by Mr. Barnes?

A. $4,000.00 in cash?

Q. Yes.

A. No, sir.

Q. Are you familiar with the sale of the Parker House?

Emily M. Barnes Craig.

A. Yes, I am.

Q. That is the one on Masonic Street?

A. Yes. I was here last summer and we had carpenters to go there and the house was in terrible need of repair. As a matter of fact we couldn't keep one apartment rented because it was leaking, and we had had to, we had a new roof put on and found out that the timbers were all bad underneath. The back porch had to be pulled off. By the time we got all the estimates together it would cost us somewhere around $2,000.00 to put the house in shape. So I started page 18 } looking for a buyer. As a matter of fact I offered it to Mr. Barnes. It joins his property. He said he would give me $6,500.00 for it. I sold the property to someone else for $7,000.00 with the understanding that they would have room in the back to put a garage, because during, at the time of our divorce when he conveyed that property to me, he had taken all the land from the back of it that extended to the water and added it to his home. So there is only about fifteen feet and not enough for a garage. I called him long distance and asked him if he would convey fifteen to twenty feet to this property so that I could sell it to have the money for the children? And he said no. So I sold the property with a survey to be made. We have had it surveyed and found that he actually owed the property—I believe thirty feet—anyway, so the sale went through, and at $7,000.00, and the money was placed in the Bank of Roanoke.

Q. Do I understand that at the time you negotiated the sale you negotiated for $7,000.00 subject to survey, and the survey subsequently revealed that another twenty-five to thirty feet at the back that Mr. Barnes was claiming went with this piece of property?

A. That was the letter I had from the realtor in Naples. He actually is the principal in the deal but he is a realtor, and he wrote us a letter saying that the reason it was being held up was because of the survey. They had found the page 19 } thirty feet would be on this property.

Q. Were you able then to increase your purchase price as a result of that?

A. No, I couldn't increase it. He wouldn't have taken it, period, without it.

Q. You stated Mr. Barnes wouldn't offer you but $6,500.00?

A. I offered it to him; he said, "I'll give you $6,500.00 for it."

Q. In your view, was it a sacrifice of the Masonic Street property?

Emily M. Barnes Craig.

A. I tried to get eight thousand dollars for it. I just couldn't in the condition and there was no room. There is no land connected to it.

Q. Are you aware of whether or not a Deed of Trust is on the Kent Street property?

A. I don't know. I don't know.

Q. At the time of the separation agreement, did you convey certain properties to Mr. Barnes?

A. Yes. I remember—

Q. Would one of those pieces of property be Judas Hill?

A. Yes.

Q. Approximately how many acres is that and where is it located?

page 20 } A. (Pause)

Q. That is all right. I withdraw that question. I expect you wouldn't know. It isn't particularly important.

So that there were mutual conveyances at the time of the settlement.

A. Yes.

Q. Do you thoroughly understand the situation with respect to this residence?

A. I'm afraid I don't. I thought I did, but I guess I don't.

Q. Mrs. Craig, what would you value the Kent Street house at, the one that is left?

A. Well, I have had one tentative offer on it through a realtor who offered sixteen thousand five hundred. This was last summer. And we have, my brother and I talked it over and refused it, because I held out for eighteen thousand five hundred, and the broker said that was ridiculous, said we would never get it. So we waited. And we have a better tenant. Unfortunately we rented it to some people who let it go to pieces, and it cost us quite a bit of money to have it painted inside and outside, and gutters, and—

Q. In your opinion is that property sufficiently productive to yield you any real income from it?

A. Well, in my opinion I think it's sort of foolish to have sixteen, if it's worth sixteen thousand dollars tied

page 21 } up with a three per cent return, if we made that.

I don't think we made three per cent return. I spent over a thousand dollars last year on the property out of my own income.

The Court: You are talking about the trust fund now?

Mr. Simmons: The Kent Street property. Two pieces of property were put in trust—the Masonic Street property and

this Kent Street property. The Masonic Street property has been sold. The Kent Street property is still left and has been rented presumably for her benefit for life.

A. My brother seems to think we are getting maybe a three per cent return on that Kent Street property. We get $75.00 a month rental, which we have just gotten. We had other tenants in at $50.00. They had it for two years, I believe. And when they left I had $2700.00 worth of repair work done. This past year I think my records will show that I have spent, I think it's a thousand and eighty dollars, just to keep the property up. In the rental account I believe there is something like $250.00 reserve. That's all that is left. And, of course, it wasn't enough left to pay for the repairs of the property. Above what we took out of the rental account I also had to supplement, and I don't believe that having sixteen thousand tied up at three per cent is a very good investment for the children, even if it made three per cent.

page 22 } Q. The $50.00 that you would get off of the property from your rentals, does that—

A. Goes into the bank in Roanoke.

Q. Goes into the bank at Roanoke.

A. And is used for the children.

Q. In other words you have elected to use all of that for the benefit of the children?

A. Yes. I have never used any of it. None of it has ever come to me.

Q. Of the $50.00 a month you received for these children, would you tell us something about how far that goes toward their expenses?

A. Well, I don't know if any of you have children, particularly from eight or nine years up to twenty years, $50.00 doesn't go very far. And then when they were younger, my goodness, some months we had milk bills of $50.00 a month. My average grocery bill is, when they are home, something like $350.00 a month.

Q. Have you received, in addition to that $50.00, any substantial gifts on behalf of the children from Mr. Barnes during this time?

A. No. I have never received any gift.

Q. Have the children?

A. I think he has sent them five or ten dollars at Christmas and at various times in the last couple years, and

page 23 } on their birthday, but never any that would add to their comfort or well-being.

Emily M. Barnes Craig.

Q. You have stated certain expenditures you have made on behalf of the children above this $50.00 a month and above the rental income from the properties that are held in trust by Mr. Marchant, what about other expenses that you have? What about the medical expenses, does Mr. Barnes pay any of those?

A. No. I believe in this contract he is to pay medical expenses and keep the hospitalization in force. I don't know about the hospitalization. However, we have also carried it because I was afraid to take a chance that maybe there would be an emergency and we would find it wasn't in force. And as far as the medical expense, Mr. Barnes has never had any, because Dr. Craig takes full charge of all the medical care and has always given it to them. And, of course, in eight or nine years youngsters have a lot of things—like knocking out their teeth, fingers and broken arms, and other things that have to be tended to. We did send one dental bill—I had around a $400.00 bill for John's front tooth, and now he has to have it replaced which will be, I say, approximately six hundred and some dollars to put the permanent one in now that he has reached fifteen—but somehow, in between, he went in for a check-up and there was a bill, I believe, which was $7.50 or $15.00 that was sent page 24 } to Mr. Barnes by the dentist's secretary.

The Court: We are getting marred here in details.

A. (Continuing) It was sent back saying I was responsible for the children's medical care.

Q. In other words we can say you have had the cost of the medical and dental expense?

A. That's right.

Q. Mrs. Craig, tell us how has Mr. Barnes made these payments? In other words, how do you compute—Do you have any written records, or how have you computed the amount that Mr. Barnes has made under the contract to you?

A. Well, all I know is he starts payments in September and it usually is ended in May. I am aware that I don't get a check from him for June, July, August or September. Now if he has the cancelled checks maybe that shows he paid maybe one or two Septembers or maybe one or two Mays, but I don't believe that he has paid any one of the three summer months.

Q. Do I understand that wherever the children are the payments have stopped during that period?

Emily M. Barnes Craig.

A. Yes. My understanding is when the children are with me, regardless whether it be summer or winter, he is responsible for $150.00.

Q. Now, Mrs. Barnes, you say you do not have
page 25 } the cancelled checks, of course; you do not have any written sort of record aside from the general statement you just made; could there be some periods that Mr. Barnes would have better records on that than yourself?

A. Maybe he has kept records, but I know when I get $150.00 and when I don't.

By the Court:

Q. Is he back $4,850.00, what you say, in your payments?

A. I was trying to be as fair about it as possible, and I thought three months to four months a year, that I know I have not received a payment. June, July, August, and many times on May, and sometimes taken off on September. I think that the check is sent out by Mr. Barnes's secretary.

Q. Is he married again?

A. Yes, sir.

Q. Does he have children by his second marriage?

A. Yes, sir.

Q. How many children does he have?

A. Two.

Q. How old are they?

A. I'm not very sure. I think four and five, or three and four.

Q. Does his wife have any other children not by this marriage?

page 26 } A. I don't know, sir.

Q. How old a person are you?

A. How old am I?

Q. Yes

A. I am thirty-nine.

Q. You are a native of Middlesex County?

A. Yes, sir.

Q. Where did you go to school?

A. I went to Middlesex High School. And then I went to work in Richmond and sent myself to night school and that was all. I'm still going to school now.

Q. What kind of work do you do now?

A. I am employed as an associate of Mayor Smith in Naples. I am his office manager.

Q. What?

A. Mayor Smith.

Emily M. Barnes Craig.

Q. Mayor Smith?
A. In our community—
Q. How large a town is it?
A. How large a town?
Q. Yes.
A. We have a permanent population of 9,500 and in the winter months it goes up to 21-22,000.
Q. What kind of doctor is your husband?
A. Medical doctor.
page 27 } Q. He is a medical doctor?
A. Yes, sir.
Q. With long standing, I mean?
A. Yes. He was the first doctor in Naples. He was there by himself. He was the only doctor in the county. We now have fourteen in the community.
Q. Does he help with these children?
A. He is the most unselfish person I know.
Q. In other words has he put up part of this $7,000.00 you had to expend for these children?
A. Yes, he put up part of it. As much as he was able to. My husband has been ill for almost three years.
Q. Your husband has been ill? He is not practicing medicine?
A. This year not since March until the week before we came, he was in his office a couple hours a day.

By Mr. Simmons: Continuing)
Q. What is his trouble, Mrs. Craig?
A. He has an emphysema and also a diaphragmatic hernia. He will have an operation for this in August, we think, which will remove part of the lung and repair the hernia that is here.

By the Court:
Q. Did you get anything out of this, except what these papers here show?
A. No, sir.
page 28 } Q. When you got this divorce, I mean, did he give you some cash on the side, or hand you any security, or anything besides what these papers say?
A. No, sir.
Q. You did get this trust fund. That was all of your part, is that your contention? That is all you got out of it. You had no lawyer?
A. No, sir.

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Q. No lawyer represented you.
A. He had a lawyer. I went with him to the lawyer's office to sign this paper in Richmond, or either I met him there. I can't remember the lawyer's name.

The Court: All right. Go ahead.

By Mr. Simmons: (Continuing)
Q. You stated that your husband had not been well for three years; do you mean that his illness has interrupted his work during the last three years?
A. Yes.
Q. What do the doctors tell you about his future chances so far as recovery is concerned, Mrs. Craig?
A. Not too good. It's one of these prolonged sort of illnesses that gradually get worse and you try to arrest it.
Q. In other words there is great uncertainty about his earning capacity after the operation?
A. (Nodding head)

page 29 } Mr. Simmons: I believe that is all.
Your Honor, I just want to make this statement as to the $4,050.00. That is an estimate on our part. We expect Mr. Barnes will have better records than we can have. We want to state to the Court that we do not want a cent more than the actual residue that is left over. If it be thirty-five hundred then that is what we want; if it be forty-five hundred then that is what we want. Mrs. Craig made an estimate at our request, and that is as close as we can come at it, sir.
That is all.
The Court: We will take a ten minute recess.

Note: At this point recess is had, following which the taking of evidence is resumed, as follows:

By the Court:
Q. How much money do you make?
A. I work on a commission basis.
Q. What is your average?
A. It varies. This year I made approximately $15,000.00. That is gross, without income tax or expenses.
Q. Can you give us your net income, estimated?
page 30 } A. Probably around eleven thousand. I can't estimate—I should have brought it with me and I failed to. I'm sorry.

Emily M. Barnes Craig.

Q. What kind of business are you in?
A. Real estate.

The Court: All right.
Mr. Overton: I have just handed counsel some checks to look at, if Your Honor please.

By the Court: (Continuing)
Q. Do you enjoy good health?
A. Do I?
Q. Yes.
A. I am developing an arthritic condition.
Q. What did you say?
A. I am developing an arthritic condition, and I also have to wear a head brace part time for an injury I had years ago, which seems to aggravate the arthritic condition in the back.

CROSS EXAMINATION.

By Mr. Overton:
Q. Mrs. Craig, has Mr. Barnes always paid you under this agreement by check?
A. Yes, sir.
Q. I am going to ask that these checks be passed
page 31 } to you and see whether or not each of those checks was paid to you?
A. I'm sure that is my signature, but it doesn't look like it. I seem to have endorsed them.

Mr. Overton: If Your Honor please, I am trying to cut this to save time rather than going over all the checks. I can offer them here now. There are eight payments of $150.00 and one for $250.00 in 1952. She was married in January, 1952.
The Court: What is that amount?
Mr. Blanchard: $1450.00. Excuse me, Mr. Overton, it may be simpler for you to list the checks by years and the number of months that were not paid in that year.
Mr. Overton: That is the easiest way. Would you read it?
Mr. Blanchard: Starting with 1952 there are three months missing for every year except 1953, when only two months are missing.
Mr. Overton: That is right.
The Court: A check is missing for three months in every

year except 1953, when only two months are missing. How much money is that?

Mr. Blanchard: As I compute that, that is $3,000.00 exclusive of the year 1959, Judge.

page 32 } Mr. Overton: That would be right. Yes. You are right.

We would offer these as Defendant's Exhibit No. 1 with the testimony of Mrs. Craig.

The Court: All right, sir.

Note: The above referred to checks are now marked and filed as Defendant's Exhibit No. 1.

Q. Mrs. Craig, at the time just before your present marriage where were you residing?

A. I was residing in the house on Kent Street.

Q. How long had you been there?

A. I moved in the day before it was complete.

Q. When was that?

A. As soon as I could possibly get in. I believe. I wanted to be in there so the children could have Christmas in the house, and I think we got in on Christmas Eve, around 2:30 in the morning I finished moving the last piece of furniture in.

Q. That was in 1951?

A. Yes.

Q. Prior to that where had you been residing?

A. I was residing at the Cove House. Mr. Barnes was to provide me with a place.

Q. Cove House, that is the one you speak of as his residence in Urbanna?

A. Yes.

page 33 } Q. When were you married?

A. I was married in 1952, I believe.

Q. January, 1952?

A. Yes.

Q. Where were the children going to school at the time of your marriage?

A. They were going to school in Urbanna.

Q. There in Urbanna?

A. Yes.

Q. After your marriage did you go directly to Florida?

A. Yes.

Q. As a matter of fact you left that day, I believe, did you not?

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A. Yes.

Q. And took the children with you?

A. Yes.

Q. Didn't you have some kind of an understanding with Mr. Barnes prior to your leaving and taking the children away like that?

A. Well, he was at my home the evening before and he knew I was going to be married, and he certainly knew I wasn't going to leave them behind.

Q. Didn't you have some understanding with him then what was to become of the children?

page 34 } A. I didn't think it was necessary.

Q. The question is did you?

A. I don't understand what you mean.

Q. Did you discuss it with Mr. Barnes in any way at all about taking the children to Florida?

A. Yes. He knew they were going to Florida with me.

Q. What discussion did you have with Mr. Barnes?

A. I was going to be married and the children were going with me to Florida.

Q. Was that when you had one of these discussions, you say you had with him, about the matter of them coming back during the summer months?

A. At that particular time I don't believe anything was said at all about them coming back at all during the summer months.

Q. When was something said about it?

A. Well, I don't know of any particular date that anything was said about it. At various times.

Q. You do not have to give us the date; you say at various times?

A. At various times we discussed, we would let him know we were coming to Virginia and bringing the children with us, and they were to visit him.

Q. But before you left, you didn't just take the children and walk off to Florida and not say to Mr. Barnes

page 35 } where you were going and whether you were coming back?

A. I certainly did not. I—

Q. What discussion did you have?

A. I told Mr. Barnes I was going to be married.

Q. Yes.

A. He knew I was going to be married; he knew that we had a home to provide for them in Naples, and he also knew that I had planned to take the children with me.

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Q. He also knew that they would come back for the summer, did he not?

A. Well, when it was convenient, or unless he came for them, which he did not do.

Q. Did he not come for them that first year?

A. I don't believe he ever came for them. One time he picked them up and gave them transportation from Naples to Middlesex, but he did not return them. I took them, I came up and took them back at the end of that visit.

Q. What do you mean he never did pick them up?

A. They were too young to travel alone. I couldn't put them on a bus or train.

Q. You mean he never picked them up in Naples?

A. Yes. He made no arrangements to come and pick them up and bring them to Virginia to visit him.

Q. He came to Naples the very following summer to get them did he not?

page 36 } A. He was in Naples on one occasion and picked them up and brought them to Urbanna since 1952. I cannot remember, I don't believe it was the following summer. I think it was a couple of years later.

Q. Did you not on one occasion call him in South Carolina and tell him not to come and get the children, and at that time he was on his way down to get them?

A. He called and told me he was coming down to pick up the children. I had no prior notice, and the children at that time did not want to come, and it took me at least a week, and I discussed it with him on the phone that if he would wait two or three days and let me talk it over with the children and try to make them understand that it would be a pleasant trip for them that they would be more apt to want to come; there wouldn't be a scene with him when he did arrive.

Q. Where was he when you talked to him on the telephone?

A. I thing he was in Carolina, as well as I remember. He was visiting some friends there.

Q. And he called you?

A. I think he did call me and say that he was on the way to Naples to pick the children up. And I suggested that he wait a couple of days until I could more or less talk it over with the children and have their minds settled. I didn't think it fair to walk in and say, "You're going to

page 37 } be picked up and carried off to Virginia tomorrow," regardless of with whom.

Q. Mrs. Craig, at that time, prior to his leaving Virginia,

hadn't the plans all been made for him to come down and pick them up?

A. No. He called me and said he was on the way and said he was in Carolina.

Q. Do you know where he was?

A. Not for sure. I think he was staying with friends. He had a friend, a Mr. Perkins, and I believe he was calling from there, as I remember.

Q. Can you tell us, you don't purport to try to tell us what times they were in Virginia and what times they were not in Virginia during the various years, do you?

A. Can I tell you when they were?

Q. Yes.

A. Usually we try to come up during the month of July, and there have been many summers that we would like to have taken trips other places but we have made arrangements to come to Virginia.

Q. Did you always come when the children did?

A. I have always come when the children did.

Q. On each occasion?

A. Yes. I have brought them to Virginia on each occasion.

Q. You never, except the time when Mr. Barnes
page 38 } picked them up, you didn't come with them that
time, did you?

A. No, I came and got them and took them home.

Q. How is that?

A. I came up later and took them back to Naples.

Q. One year you didn't come with them; how about the other years?

A. I think I have been up every time. I can't—They came up on the train last year.

Q. When was that, now?

A. Last year.

Q. 1958?

A. Yes, sir. I believe they were on the train last year alone.

Q. You didn't come that time, did you?

A. I can't remember if I came up and got them, or whether they came back on the train.

Q. How about 1957? How did they come up that time?

A. 1957? I believe we all drove up together.

Q. Do you know how you came in 1956?

A. I think we all drove up together.

Q. You think you came together each time, don't you?

A. Yes, Well, last year they came on the train; this year they came on the train.

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Q. They came on the train this time?

page 39 } A. Yes.

Q. You are not saying the children were not there in June of any year, are you?

A. I don't, I can't remember that they were there in June. They may have come up one of the very first years in June. I really can't remember.

Q. How about the year 1955? Where were they during that summer?

A. Oh, they have been in camp two years, and '55 may have been one of those summers, and then we came to Urbanna, drove to Carolina, picked them up and brought them to Urbanna after camp, and they visited, and then we took them home in time to put them back in school.

Q. Isn't it a fact, Mrs. Craig, that they were in Urbanna practically the entire summer of 1953?

A. Of 1953?

Q. Yes. And that you were there only a little while, off and on?

A. No, I don't usually come off and on. It's too expensive.

Q. Can you say whether or not they were there practically the entire summer of 1953?

A. No, I can't, because I don't remember that they were. There is a possibility that they were there longer than they have been for the last five or six years, but I can't

page 40 } remember them being there a whole summer.

Q. The point, I am not trying to embarrass you in any way at all—

A. I realize you aren't. It seems to me one of my children stayed with my sister for awhile in the summer.

Q. You made a statement here from which the inference could be drawn that you always came with them, you stayed as long as they did, they went back when you did with you; that isn't correct, is it?

A. Well, almost, except they came on the train, as I said, last year. They were old enough to come alone, but they weren't before. My mother is not well enough to take care of them and someone has to be there in the house if they are visiting there.

Q. When they went to Chicago and Wyoming in the summer, did you go with them in the summer of that year?

A. No. Was that in '53?

Q. I couldn't tell you.

A. I don't remember.

Q. You have to answer that yourself.

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A. No, sir.

Q. Do you know how long they were gone?

A. I think, if I remember right, they were gone around a month. I don't know how long their trip took, really.

page 41 } Q. The only point I am trying to make, as I say, I am not trying to embarrass you; looking back over eight years it is impossible for you to say when they came each year, and when they went back, and how long they stayed, is it not?

A. I can't give you the specific dates. I have a very good idea how long they have been away from me at any time.

Q. You say Mr. Barnes was down for your oldest daughter's graduation this year?

A. Yes.

Q. At that time there was a discussion about her going to college?

A. He asked me what school she would be attending this coming year, and I told him that she had put in her application to the University of Florida because it was a State school and I felt that we could afford to send her there, though she was not very happy about it from an educational standpoint.

Q. Where did she want to go?

A. Well, she preferred to go to Randolph-Macon.

Q. Had she put in her application there?

A. She had not put in her application. I didn't feel it fair to tell her to, and not be able to pay the finances at the last moment.

page 42 } Q. As a matter of fact, this child had been writing her father since sometime last January, February about where she was going to college, mentioning different colleges and so forth, had she not?

A. I don't think so. I don't know of any letters she has written. I don't believe so. I, many times, asked her would she please talk to her father about his intentions of sending her to college, and she called me long distance and said she had talked to him, but had arrived at nothing that she could depend on.

Q. Then you, as far as you know, she hasn't been in correspondence with her father about where she was going to school?

A. No.

Q. Or when?

A. No, sir.

Q. You do not believe that has taken place?

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A. I don't know. I don't think so. I don't believe so, but I don't read my children's mail.

Q. About something as important as making arrangements with her father about going to college, you say it hasn't been done, no plans made or anything of that sort; now you say you cannot say whether she has been in correspondence with him about it or not.

Q. I do say I don't know whether she has written to him.

Q. You do not know whether she has or not.

page 43 } A. She has not been at home during the winter months; if she wrote to him while at Rosarian, I don't know. I have asked her on several occasions to ask him and talk to him about education, and when she was here in Virginia before I came up this week I had written her a letter and asked her to talk to Mr. Barnes and see what his plans were and what his intentions were before she went to Randolph-Macon to put in an application there.

Q, When did she go to Randolph-Macon to put in her application?

A. She went up there the weekend, I think two weekends ago. Two weekends ago.

Q. She has been to Randolph-Macon since she has been in Urbanna.

A. Yes.

Q. What other—The conversation you had with him at the time of your daughter's graduation, I take it, was in June?

A. Yes. It was the first day of June, I believe, or the last day of May.

Q. What other conversations have you had with Mr. Barnes about college education for your children or for Lanthe in particular?

A. Any time we ever met we have discussed slightly the expenses of the children, but he has made no offer

page 44 } to do anything other than say that he would take care of it, or that he would make some arrangements. But nothing has been done.

Q. Have you asked him to make any arrangements?

A. Yes, I have.

Q. You say he said he would make some arrangements?

A. He offered to make some arrangements, but he has never done it. He hasn't made any arrangements.

Q. When was the last time you talked to him about it?

A. In June, at Lanthe's graduation.

Q. Have you written to him about it since?

A. No, I have not.

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Q. So then as far as this coming year is concerned you haven't asked him to make any arrangements?

A. Yes. We talked about it in June when he was in Florida.

Q. At that time you told him she was planning to go to the University of Florida, but she didn't like it much?

A. She wasn't very interested in going there, but that we couldn't afford any place else. She wanted to go to a different school. And he said he would make some arrangements to help, but that was the end of it. I never heard any more from him. And on all of these occasions I would leave expecting to hear in another week or two, and I never would.

page 45 } Q. Mrs. Craig, hasn't it been your understanding all through the years, and originally planned, that this trust fund was for the education of these children?

A. My understanding of that trust fund was that it was for my own needs.

Q. It had nothing to do with the education of the children?

A. No.

Q. That has been your understanding from the very beginning?

A. Yes, it has.

Q. No time have you had a different understanding?

A. No, sir. I have not. I have spent it on the children. I don't think I have ever spent any of it on me. But my understanding of that was that it was for me.

Note: A paper writing is passed to counsel who examines it and then passes it on to the witness.

Mr. Simmons: We object to the introduction of this letter into evidence, which tends to alter this written contract here before us, on the grounds that (a) there is no consideration shown, and (b) this letter shows in two places where she said she was very much confused. You can tell that by the way it is written. It is all jumbled up. I do not think that is anything more than a confused state of mind. In 1956 she is

page 46 } stating what she thought about this contract, which speaks for itself. She has already said there has been no agreement in addition to that contract.

The Court: What is the purpose in introducing it?

Mr. Overton: If Your Honor please, this is a long letter, twelve pages long, from Mrs. Craig to Mr. Barnes. The whole purpose of the letter is to write him and tell him she wants to talk to him about selling these two properties which

constituted the trust fund at that time, and reinvesting the funds. She refers to the fact that she will discuss it further with him when she gets there. She thinks it is a better idea to sell the two properties, put the funds in something else, and she wants him to agree to it. She goes on to say in two different places the trust in this property is for the education of these children. I think it is very pertinent. This contract itself is certainly ambiguous there when it says the terms of the trust shall be acceptable to the parties hereto; but shall include the right to dispose of the property for an emergency in one place, and in another place it goes on to set out what appears to be a contradictory trust.

The Court: We will admit it for what it is worth. Go ahead and read it.

page 47 } Mr. Overton: "Since I am not planning to be in Virginia until later this summer—"

The Court: What is the date of the letter?

Mr. Overton: It is postmarked June 16, 1956. I don't believe there is any date on the letter. Incidentally, I might ask Mrs. Craig this:

By Mr. Overton: (Continuing)

Q. This letter is signed Missie; that is your nickname, is it not? This is your letter, is it not?

A. Yes.

Mr. Overton: "Dear Harold: Since I am not planning to be in Virginia until later this summer and have some things I would like to talk over with you thought I would write then we can talk at a later date or you may write your views.

"First, I would like to talk about the property in Urbanna that came to the children and me through our settlement. At the time, being in a complete state of confusion and not having any business experience all seemed a fair arrangement to me. Also due to lack of experience or good judgment, I failed to realize what the future responsibility would be as far as upkeep is concerned.

"Actually in the last three years I have not

page 48 } made any return on the investment. In fact I have had to spend money earned on the places to keep the property in Urbanna going. My understanding is if I don't make a ten per cent return on established property I am going in the hole. After a period of years this seems more than is reasonable. If this situation continues the children

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will have to sacrifice the property as there will be a debt. Since I have been connected with the real estate business, I realize what a bad arrangement this can be, Since the setup was to be used for the care—education, etc. of the three children until my death, at which time the children shall inherit the property to be divided between the three of them.

"I don't believe we arrived at the actual value of the house on Rappahannock Avenue. Glen Folliard had both properties appraised last year. At the time he set a value of thirteen on the Rappahannock Avenue house and about seven on the apartments. I would like your opinion on this.

"You probably are not interested in this part of the picture but just for the books, I had a letter from John giving information needed for income tax: "Your report for the year is very brief as you had few expenses." I page 49 } spent money earned here that has not shown on John's books—also let other repairs rock along until this summer. And I am having trouble collecting rent from John and Carrole—Carrole still owes $240.00 for 1955 and $120.00 in arrears for 1956. At this point the total I believe will be almost $450.00. John owes $300.00 for 1955, is behind $150.00 for '56. I think they have paid part of this as John has written and talked to both several times. Taxes to the town $66.20. County $139.02, plus it will soon be time for insurance.

"The houses will have to be painted this year, also a serious problem with the roof leaking in the Rappahannock Avenue house. As well as the apartment porch. The ceiling in the living room and hall of the house need repairing. Also the screens need to be replaced. Work on roof, lawn, both kitchen and bath sinks need repair.

"What I want to know is: do you think we can do anything to adjust matters. I will give you my ideas and you can tell me what you think. It is my belief we should sell these properties for a reasonable price and reinvest the money in something more worth while for the children at least to help more with their support.

"There are several ways we could invest the page 50 } capital for them.

"Jim and I bought some beach frontage (where we now live). We were able to buy 150 feet frontage by 350 feet deep. We were able to get the property through a situation much like mine. The owner acquired the house through a settlement then found he did not have the money to keep it. We have an investment of forty thousand plus

five thousand for seawall. This property is zoned in estates. However, we are allowed to build one guest house on Gordir Drive to be not more than 60 per cent not less than 40 per cent of square feet area of main dwelling. In our case the guest house would be approximately 1300 square feet. This would give room for three bedrooms, etc. So it could be rented out on a seasonal basis for thirty-five hundred to thirty-seven hundred for three months and $125.00 for out of season. I could make some arrangements to sell them the east side of the property or deed it to them or through Will. I don't know the exact steps but some way that they would be protected as well as have education money when they needed it, etc.

"I hope this letter is not too confusing maybe it will be food for thought until we can talk about it.

page 51 } "The children are planning to go to camp again this summer. Puts a little strain here and there but they want to go and I'm sure it does them much good. They plan to come to Virginia just as soon as camp is out. I will pick them up at camp and come on to Virginia. Since I will be working this summer I cannot be so definite as I don't know what might come up at the time. However if I can't get away they can come to Richmond by train or maybe you could pick them up. I cannot let them go to mama without help, as I don't think she is well enough to cope with all of the things that come up with teen agers.

"They all passed with very good grades this year. John is interested in football for next year. This I don't mind but I would appreciate it if when you talk to him you will try to impress upon him how he must take advantage of his chances for an education, etc. At this point he seems very ambitious and is making good grades, but it takes a lot of talking.

"I hope to make enough this summer to send the two girls over to Palm Beach to school next winter. They both realize they will need more in the way of education than they are getting here. However it is a very hard school so it remains to be seen if they can take it.

page 52 } "In re-reading this letter I realize how mixed up it sounds trying to write in the office between answering phone, in talking to people about other things. Two things I forgot. The property on G Drive is now $350.00 a front foot. Going price. Two, Mr. Major failed to send check for children for May. Since you owe for June and July as I will be paying expenses we can let the check I

received in June go for May and will appreciate check for June and July. I hope you are real well and enjoying life. I will be looking forward to seeing you this summer. As ever, Missie."

The Court: Have any deeds been executed to this trustee?

Mr. Overton: Yes, sir.

The Court: The property has been conveyed to the trustee Marchant?

Mr. Overton: Yes, sir. Yes, sir. I think it was done the same day the agreement was entered into, if I am not mistaken.

The Court: Where are the deeds?

Mr. Overton: Unfortunately they are recorded over in Middlesex County. I overlooked getting copies of them. I do not know whether Mr. Simmons has gotten certified copies of them or not.

Mr. Simmons: I have not gotten certified
page 53 } copies.

The Court: I was wondering if it said that the money was to be used for the educational purposes of these children?

Mr. Simmons: I think it was in accordance with this agreement, conveyed with special reference to this agreement we have read.

Mr. Overton: That is right.

Mr. Blanchard: The preamble begins: "Whereas certain agreements have been entered into—"

The Court: This letter will be received as Defendant's Exhibit No. 2.

Note: The above letter is now marked and filed as Defendant's Exhibit No. 2.

Mr. Simmons: Your Honor, we have a copy of one attached to the Pleadings—the agreement, not the deed. But the agreement states, in answer to a question that has been raised—the Kent Street property, which is the piece that is still owned belonged to the Saluda Lumber Company, Incorporated, and they entered into an agreement on the 14th of June, 1951, which is part of these Pleadings, and they state—The Board of Directors have adopted—and so forth, "Whereas the Saluda Lumber Co., Inc. is the owner of a lot
in the town of Urbanna, Va. at the corner of Rap-
page 54 } pahannock Avenue and Kent Street, recently purchased from C. W. Eastman, on which a dwelling

is being erected, it was resolved that the President and the Secretary of the Saluda Lumber Company, Incorporated be authorized to enter into a contract with Emily M. Barnes for the completion of the said dwelling by October 1, 1951 and upon such completion to execute a deed conveying the said property to John R. Marchant, Trustee, for the benefit of Emily M. Barnes, upon the execution by the said Trustee of deed of trust on the said property."

The Court: Where is that in here?

Mr. Simmons: Attached as an exhibit, Your Honor. It ought to be Exhibit A or B of these Pleadings. Exhibit A ought to be the agreement between the parties and this is an agreement between the Corporation and Emily M. Barnes.

You will notice our client is the party of the second part. It goes on down to say that "subject to that payment of ten thousand dollars which is to be paid when the home place of Harold G. Barnes and Emily M. Barnes in Urbanna, Virginia is sold," and it says, "whereas the parties to this agreement mutually agree to be bound under the terms and conditions heretofore set out." Therefore the deed, the deed which we don't have a copy of—as I recall, I looked

page 55 } at it yesterday afternoon—as I recall the deed it goes on after the preamble to state that this agreement has been entered into and the property is to be conveyed to Marchant on the terms and conditions set forth in this written contract which is Exhibit A.

Mr. Overton: That is my understanding of it.

Mr. Simmons: That is the gist of it.

Mr. Blanchard: In other words, Judge, it incorporated, as we understand it, Paragraph Ten of this Exhibit A, which is the one that Mr. Overton contends is ambiguous. We submit we do not see how there can be any room for any ambiguity in it, when the deed conveyed to John Marchant is conveyed in accordance with Paragraph 10. That is spelled out very specifically exactly what it shall be in trust for. We submit that there has been no further writing of any kind, certainly that could supersede this written agreement. We submit this letter, which she herself says is jumbled and is an effort on her part to set forth her ideas to Mr. Barnes, cannot amend this agreement.

The Court: Could there be any agreement which could supersede this?

Mr. Blanchard: I don't see how there could be.

page 56 } Mr. Overton: If Your Honor please, the position we take with respect to this is that the con-

tract itself sets out that the terms of this trust are to be acceptable to both parties.

The Court: That means it should be drawn up in accordance with this. Everyone is satisfied that that has been carried out, from what was said here.

Mr. Overton: But it goes on to say, "Shall include a provision for—" I don't know what the words are— "—invasion of the trust for any emergencies." In other words they had in mind something different from the language, which shows that there was some question about it, otherwise it would be no point in it being in there.

The Court: Your position isn't plain to me.

Mr. Overton: This language is apparently picked out of a deed of trust, something of that sort, and inserted in the middle of this paragraph here. If that were the only condition on which it was to be conveyed the other language would not be in there.

The Court: Here is what it says: "The payments and conveyance to John R. Marchant, as Trustee—" Now that contemplates that the deeds would be given to

page 57 } Marchant.

Mr. Overton: That is right.

The Court: The first thing for both to do was sit down and draw deeds to Marchant as Trustee. "—shall be in trust for the benefit of the wife for life and at her death to be divided equally between the three children of the parties hereto." Now the deed has to contain that. "The terms of said trust shall be acceptable to the parties hereto,—" Now when you draw that deed, I take it that that means that both paries have got to understand and that when you draw the deed that it had that in it. "—but shall include the power to use the principal in the case of emergencies." Now that is added to it. "In trust, nevertheless,—" and so forth. Then from then on out it is plain. That is the view I take about it. I tell you that because that is the way it looks to me. I could be wrong, but that is the way it looks so far.

Mr. Overton: It certainly isn't a simple trust for wife for life and children at death—

Mr. Blanchard: What else—

Mr. Overton: Because of the fact it can all be spent for emergencies. What are those emergencies?

page 58 } Mr. Blanchard: That is a typical provision which is found in any trust deed. It provides merely that the trust deed can be invaded, the principal, for

emergencies. There is nothing more typical than that in a trust fund.

The Court: That is what the letter is about, is it not?

Mr. Overton: That is right. The education of the children and so forth. She suggests using it for that kind of thing.

Mr. Blanchard: Because you suggest using anything, it doesn't amend the basic agreement.

Mr. Overton: The point I have in mind, and what I certainly want to make myself plain on is, it was the understanding of this gentleman and it was the understanding of that lady, as shown by her letter written some years ago, that that was the purpose of it to start with; that that is what it was for. She says when they change it and put it into other property she will execute a deed, or will do whatever is necessary to make it available to them.

The Court: This is my reason for raising the question: It looks to me as if, so far as Paragraph Ten is concerned, you have a legal question as to what it means. It is a legal question. The Court takes the view that they are the terms of said trust. Now the terms of the trust are in-
page 59 } corporated in the deed, that that deed shall be acceptable to both parties. In other words when they draw up the deed they want to make sure that the deed contains what Paragraph Ten contains. When that is done, it has to be done in a fashion and way that is satisfactory with both parties.

Mr. Blanchard: That is as we understand it.

The Court: Otherwise, the thing could mean anything; you could have some side agreement and it would nullify the whole thing. They could get together and say just give it to somebody else entirely. I don't think as a matter of law we can say that. We are going to admit the letter for whatever it is worth. I tell you that because I think we can narrow it down some.

Mr. Simmons: Your Honor, we would only point out our objection solely for the record. Our further objection to the admission of the letter would be on the ground that counsel is seeking to bring a subsequent writing, which says on its face that it is a confused interpretation of something that went on before, to modify the effects of a deed which was based on this agreement itself, and which cannot
page 60 } be altered, as we all know, except by another change of title, another deed, or something of that kind.

The Court: I have tried already to make it plain that it

was not being accepted for altering Paragraph Ten, but it was accepted by the Court in evidence because it shows, even though it would cut short her income, the willingness of this lady to sell this property and make available the corpus for the education of the children.

By Mr. Overton: (Continuing)

Q. Mrs. Craig, I understand you to say that you were in some way associated with the Mayor of Naples?

A. Yes.

Q. In what way?

A. I am his associate in business.

Q. In what kind of business?

A. Real estate business.

Q. Then the two things are the same.

A. Yes.

Q. You say you have made $15,000.00 this year?

A. Yes.

Q. You think eleven thousand of that would be net?

A. Yes.

Q. Could you tell us what your income was for
page 61 } last year?

A. No, I can't.

Q. Can you give us some reasonable approximation?

A. Somewhere around, right around in that figure, fifteen or sixteen thousand. But that doesn't count my car expense or any of my expenses. That's the gross.

Q. When you said that you went to an attorney with Mr. Barnes, was that Mr. Fielding Williams in Richmond that you went to with this agreement?

A. I'm sorry I really don't remember his name.

Q. You do not know who it was?

A. I'm awfully sorry, I have tried to think many times, and I still can't remember who it was.

Q. You went to his office and talked to him?

A. Yes.

Q. That was Mr. Barnes' attorney.

A. Yes. At the time I was in a state of confusion, I think, and I really don't remember the man's name, and I don't think I would know him if I saw him on the street.

Q. Did he draw up this agreement?

A. I'm not sure. I think he did. I don't know. I think Mr. Barnes can probably answer that. The only representation I ever had was Mr. Lewis Jones in Urbanna, who is a friend of our families, went over the papers and read them

Emily M. Barnes Craig.

to me a couple of times, but he actually never really advised me of anything.

page 62 } Q. You mean Judge Jones, who is living in Urbanna?

A. Yes.

Q. You took the papers to him and he went over them with you?

A. Yes, and then he, I think at that time, it seems to me that he was turning his office over to Mr. Beattie, or something like that. I can't remember what it was, but he said to me that, or somehow I think that Mr. Beattie read over the agreement but never suggested—I believe Mr. Barnes went to see Mr. Beattie. No one ever suggested any change to me or anything, to do anything about it except sign it.

Q. At the time you talked to the man who is now Judge Jones, that was before he became judge, was it not?

A. Yes.

Q. Did Mr. Barnes have any other representation?

A. I know he had a lawyer in Richmond, and he had a lawyer in Saluda.

Q. Who was that?

A. Mr. Bareford.

Q. Did you talk to Mr. Bareford, too?

A. I went out there and signed some papers and picked them up, but I don't remember spending any time in his office at any particular time.

Q. Do you recall what those papers were that you signed? Was it this agreement?

page 63 } A. I think it was this agreement.

Q. That you signed in Mr. Bareford's office?

A. I don't remember. It was either a deed to the farm, this agreement, or a deed to the farm. I remember going to his office in Saluda and signing papers.

Q. Mrs. Craig, you say that you do not know anything about the $4,000.00?

A. No, sir. I don't understand what $4,000.00 you are even talking about.

Q. You said there had been no other suit between you and Mr. Barnes with respect to this agreement?

A. No, sir.

The Court: What agreement are you talking about, Mr. Overton?

Mr. Overton: The one we have been referring to here, Your Honor.

Emily M. Barnes Craig.

A. What do you mean? What suit? You mean a court suit, or something?

Q. Yes.

A. I have never been in court before.

The Court: Are you talking about Paragraph Ten?

Mr. Overton: I am talking about the whole thing. Yes, sir.

The Court: If this matter has been litigated, page 64 } what is it doing here today?

Mr. Overton: It has not been litigated with respect to the college education but, we submit, it has been as to the house; which is No. 3 on your list up there. That has been fully litigated.

Mr. Blanchard: Judge, this obviously is some title suit where she has been made a party, and it is a typical situation, I am sure, of some lady where they are clearing up the title and she doesn't know anything about the details they are trying. Frankly, we don't either. It is a voluminous file, it looks to me like, to clear a title. We would like time to read it if we could.

Mr. Overton: It is a clearing title suit brought by this woman with respect to the Cove House in Urbanna. It is her Bill of Complaint. There are a lot of other things, too, in the same agreement.

Mr. Blanchard: It is a complicated bunch of papers. Frankly, we would like time to review them, if Mr. Overton thinks they are material.

Mr. Overton: Indeed I do. It shows the whole matter has been settled, thoroughly, that you have as one of your issues here.

The Court: Tell us about it.

Mr. Overton: If Your Honor please, in 1952 page 65 } Mrs. Craig instituted suit against Mr. Barnes in the Circuit Court of Middlesex County for the purpose of bringing this residence property issue to a head. This contract there provides that the residence shall be sold, that the funds shall be divided in half and that ten thousand of it shall be paid to the Saluda Lumber Company and the balance of that half shall be paid to John R. Marchant, Trustee, under this trust agreement here.

The records show that when the suit was instituted Mrs. Craig made certain allegations and the defendant came in and each of them, practically, were denied. She asked for that relief and that relief was granted. Also, there was a provi-

sion in that contract which provides that she was to get $50.00 a month for each month after October 1st if the building on Kent Street was not completed. She asked for that relief there and alleged in her Bill of Complaint that the house wasn't completed until sometime in 1952; she says today here it was completed by Christmas of 1951.

To make a long story short all the issues, practically, which should have been raised at that time under that contract were raised, the matter as to the completion of the house was raised, the matter as to the conveyance of the funds to the Trustee was raised.

page 66 } The last thing in the file is the decree, next to that is a Memorandum of Agreement which I believe is signed either by Mrs. Craig or her attorney setting forth the full and final settlement. This was carried on the docket for some five or six months.

Note: At this point Mr. Overton refers to the Middlesex County case and reads the Memorandum of Agreement by and between Emily M. Barnes and Harold G. Barnes, which the reporter records but does not here incorporate into this transcript since the whole record is to be made a part hereof, following which Mr. Blanchard states as follows:

Mr. Blanchard: How long have you known about it, Mr. Overton: Did it just come to your attention, too?

Mr. Overton: What is that?

Mr. Blanchard: This suit.

Mr. Overton: Yes, it just came to my attention within the last few days.

Mr. Blanchard: It is a shame you didn't know

page 67 } about it in the Answer so we could have all known about the property.

Mr. Simmons: If it really disposes of the issues as alleged—

Mr. Overton: Here is the Memorandum of Agreement, right here.

The Court: My purpose in asking about it—I mean the lady, she never would have been able to explain it to us.

Mrs. Craig: I can't even remember anything about it.

The Court: What attorney represented her?

Mrs. Craig: Was that Mr. Jones or Mr. Beattie?

Mr. Overton: Mr. John S. Beattie purports to represent her, sir.

Emily M. Barnes Craig.

Mrs. Craig: Wasn't that when Mr. Barnes wanted me to sign over property to him, or something?

Mr. Overton: I don't know anything about it. She brought the suit.

The Court: Here is the Memorandum of Agreement or Settlement of interest.

Mrs. Craig: I think Mr. Barnes also asked Mr. Beattie to have that drawn up, said I could sign it, and he would be—I wouldn't be on any of the property, or some-
page 68 } thing. I certainly never remember ever bringing suit against him.

Note: At this point the Court refers to the case discussed above and reads the August, 1952 Memorandum of Agreement by and between Emily M. Barnes and Harold G. Barnes, which the reporter records but does not here incorporate into this transcript since the whole record is to be made a part hereof, following which the Court states as follows:

The Court: How about the children, what happened to them?

Mr. Overton: Sir?

The Court: What happened to the children under the trust agreement?

Mr. Overton: I don't think I understand what you mean, Judge.

The Court: I thought the property was to
page 69 } go in trust for the children, as you say, for the educational use of the children.

Mr. Overton: That is right.

The Court: Are they parties to that suit?

Mr. Overton: Yes, I think so, Judge, if I am not mistaken. Yes, sir. They are parties to it.

The Court: I didn't know. You never mentioned their names.

Mr. Overton: She is the first plaintiff, the children come next, John R. Marchant, Trustee, next. Harold G. Barnes, defendant, and Saluda Lumber Company, Incorprated, defendant.

Mr. Simmons: Do I understand without going through this maze of papers, the purpose for introducing this suit is for the elimination of the question as to the residence house? I think you explained to the Court that you were not fully

aware of it at the time you filed your Answer. Isn't that all it does?

Mr. Overton: No, that isn't all it does.

Mr. Blanchard: Does it pertain to any of the other allegations in this suit?

Mr. Overton: No, not as to the other things.

page 70 } Mr. Simmons: It removes that as an issue in the case, an issue that we thought might have been outstanding with respect to the residence house. That is all that suit does.

Mr. Overton: That is what I told you this morning.

Mr. Blanchard: Mr. Overton, do I understand that the ten thousand dollar deed of trust in favor of the Saluda Lumber Company has been taken off of the Kent Street property and has been released?

Mr. Overton: I am not sure about that, Mr. Blanchard.

Mr. Blanchard: I understood there was still of record that ten thousand dollar deed of trust on the Kent Street property. I assume that would have been taken care of. I would say that it should have been taken care of by that Memorandum of Agreement.

The Court: It is agreed that that is out? We do not have to bother with that?

Mr. Simmons: It doesn't touch the other issues, Your Honor, for the support or the education of the children, which are the other two issues before the Court.

Mr. Blanchard: If Your Honor please, would it page 71 } be permissible to have it understood that we do agree to dismiss that, provided we have a right when we recess for lunch just to glance through the file and be certain that there are no omissions on that very question?

The Court: It is tentatively agreed then that this will be received in evidence. All right.

Mr. Overton: I believe that is all, Your Honor.

The Court: All right. We will adjourn one hour for lunch.

Note: Recess for lunch is now had until 2:00, at which time the hearing is refused as follows:

Mr. Simmons: Your Honor, at the point we broke off for lunch we had some question whether we would agree to the introduction in evidence of this suit. We wish to state that after having been able to examine it thoroughly we certainly will agree to it and we ask that it be incorporated in its

entirety in this proceeding for the reason that it shows in Paragraph 5 of the bill bearing in mind that this was in the middle of 1952. The agreement that is in here, the
page 72 } second agreement was in August, 1952. The Bill recognizes fully the agreement that we have been talking about here. In other words, the allegation has been that this thing was altered at the time this lady went to Florida, which was in January of 1952.

This law suit recognizes in here that this agreement, that we are talking about, that they had this written agreement that was in the divorce decree. It is recognized in the bill. It is admitted in Paragraph 3 of the Answer that this thing is outstanding, and was an effort to settle all these questions, and also, in the agreement itself, it again says that Saluda Lumber Company will execute a deed in accordance with the terms of an agreement between Emily M. Barnes and Harold G. Barnes, dated June 14, 1951. So, in other words, it bears out, Judge, exactly what you were asking us about on the form of the deed.

The settlement agreement which was entered terminating this suit provides that the Saluda Lumber Company will execute a deed conveyed with general warranty to John R. Marchant, trustee, the house located on Rappahannock Avenue and Kent Street to be held by him in accordance with terms of an agreement between Emily M. Barnes and Harold G. Barnes, dated June 14, 1951. So clearly all they have done is convey it to John Marchant subject to the terms
page 73 } of this very agreement as we were discussing before lunch.

This ratifies the agreement after the time alleged in the opening statement of the oral modification. We do want to withdraw any claims which we weren't so sure about at the outset concerning the residence. This obviously cleared that up.

The Court: This will be Defendant's Exhibit 3.

Note: The above referred to file is now marked and filed as Defendant's Exhibit 3.

The Court: All right. Go ahead.

EMILY M. BARNES CRAIG,

resumes the stand for further examination, having been previously sworn, testified further as follows:

Emily M. Barnes Craig.

RE-DIRECT EXAMINATION.

By Mr. Simmons:

Q. Mrs. Craig, let me ask you this question: You stated to Mr. Overton in reply to his question to the effect that you were uncertain as to the exact times that the children had stayed with Mr. Barnes at his home; do I understand that the children would be the best witnesses as to what period they stayed with their father?

page 74 } A. Yes.

Q. While they were staying at Urbanna, you stated that they stayed with Mrs. Marchant?

A. Yes.

Q. I just want to ask you this one question: Could you tell the Court whether or not you and Lanthe in your efforts to get some idea about college costs, have you got some definite idea about where this girl can go to college and approximately how much it will cost to go?

A. Well, I first had considered the University of Florida, because I thought it was less expensive. Being a resident of the State of Florida she, I was under the impression that she could attend college there for approximately $1,200.00 a year, but she went up to the University and spent two days—

Mr. Overton: I don't think she can testify as to what she found out at the University.

A. They wrote me a letter that would not include her board or her books. She would have to eat on campus, three meals a day at one of the cafeterias they provide for the students. Her books, they are esitmated at $175.00. We added it up and decided that the approximate cost there would be $1,800.00, excluding transportation and wardrobe.

We looked into some of the other schools and they seemed to vary from around twenty-two hundred up to as

page 75 } high as three thousand-thirty-five hundred. I believe Randolph-Macon would run us close to three thousand dollars, including her transportation and her books.

Q. You stated, Mrs. Craig, that you had gone to work. Why did you go to work for Mayor Smith?

A. I went to school—I went, entered school three years ago.

Q. At the time the doctor's health was failing?

A. Yes.

Q. Would you tell us when Judge, now Judge Jones, then Attorney Jones, read these papers to you? Was it before you signed them or after you signed them, or do you recall?

A. I don't recall for sure, because I can't remember in what office I signed the papers.

Mr. Simmons: That is all, sir.

Witness stood aside.

page 76 } LANTHE BARNES,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Simmons:

Q. Now would you address your remarks to Judge Weymouth but talk loud enough for us to hear you. Would you state your name and age?

A. Lanthe Barnes and I am eighteen years old.

Q. I understand that you live in Naples, Florida with your mother?

A. That's right.

Q. Would you tell us whether you have ever visited your father's home in Urbanna prior to this year?

A. Only this year to stay, to spend the night. I mean I have only stayed there this summer over-night, and it has been three weeks. I have been down for visits while staying at my grandmother's across the street and for meals and such as that.

Q. Is your grandmother Mrs. A. B. Marchant?

A. That's right.

Q. How close is her home to your father's?

A. Oh, a matter of feet.

Q. Do you know whether or not your mother, while you were staying at your grandmother's, has contributed to your support?

page 77 } A. Yes. As a matter of fact mother pays all of grandmother's bills, or all, you know, everything from food, laundry, everything while we are with her; and not only while we are with her. I think they contribute to their welfare quite often.

Q. Has your mother ever restrained you, that is, kept you

in any way from visiting in your father's house and staying at his house?

A. No, she has not in any way. As a matter of fact a couple of times mother has mentioned to me maybe that it would be best for all concerned if I wanted to, to stay with the Barneses, to stay overnight at the Cove house. I have never been forced to do anything such as that. And it was my own choosing and my own decision that I did not want to before this summer.

Q. Now, turning to college. I understand that you graduated this year from Rosarian Academy and have been accepted by several colleges that your mother has mentioned, is that correct?

A. Yes, sir.

Q. Have you ever had occasion to talk with your father, Mr. Barnes, about your college education and who would pay for it?

A. I have only mentioned it, as a matter of fact, once since I have been here this summer, and never previous page 78 } to that. And that was one night as I was eating my dinner I mentioned it. I brought up the subject, and it was stated in that conversation that Harold would pay anything that mother would do, that he would do the same. For instance, if I went to Randolph Macon he would give me fifteen hundred dollars; if I went to the University of Florida it would be seven hundred fifty. That was quoted from what he said.

Q. Did he ever discuss with you whether or not there was any property being held in trust by him or anybody else out of which he would pay for your college education?

A. Yes. And that had been mentioned to me before as saying that my grandmother Barnes had bought it for me when I was a child, but Harold said that he had bought it—and I believe that's right—when I was a child, I think when I was about a year old. And it's in Gloucester. And during the same conversation he stated that he planned on getting four thousand dollars out of this timber, which had not been cut as of yet, and that would be for my college education.

By the Court:

Q. Be for it, or be a part of it?

A. Be for it.

By Mr. Simmons: (Continuing)

Q. And it was only the timber land in Gloucester that your

father mentioned to you as being property held in trust for your college education?

page 79 } A. That's right.

Q. Lanthe, do you have any understanding about the property that is held by your uncle, John Marchant?

A. Do you mean the property in Urbanna that belongs to us that he is holding?

Q. Yes.

A. The only knowledge I have of that is that everything that, I mean that it belongs to us, to the three of us children, and that whatever is made out of it goes to us. However, it's my knowledge that nothing has, to any extent, so far. I mean I realize that that belongs to us. If anything other than that—

Q. Have you ever understood that there was any provision that that was to be used for your college education?

A. The only knowledge I have of that was that it was to be used, not specifically for our education. I mean that, as far as that, it has never been stated to me one way or the other.

Q. Were you familiar with any agreements existing between your mother and father concerning whether or not you were supposed to spend any particular time with Mr. Barnes?

A. No.

Q. Have you ever done any work, been gainfully employed?

A. Never. No, sir.

page 80 } Q. Have you ever baby sat?

A. I have never baby sat. My mother never allowed us to baby sit.

Q. So that you have never been gainfully employed.

A. Never.

Q. Do you have any other property in Florida that we don't know anything about that you can draw on or use?

A. No, I'm afraid not.

By the Court:

Q. This school that you went to is a Catholic school?

A. Yes, it is a Roman Catholic school.

Mr. Simmons: I do not know whether it is material, Your Honor, but we are prepared to develop that there was no influence on her religion or anything. I do not think that is material.

The Court: It apparently was a rather good school. I was interested in knowing.

Lanthe Barnes.

By Mr. Simmons: (Continuing)

Q. It has been stated that application has been made at the University of Florida and Randolph Macon. All things being equal, do you have any choice as between these colleges?

A. Well, yes. I'd rather go to Randolph Macon. I think it is rather apparent. I have come from a smaller
page 81 } school where ethics and morals and so forth are greatly stressed. However in just the scholastic field it's apparent that Randolph Macon rates as one of the top ten. The only top ten scholastic women's colleges are in the South, and the University of Florida with fifteen thousand students, I feel, probably wouldn't give me as much individual attention.

Mr. Simmons: Mr. Overton.

CROSS EXAMINATION.

By Mr. Overton:

Q. To what colleges have you applied, Miss Barnes?

A. The University of Florida, and Marymount College at Tarrytown, New York, and Randolph Macon.

Q. They are the only three to which you applied?

A. Yes.

Q. When did you get up here this year? Do you know what day it was you got here?

A. It was three weeks ago this past Tuesday.

Q. Three weeks ago this past Tuesday?

A. Yes.

Q. The 21st of July?

A. Probably.

Q. And you have been staying at your father's home since that time?

A. Yes.

page 82 } Q. Why do you say it is that you are staying there this year and never have before?

A. That's right.

Q. I say why is it you are staying there this year?

A. I think because Harold stated he wanted us to come up and sent us money to come up.

Q. Hasn't he always done that?

A. Not to my knowledge. But this is the first year that I have been old enough, I feel, to just feel that I wanted to come.

Q. What kept you from wanting to come before?

Lanthe Barnes.

A. I feel that's awfully very personal.

Q. Hasn't your father called you and talked to you on the phone about coming?

A. Quite often.

Q. Quite often?

A. Not concerning about coming, no, only asking us when you would be up.

Q. Asking you when you would be up?

A. Yes, maybe, or I can't wait to see you this summer, something to that effect.

Q. In other words making plans for you all to be with him during the summer.

A. No, not necessarily. I would not call that plans.

page 83 } Q. You say he has called and asked when you would be up and told you that he would be glad to have you with him and so forth.

A. I think probably you would have understood if you would have heard the conversation.

Q. I am trying to hear what you know about it now.

A. It was very vague and that sort of thing.

Q. Didn't he come down to Florida and get you all once?

A. Not that I can remember.

Q. You do not remmeber that ever happening?

A. No.

Q. And you say you eighteen, now?

A. Yes, I am.

Q. When were you eighteen?

A. July the 2nd.

Q. You say that it was not your understanding that the property in Urbanna was specifically for your education?

A. Yes.

Q. It was just for your benefit, whatever it happened to be used for?

A. Yes.

Q. Is that right?

A. That was my understanding. Yes.

page 84 } Q. When did you have the conversation with your father with respect to the four thousand dollars out of the timber?

A. I think it was just last week.

Q. Since you have been here this time?

A. Yes, it was since you have visited us at home. I mean it was since then and today.

Q. And was that the first time—

Lanthe Barnes.

A. It was, as a matter of fact, I think it was last maybe Thursday or Friday. Something like that.

Q. Was that the first time you had had any discussion with him about college since you have been here?

A. Yes, other than the day we were sitting on the front porch when you and your son visited us and mentioned, is it Mary Washington your daughter goes to, or—? Harold says, "I would like for you to speak to—" talking about you, "—this man. I believe he has sold me on Mary Washington." Other than that I have never mentioned college.

Q. Didn't you have a conversation with respect to fifteen hundred dollars at some other time?

A. No, not at any other time than that, which was about a brief eight or ten minutes before I went out.

Q. Going back some months into the spring and winter, did you have conversations with your father about college at that time?

A. No, sir.

Q. No conversation at all?

page 85 } A. No. No conversations and no letters.

Q. You received no letters from him?

A. No. Yes, I have received letters from him, but not stating plans of further education.

Q. Did you not write him letters about it?

A. No, I did not.

Q. You wrote him no letters at all about mentioning plans for college?

A. Other than I was planning to go to college one way or the other.

Q. I want to ask you if you didn't write him and tell him in April of this year that you had been accepted at Marymount College and that you were considering that very strongly at the time; words to that effect?

A. Probably so. It was a big event when I got the news I had been accepted at Marymount. I had worked on it for about six months and to this day I consider it a more or less a feather in my hat I got accepted in such a high scholastic rating school.

Q. Did you write him any other letters with respect to plans with respect to college?

A. No, sir, not that I can remember.

Q. Do you say that you did not?

A. Yes.

Lanthe Barnes.

Q. Did you write him a letter about taking some
page 86 } merchandising course in New York?
A. I don't believe so, however merchandising has always been foremost in my mind.

Q. You do not think you wrote him anything about that?

A. Other than that if I went to college probably I would like to take merchandising.

Q. Did you not have a conversation with him sometime along in the winter about making plans for your college education?

A. I don't believe so.

Q. I don't want to embarrass you in any way, Miss, but we have to get to the facts here. I want to show you these two letters and ask you if you wrote them and if they didn't refer to some conversation you had with your father?

A. Yes, I certainly did.

Q. The letter that you have in your hand, did you write that one?

A. Yes.

Q. You do refer to studying merchandising in there, do you not?

A. Of course. Yes, sir.

Q. And refer to plans for college as if you have been having conversations or something, do you not?

A. Harold was down for one night, I believe,
page 87 } last winter and we went out to dinner. I can't
repeat what was said in the conversations during the evening, I can't remember. I only—I don't even remember speaking of college, because I just told you that I didn't.

Mr. Overton: Would you hand us that letter back, Mr. Blanchard?

Note: Letter is handed to Mr. Overton.

Mr. Overton: If Your Honor please, I would like to offer this.

The Court: All right. It is admitted without objection as Defendant's Exhibit No. 4.

Note: The above referred to letter is now marked and filed Defendant's Exhibit No. 4.

Mr. Overton: I would like to read this portion of it. I do not believe that it is necessary to read the whole letter.

Lanthe Barnes.

"As of yet my plans haven't changed too awfully much since I last talked to you, but I have almost made up my mind that out of necessity I am going to have to go to college near New York to get the best course in merchandising possible and if I don't find a four year college that offers that plus a junior year abroad, I might get the course at a University and go to Europe for a year on my own. The next couple of months will decide everything. So I guess I just have to let things take their own course."

page 88 } A. I have never considered any college in New York or near New York except for Marymount in Tarrytown.

By the Court:

Q. That is where, ma'am?

A. Tarrytown, New York.

Q. What college can you go to right now, where you are all lined up? As I understand it you cannot get into Randolph Macon.

A. No. I have been accepted into Marymount, and Randolph Macon. I mean University of Florida. I'm sorry.

Q. Tell me something about Marymount. I have never heard of it.

A. It's, as I said, it's a Roman Catholic School run by the Sisters of the Sacred Heart and I think it has about a five hundred student populate enrollment.

Q. Is it coed?

A. No, it is not coed. It is thirty miles, I guess, outside of New York City, and—

Q. What courses does it have there?

A. They, as far as I know, have a strictly Liberal Arts course. However, they have a very good field in their Art division which would enable me, as far as I was concerned then, now I'm not sure whether I'm deeply interested in merchandising and fashion design, apparel design, that sort of thing.

page 89 } The Court: All right.

Mr. Overton: I would like to offer this letter.

The Court: It will be admitted as Defendant's Exhibit No. 5.

Note: The above introduced letter is now marked and filed as Defendant's Exhibit No. 5.

Emily Barnes.

By Mr. Overton: (Continuing)

Q. Miss Lanthe, have you changed your mind now about merchandising?

A. Not definitely. No, sir.

Q. Well, I didn't understand your last statement to the Court.

A. That I am not quite so sure as I have been, now, as to what field I would follow in college.

Q. Do you know what you want to study?

A. Well, I feel that I want a rounded, well balanced education. That it's necessary.

Q. Liberal Arts.

A. I believe so. (Nodding head)

Mr. Overton: I think that is all, if Your Honor please.

Witness stood aside.

page 90 } EMILY BARNES,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Simmons:

Q. In reply to all questions talk loud enough so all the lawyers can hear you. Will you state your name and age?

A. Emily Barnes, sixteen.

Q. Emily, you are living with your mother in Naples, Florida?

A. Yes, sir.

Q. Have you spent any substantial time in your father's house during the summers since you first went to Florida?

A. Well, I usually come to Virginia about three weeks out of every summer, and I usually spend the entire time with my father.

Q. You actually stay in your father's home?

A. Yes, sir.

Q. Do Lanthe and John stay there with you?

A. They never have until this summer.

Q. Where do they stay?

A. At Mrs. A. B. Marchant's home. That's my grandmother. Right across the street.

page 91 } Q. Are you aware of any effort on the part of your mother, Mrs. Craig, to prevent their staying with your father the way you do?

Emily Barnes.

A. Pardon me?
Q. Does your mother prevent the other two children from staying with Mr. Barnes?
A. Not in any way. No, sir.
Q. Are all three of you free to stay wheresoever you wish?
A. Yes, sir.
Q. Where do you go to school?
A. Rosarian Academy, West Palm Beach.
Q. The same place your sister just graduted from?
A. Yes, sir.
Q. How many more years do you have?
A. I will be a Junior this fall. That leaves me two years.
Q. Have you ever done any work for which you received any remuneration, any money?
A. No, sir.
Q. Do you have any property that we don't know anything about down in Florida, or resources, financial resources?
A. No, sir.

Mr. Simmons: That is all, Mr. Overton.

page 92 } CROSS EXAMINATION.

By Mr. Overton:
Q. Miss Emily, why is it that the other two don't stay at your father's home?
A. By their own choice.
Q. By their own choice?
A. Yes, sir.
Q. Do you know any reason for it?
A. Well, I don't know what they think.

The Court: Just a minute. I am not so sure I understand the testimony. Has she ever stayed in her fathers' home before this summer?
Mr. Simmons: Yes, sir. She has stayed each year. Each year she has stayed there.
The Court: She is the one who has stayed there.
Mr. Simmons: Yes, sir. I think her testimony was that she stayed with him three weeks each summer.

By Mr. Overton: (Continuing)
Q. How do you arrive at the three weeks, Miss Emily?
A. That's a generalization. We usually, Dr. Craig and my mother take a month's vacation in the summer time,

usually, for the past, oh, I would say five years, four or five years. And the time going up to Virginia takes
page 93 } three days and leaving three days, and so I usually spend about three weeks, from two to three weeks. Never more than a month.

Q. You are subtracting the six days from a month, that is the way you arrive at that?

A. About. Yes, sir.

Q. Did you not go out to Wyoming one summer with your father?

A. Yes, sir.

Q. How long did you stay that summer?

A. I don't know. Let me think. Could I ask my father?

Q. He cannot testify. If you don't—

A. Could I ask—We were out there about—

Q. If you do not remember just say so.

A. I think about a week. I'm not sure. Not too much longer than that.

Q. At Wyoming you mean?

A. Yes, sir.

Q. Do you know how long you stayed with your father that summer?

A. No, sir. I don't know if it was more—

Q. Wasn't there a time, one year, when your father came to Florida and got you and your brother, both, and brought you back to Virginia?

A. Yes, sir.

page 94 } Q. Well now, where did your brother stay that time?

A. He might have stayed with—To tell you the truth I can't exactly remember. He might have stayed two or three nights, or one or two, or maybe just one with my father and the rest with my grandmother. I can't remember.

Q. You really don't know how long he stayed there, do you?

A. No, sir.

Q. But your father did go down, got the both of you. and brought you up here.

A. Yes, sir. I'm sure he didn't stay for any length of time.

Q. How can you be sure of that, be fair about it.

A. To be fair to myself I mean I, well, he never has, as far as I can remember, shall I say.

Q. Your grandmother's house is right at the end of the lane leading to your father's house, is it not?

Emily Barnes.

A. Yes, sir.
Q. You all go back and forth between the two all the time?
A. Yes, sir.
Q. Do you remember a summer when you were up here and Mrs. Berry had a birthday party for your sister Lanthe on the 2nd of July?
A. No, sir, I can't remember.
page 95 } Q. That is her birthday?
A. The 2nd of July. Yes, sir.
Q. You do not remember that?
A. No, sir. I can't remember. No, sir.
Q. Do you remember—
A. Pardon me. Was that a party down on the farm that the Parkers are now living in?
Q. I cannot testify. Do you recall a summer at the end of which your father put you on the plane and sent you back to Florida?
A. I can't remember returning to Florida on the plane. No, sir. I can't remember.
Q. I want to ask you again: Do you remember all three of you children being taken to Richmond and put on the plane by your father at the end of the summer to go back to Florida?
A. I remember a plane trip in which John and Lanthe and myself, we went by ourselves—should I say. I can't remember whether we were coming to Virginia or going to Miami.
Q. But you do remember the plane trip?
A. Yes, sir, I do.
Q. Would you remember whether it was right at the end of the summer or not?
A. No, sir. I can't remember. I have been
page 96 } trying to to think, but I can't remember.

Mr. Overton: I think that is all I am going to ask her.

By the Court:
Q. Do you know of any contributions your father has been making, other than this twelve hundred or thirteen hundred and fifty dollars a year that he is sending to your mother? Does he do anything else? Does he buy you anything, or buy your sister anything? Does he give you money? Or is that all he is putting into this?
A. No, sir, he sends us checks in the mail.
Q. Tell us about that. Up to this point we don't know anything about that, except the thirteen hundred fifty dollars a year for the three children.

John L. Barnes.

A. I must say I am not very good in corresponding with my father, I know. I would like to write more often—

Q. Has he given you money, or—

A. When I write him he usually, he does write in return. And some of the times he sends money—$20.00 for Lanthe and I, or $15.00 for all three of us, or something like that. And he's, whenever we are up here in the summer, I mean, he's always offered if we need money, you know, for the movies or anything. And this previous summer, or this summer I needed a formal for debut at school and Barbara,

page 97 } that's Mrs. Barnes, we went to Richmond and bought it. And so, let's see, I can't think of—

There are always presents—Christmas presents and birthday presents, and things like that. But as far as wardrobes are concerned, I mean like a school wardrobe that we have to go to Miami and get—skirts and blouses and different basic things—well, no.

Q. As the Court understands it, he is putting about thirteen hundred fifty dollars a year towards the support of these children. How much more does he send down there to you, your sister, or anybody else? When you are up here, down there, or wherever you are? What would that amount to in a year, can you estimate it?

A. It is hard for me to estimate because mother also sends money to us, and I can't, I don't know exactly, you know, which ones are which. I would say—

Q. How much for you alone? How much would you get in dollars and cents from your father per year?

A. I would say about thirty dollars, forty maybe, possibly even fifty; but that would be the maximum. During the school year.

The Court: That is all.

Witness stood aside.

page 98 } JOHN L. BARNES,

introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Simmons:

Q. Talk to the Judge and talk loud enough so that we all can hear you, especially so the Judge can hear you. Please state your name and age?

John L. Barnes.

A. John L. Barnes, fifteen.

Q. And do you live with your mother in Naples?

A. Yes, sir, I do.

Q. Where do you go to school?

A. This past year I went to St. Bernard's, which is a school in northern Alabama.

Q. How many more years would you have there before you would be ready for college?

A. Three more years.

Q. John, do you come up to Virginia in the summer?

A. Most of the summers I do, yes, sir.

Q. Do you stay with your father?

A. Well, in the past summers I have not actually stayed in his house. I stayed with my grandmother, which is across the street. But I have seen him and talked to him all during the summer. This past summer I stayed with him.

Q. Has there been any effort on the part of your
page 99 } mother to keep you from staying with your father
if you had wanted to do so?

A. No, not none. Not at all. She hasn't even tried to influence me one way or the other. She has left it up to me. She has left it up to me entirely on where to go.

Q. John, are you gainfully employed at any time? Do you make any money?

A. Not other than working around the house. That's no regular job. No, sir.

Q. How much per year does your father give you in addition to the fifty dollars a month that you are paid for several months a year?

A. I don't know. Just directly on me?

Q. Yes.

A. He has given me, when he came to my school he gave me quite, not a whole lot, he gave me I think it was around twenty-five dollars at school, and whenever I see him or when he came down to Florida he has given me money to spend. Other than that—

Mr. Simmons: Answer Mr. Overton.

CROSS EXAMINATION.

By Mr. Overton:

Q. Do I understand that you stayed continuously at your

Harold G. Barnes.

grandmother's, or back and forth with your
page 100 } father?

A. I did not before this summer stay in his house, not at night.

Q. Not at night.

A. No, but I have been in it during the day time.

Q. Where would you eat your meals?

A. I ate a few meals over at his house, but most of the time I ate at grandmother's house.

Q. How did you happen to be staying at your grandmother's?

A. Usually when we come up here, before, when I was still pretty small, we would come up in the summer and my mother stayed at my grandmother's, so I just stayed there. And a lot of times she didn't come. In the last couple of summers, three or four summers she hasn't come up when we have come up, and I have just come and stayed there.

Q. Do you recall an occasion when your father came to Florida and got both you and your sister Emily and brought you up here?

A. Not too clearly. I recall he came and we went with him.

Q. Do you know where you stayed that summer?

A. Not the whole summer, no. We went to South Carolina to Mr. Bill Perkins, I believe, for awhile. And I don't recall—

Q. I mean while you were in Urbanna.
page 101 } A. I really don't recall where we stayed.

Mr. Overton: I don't think I have any further questions.

Witness stood aside.

Mr. Blanchard: We would like to call Mr. Barnes as an adverse witness.

HAROLD G. BARNES,
called as an adverse witness by Mr. Blanchard, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Blanchard:

Q. Would you state your full name, address, and your age, Mr. Barnes?

Harold G. Barnes.

A. Harold Gilbert Barnes, fifty-three. I live in Urbanna.
Q. By whom are you employed, Mr. Barnes?
A. Self-employed, sir.
Q. Don't you work for the Saluda Lumber
page 102 } Company?
A. Yes, sir. President of it.
Q. Aren't you paid a salary by them?
A. Yes, sir.
Q. So technically you are employed by them.
A. Right you are, sir.
Q. But I take it since you own all the stock in the Saluda Lumber Company you really don't think you are employed by anyone but yourself, is that correct?
A. Yes, sir.
Q. Mr. Barnes, do you make any serious contention in this suit that you are not financially able to send these fine children of yours to college?
A. A reasonable college I think I can do it. I have said I would and I fully expected them to have a college education.
Q. What is your idea of a reasonable college?
A. Well, where I can get to see them, or have them home on weekends, and the price reasonable.
Q. What do you consider a reasonable price for a college?
A. Well, I feel like that Mary Washington would be a good school. It is a good school and it's close to home. For an example Mary Washington.
Q. But I understand from your amended answer that Mary
Washington is just an example; I understand you
page 103 } are not necessarily trying to impose that one
school—
A. No, sir.
Q. —on Lanthe?
A. Yes, sir.
Q. What is your idea of the annual cost of sending a girl to Mary Washington?
A. Around fifteen hundred dollars.
Q. Including everything? Including room and board?
A. That's what I understand.
Q. I assume that doesn't include clothing, of course?
A. No.
Q. Room, board, and tuition.
A. Yes, sir.
Q. If your understanding of what it costs to go to Mary Washington is wrong, you would still consider Mary Wash-

ington a reasonable college, would you not, if it really cost more than that?

A. I would say so.

Q. Your particular desire is to have her go to school in Virginia, reasonably close to where you are?

A. I would say that's correct, sir.

Q. If in fact—I think I have been over this but I want to make it clear—if in fact Lanthe, for reasons that teen agers often have about various things, had some particular objection to that particular school but liked some

page 104 } other college in Virginia, you wouldn't have any objection to that school, would you, if that was within the general price range of Mary Washington?

A. I don't think I would, sir.

Q. As I understand it, if it is within that type of price range you consider that you are financially able to send her to college?

A. I am not sure of that, but I feel like I can make some arrangements.

Q. None of us are ever very sure about that, but as far as you can tell you think you can afford to do that?

A. Whether I can afford it or not I would.

Q. Mr. Barnes, I would like to hand you this set of tax return that you have presented us today, which are your income tax returns for 1952 through 1958, except for the year 1957, and I would like to ask you just to read into the record this item on here which is your net income, which is your salary in each case, as I understand it, from Saluda Lumber Company plus item 3 which is all of your other income resulting in your total income.

A. Would you read it? I don't know the first thing about this.

Q. All right. Would you check me as I read this? I am reading from the 1951 return. It shows a net income of $22,-679.37, is that correct?

page 105 } The Court: What year is that?

Mr. Blanchard: 1951.

Mr. Overton: Excuse me, if Your Honor please, that is the gross income he is reading from.

Mr. Blanchard: I used the word net because as I understand it; it is net income as you and I know income, but it is technically gross income on tax returns. In other words it is income after expenses that are deductible for taxes.

Mr. Overton: I don't think that is quite correct, because

you have such items as taxes, interest, and other deductions that come off. There is a net income figure on there, is there not?

Mr. Blanchard: Let me get you to look at it with me.

Note: An off the record discussion is had hereon, following which Mr. Blanchard states as follows:

By Mr. Blanchard: (Continuing)

Q. Mr. Barnes, the figure I will read into each year will be what is shown as item 4 on a Federal Income Tax return, which as I understand it is gross income before you take off your deductions which you may itemize on a return.

A. Wouldn't it be easier, wouldn't everybody know what's going on if you read what I paid the government?

page 106 } Q. That is a very impressive figure in your case, I will concede; I don't think we can get at what I am trying to get at in that way.

For the year 1951 your gross income, then, was $22,679.37, is that correct?

A. Yes, sir.

Q. 1952 your gross income was $22,786.99; 1953 the gross income was $20,747.66; 1954 the net income was $13,532.11; the gross income. I think I said net. In 1955 it was $13,-871.93; 1956 it was $14,634.44; and in 1958 it was $16,672.09.

The Court: Give me that again?

Mr. Blanchard: $16,672.09.

The Court: What year is that?

Mr. Blanchard: 1958. 1957 he does not have. I was coming to that in a moment. For some reason he doesn't have a copy of his 1957 return.

The Court: That is the Federal income tax return, I believe, you have there?

Mr. Overton: No, it is the State.

Mr. Blanchard: I must say that is confusing to me. I would like to study these returns and know how you get that much difference between the Federal and State. I apologize.

What I was reading was the State income tax of

page 107 } $16,000. I note your Federal income that year was only $12,152.89.

A. I think I can explain that, sir.

Q. That is all right. I shouldn't have brought it up.

Harold G. Barnes.

Mr. Barnes: Judge, I would like to say that isn't a true picture, sir.

The Court: Well, we will get a list of your assets before we are through here.

By Mr. Blanchard: (Continuing),

Q. Can you give us an estimate, Mr. Barnes, of what the income was of the Saluda Lumber Company for the last two years?

A. It lost money. And the reason it lost, do you want me to tell you why it lost money?

Q. I am not particularly interested, frankly. What do you estimate the value of your stockholdings in Saluda Lumber Company now to be?

A. I'd say $25,000.00. Not according to the picture there, but—

Q. Would you sell your holdings in the Saluda Lumber Company for $25,000.00?

A. Yes, sir.

Q. Do you know you have filed with the State Corporation Commission the fact that your, just your capital in the business is $40,000.00?

page 108 } A. Yes, sir.

Q. And you have lost enough money so that the capital is impaired to the tune of $15,000.00?

A. I don't know. I have wanted to close the corporation for two or three years and didn't know how to do it. All the same it is costing me money every year for the simple reason I need so much money to live on, to pay my interest, taxes, and what not. I am taking the salary out of that and paying income tax on my salary, and yet this corporation is having a loss. I have got sense enough to know that isn't as it should be. I just haven't been lucky for the last few years. I'm hoping for better times.

Q. You are, taking for example in 1958 you received a salary from Saluda Lumber Company of $10,400.00, is that correct, which is substantially less than the prior years?

A. Yes, sir.

Q. And after that salary it took a loss, is that right?

A. Yes, sir.

Q. What is the value of the real estate owned by Saluda Lumber Company?

A. I don't think they own any, sir. They could, but it's in the paper there that will tell you whatever they

page 109 } own.

Q. You do not know what real estate Saluda

Harold G. Barnes.

Lumber Company has, yet you are the sole stockholder of the Saluda Lumber Company?

A. I know they don't own the ground that the buildings are on.

Q. Who owns that?

A. I do. At least I think I do. I think that's the way it's set up.

Q. What do you value that real estate at?

A. You got the papers there, sir.

Q. I don't have any papers.

A. Mr. Overton, don't we have the Saluda Lumber Company's statements somewhere?

Mr. Overton: What kind of statements do you mean?

Mr. Barnes: Yearly statements.

Mr. Blanchard: The financial statement, balance sheet, profit and loss statement—

Mr. Overton: No, sir. The income tax return, that includes it, I think.

Q. Do you have a balance sheet? Is it audited each year?

A. Yes, sir.

Q. Don't you have the auditor's financial statement?

page 110 } A. The corporation income tax return includes the balance sheet. The same man did this that did the other. I feel sure they're the same.

Note: An off the record discussion is had following which the Court states:

By the Court:

Q. What do you think it is worth, this piece of land is worth that this business sets on?

A. Oh, it's worth fifteen—twenty thousand dollars, sir.

Q. Fifteen thousand dollars. That belongs to you. Is it encumbered?

A. I don't believe that does have a mortgage on it.

By Mr. Blanchard: (Continuing)

Q. Do you lease that to the company?

A. I used to lease it to them. I haven't been able to get rent out of them for a good many years.

Q. Don't you lease some to Ruffin & Payne?

A. Yes, sir.

Q. What do you lease to them?

Harold G. Barnes.

A. Three buildings and a certain amount of ground, whatever they need.
Q. That is your ground that you are leasing.
A. Yes, sir.
Q. What do they pay you in rent?
A. $200.00, or $206.00 a month.

page 111 } By the Court:
Q. That is reflected in your income tax, is it not?
A. Yes, sir.

By Mr. Blanchard: (Continuing)
Q. You estimate, though, that the plant property of the Saluda Lumber plant is worth maybe $15,000.00?
A. I said fifteen to twenty thousand.
Q. Fifteen to twenty. All right What other real estate do you own, anywhere, Mr. Barnes?
A. Oh, mercy. I own my home in Urbanna.

By the Court:
Q. That is the residence property that we have been talking about?
A. Yes, sir, Yes, sir.

By Mr. Blanchard: (Continuing)
Q. What do you value that property at?
A. It cost over $30,000.00 to build it. It's got a $14,000.00 mortgage on it, as I recall.
Q. What do you think it's worth now?
A. I would like to sell it. I priced it at $35,000.00.
Q. What other real estate do you own?
A. I own a piece of water front property on the Piankatank that I gave fifteen thousand for.
Q. What county is that in?
page 112 } A. Middlesex.
Q. What is the name of that piece of property, Mr. Barnes?
A. Woodport.
Q. That is timber land?
A. A good piece of water front and it's got a young piece of growing timber on it, sir.
Q. What is it worth?
A. I don't know.
Q. You don't have any idea?

Harold G. Barnes.

A. Yes. I mean I think I have got it on my statement at $60,000.00, I believe. But—

Q. Is there any mortgage on it?

A. Yes, sir. There's, I believe there's ten on it, or maybe fourteen.

Q. Any other real estate?

A. Yes, sir. I own a little piece of real estate in Saluda, nine acres that I gave $12,500.00 for that about four years ago. And that, I had to pay $150.00 a month monthly payments on. It had a mortgage on it of about eight and that has been cut down now, I would say, to six at the outside.

Q. Anything else?

A. I own a farm in King and Queen that I paid seventeen thousand five hundred for. That's got a Deed of Trust against it for ten.

page 113 } Q. You paid how much for it?

A. Seventeen thousand five hundred.

Q. It has a Deed of Trust of how much?

A. Ten.

Q. What is the name of that farm ?

A. Lombardy Grove.

Q. Any other?

A. I have a place called Kilner's Point, about forty-six acres in it.

Q. What county is it in?

A. Middlesex.

Q. How many acres?

A. Forty-six.

Q. What is the name of it?

A. Kilmer's Point.

Q. Is that Remlik Hall?

A. Yes, sir.

Q. What is the value of that?

A. I gave forty-five thousand for it. It has a mortgage on it of just, I forget. I have had it three years. I borrowed all the money to buy it. I paid three payments on it of five thousand each, and the twenty thousand I borrowed from a friend of mine. I have been paying him a thousand dollars every three months and his interest. So can you figure that? That's what's left on it. I owe ten to one man.

page 114 } The Court: You paid four thousand dollars three years would be twelve thousand dollars, and you paid fifteen thousand dollars. You have paid twenty-seven

thousand dollars on the forty-five thousand dollar property.
Mr. Barnes: Yes, sir.

Q. Any other property?
A. A piece of timber land of seventeen acres, I believe, in Gloucester, that I gave nine hundred dollars for.
Q. What do you value it at?
A. I believe the timber on it—
Q. Or the land.
A. —would be worth six thousand dollars.
Q. Is there any mortage on it?
A. No, sir.
Q. What year did you buy it?
A. I always thought it was the year my first daughter was born.
Q. Is that the piece of property you regard as being available for—
A. Her education.
Q. —her education?
A. Yes, sir.
Q. All right. What other property?
A. I think that's all that amounts to anything.
page 115 } I have a couple little pieces of cut-over timber land.
Q. How about property in Jamaica District of Middlesex?
A. Yes, sir. Jamaica. I have thirty-five acres up there but—No, I sold that the other day to the boy that works for me. I owed him some money and I sold it to him. We had a piece of property in conjunction with the former clerk of the court in Middlesex. That was sold last year, I believe.
Q. This is in Jamaica District?
A. Yes, sir.
Q. Where is Dunn's Mill?
A. I don't know.
Q. Seventy acres?
A. That's back in Turkey Neck, I think. That's cut-over timber land. And I have had a partner, Mr. R. P. Gray, in that, and he gave me his half of the land when we sold the timber off of it.
Q. What do you think that is worth?
A. Ten dollars an acre or better. That's been three years. It gets better each year, you know, if it comes back in pine.
Q. Anything else?
A. I believe there was seven acres at Deltaville that was

Harold G. Barnes.

left over of some land that, I had sold all but the
page 116 } seven acres. That's not of any real value.

Q. That is Sturgeon's Creek?

A. Yes, sir.

Q. How much do you think that is worth?

A. Oh, from five to seven hundred.

Q. Do you know that it is on the tax books at three hundred? Does that affect your thinking any as to what it is worth?

A. No, sir. I think I'm right. I don't—

Q. Five to seven hundred.

A. Yes, sir.

Q. Is that everything?

A. No, sir, I'm obligated on a note of—

Q. I am not asking about your notes, yet. I am asking if you have any more property.

A. No, sir.

Q. How about Shooters Hill, one hundred seventy acres?

A. Yes, Shooters Hill.

Q. One hundred seventy acres?

A. Yes, sir.

Q. Where is that?

A. That's in Middlesex.

Q. How much do you think that is worth?

A. I gave, I think, sixty-five hundred or fifty-
page 117 } five hundred for it.

Q. What do you think it's worth now?

A. I don't know, sir. I know I wouldn't want to take twenty thousand for it. It could be a little sentiment.

Q. Is there any mortgage on that?

A. Yes, sir. There is ten thousand on that.

Q. Anything else?

A. Two little pieces north of Stormont left over from, I believe it's fifteen acres in the two pieces, and got some growing timber on it.

Q. Where is that? Is that in Middlesex?

A. Yes, sir.

Q. That is called Paradise?

A. Yes, sir. You got a pretty good record there, sir.

Q. You got a lot of property to keep up with. It takes a good record, Mr. Barnes. I don't know how you keep up with all of it. Anything else?

A. It could be, but I can't recall, sir.

Q. You just don't remember for sure whether you have any

more real estate or not. In any other counties do you have any?

A. No, sir. Not that I recall.

By the Court:

Q. What is this Paradise worth?

page 118 } A. Oh, the two pieces ought to be worth a thousand dollars. They are on the tax books.

By Mr. Blanchard: (Continuing)

Q. They are on the tax books at about a little over two hundred dollars.

A. (Nodding head)

Q. Which is, as I understand it, over there is forty per cent; what they are shooting at, anyhow.

A. (Nodding head)

Q. Where is Arms of Dragon?

A. Arms of Dragon? Oh, King and Queen?

Q. Yes.

A. Seventy-seven acres. I don't own that, sir. I sold it to the sheriff over there a short time ago.

Q. How much did you sell that for?

A. Two thousand dollars. And then there is thirty-five acres more on the same dragon.

Q. That's right. Was that sold with it, or do you still have that?

A. No, I still have that.

Q. How much is that worth? Incidentally, I notice the Arms of Dragon was on the tax books at $190.00; you got two thousand. The other is on the tax books at $90.00. What do you think that is worth?

A. Six or seven hundred.

page 119 } Q. Now what other property do you have?

A. You tell me. I swear, if you know of anything else, you tell me.

Q. How about the corporation now. Have you decided whether they have any real estate?

A. I don't—

Q. Don't they have some real estate in Middlesex County? I don't know where it is; I just know it is in Middlesex County.

A. I can't recall it, sir.

Q. You don't. I'm sorry I don't know enough about it to refresh your recollection.

A. What does it say there?

Harold G. Barnes.

Q. The appraisal is $400.00 tax value.
A. I'll be darned if I know. I just don't recall, sir.
Q. You don't deny that it may have some other property?
A. That's right.
Q. You just cannot remember all of this property.
A. That's right.
Q. What about the tangible personal property of the corporation? What value would you put on that?
A. Well, they have got a lot of broken down machinery.

page 120 } Q. You don't know of any other real estate that you own?

A. I can't think of it, but I think, I didn't think I owned all that until you refreshed my memory.
Q. How about personal property you own? Property that you yourself own?
A. I got some cattle and hogs and farming implements on the farm at Shooters Hill.
Q. What value do you put on those?
A. Around ten thousand dollars, I'd say. That might be high. It might be low.
Q. You were starting to tell us awhile ago before I interrupted you about some other debts against this property, as I understand it.
A. Not against—You mean about some obligations that I had?
Q. Yes.
A. The Saluda Lumber Corporation and C. F. Barnes are partners. The reason I did that is to try to recuperate some of that, I mean, rather than just H. G. Barnes and C. F. Barnes.
Q. Is C. F. Barnes your—
A. Brother. We bought a timber in Gloucester on a note for six per cent. That is now around one hundred and fifteen thousand dollars.

page 121 } Q. Where did you borrow that?

A. Charlottesville.
Q. What bank?
A. The Peoples Bank.
Q. So I take it then they are not going to lend you $115,000.00 unless they think the property is worth more than that, are they?
A. Well, it's a monthly payment deal.
Q. And that property—
A. That was the full price. We borrowed the full purchase price of the tract of timber. No real estate involved.

Q. So that is not one of the things listed on here.
A. No, sir.
Q. So on the Gloucester timber land—
A. Right.
Q. —which your corporation and your brother have bought jointly,—
A. That's right.
Q. —which you owe, all of you owe, presumably, jointly and severally one hundred and how much?
A. Around one hundred thirty-five. We curtailed it down to one hundred fifteen, I think.

By the Court:
Q. Is it timber down there?
A. Yes, sir. We have been cutting it for the
page 122 } last four months.

By Mr. Blanchard: (Continuing)
Q. But you borrowed from the bank the full purchase price.
A. Yes, sir.
Q. You borrowed one hundred thirty-five; you paid one hundred thirty-five, is that right?
A. (Nodding head)
Q. How much equity do you think you have in that now?
A. I guess, I hope there's enough down there to get the bank paid. I don't know.
Q. You cannot state definitely that you think you have any equity in it, in other words?
A. That's right. I know I got a lot of liability in it.
Q. You don't have any reason to think though that the property won't cover the liability, do you?
A. I didn't when I bought it.
Q. The bank didn't either, did it?
A. They didn't see it. They got my signature, my wife's, Saluda Lumber Company and my two brothers.
Q. Enough to lend you $135,000.00.
A. Yes, sir.
Q. So, I take it ,they think you are worth some-
page 123 } thing well in excess of that amount, do they not?
A. I wouldn't think so. I couldn't borrow it myself.
Q. You do, don't you?
A. I wouldn't say that. Sometimes I feel like maybe I am going to make it; other times I feel like maybe I won't. I'm trying.

Harold G. Barnes.

Q. Where did you go to college, Mr. Barnes?

The Court: Let's go on with the assets. I am writing them down here.

Mr. Blanchard: I should have gone back to that.

By the Court:

Q. You must have money in the bank.

A. No, sir.

By Mr. Blanchard: (Continuing)

Q. How much money do you have in the bank account?

A. I stay overdrawn, sir.

Q. What bank permits you to do that?

A. I don't on their books, but on my books. The Bank of Middlesex, Saluda, Virginia.

Q. You are overdrawn there today?

A. Yes, sir. So is the corporation, according to our books.

Q. That is an intriguing thought, however I don't believe I should go into that, Mr. Barnes. How about page 124 } stock you own? Do you own any stocks?

A. My mother left me a little stock in the Crozet Lumber Company.

Q. What do you think that is worth?

A. Supposedly three thousand dollars.

Q. Any other stock?

A. Southern States Dividend Stock, but that don't amount to a row of beans. That's all that I know of, sir.

Q. Do you own anything else in the world that you haven't listed for us?

The Court: Government bonds?

A. No, sir. There might be, I don't believe there is any of those left. I used to have a few and cashed them in.

Q. How about insurance policies? How much insurance do you have?

A. I got a term policy with Virginia Manufacturers Association Group, I think that is $20,000.00.

By the Court:

Q. Who is that payable to?

A. I believe it's payable to the corporation, sir. I know they pay the premium on it. I have got some life insurance, I'd say double indemnity around $25,000.00. I could have brought it to you piece meal, but—

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Q. Who is that payable to?
A. That's payable to Mrs. Barnes, I believe.

page 125 } By Mr. Blanchard: (Continuing)
Q. The present Mrs. Barnes?
A. Yes, sir.
Q. Do you have any life insurance that is payable to your children?
A. I have an educational policy set up for the children if something should happen to me. Just how much that is I don't recall.
Q. When did you take that out?
A. That has been taken out eight or ten years ago. I think that's how long it's been.
Q. Before the separation or after?
A. Before I believe.
Q. How much does that provide in the way of educational benefits?
A. I just don't recall at all. I haven't even thought of insurance for a long time, sir. But the records are over there. I will be glad for you to look at them.
Q. Do you know if any of that is available right now to send anyone to college?
A. I just don't—I know I'm, it's a high premium.
Q. That ought to provide some benefit, I think, don't you?
A. It ought to.
Q. I wonder if it is practical, if there is someone over in your office, to have that if you will call over there and find out about it?
page 126 } A. I don't think it's that important.
Q. Do you have any idea what the premium is a year?
A. I'm not going to—I believe it's $180.00.
Q. A year?
A. Approximately that. And I can't die now, so what good is it?

By the Court:
Q. Let me ask you this question: All this property here, did you acquire this after you entered into this agreement here of $150.00 a month?
A. I had, I'd say, the majority of it, sir.
Q. You mean you were in this financial condition when you entered into this contract?
A. Judge, that thing doesn't fool a banker at all.

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Q. I'm talking about this agreement, how much you pay your wife for the support of these children; did you have all this property then, the bulk of it?

A. I would say I did, sir; I wouldn't say I did. I just don't —I can find out mighty easy. But I—I don't think I had Lombardy Grove at the time. I may have. I do know I didn't have Kilmer's Point.

By Mr. Blanchard: (Continuing)

Q. Mr. Barnes, is it not true that you had a very substantial part of this, in addition you continued to acquire property ever since; so you had some and you have con-
page 127 } tinued to acquire property right down through the years since that time?

A. I would say so, sir.

Q. Where did you go to college, Mr. Barnes?

A. I went to the University of Virginia for a year.

Q. I think you already stated to me a while ago that this Gloucester timber is the property that you have referred to, to Lanthe—

A. That was just—

Q. —and to other people as being the property that you regarded as the property that you were going to use to put, or at least apply toward some of her college education, was it not?

A. That was my thought and I haven't changed, although I may have to sell it or borrow money on it.

Q. Generally in the back of your mind, in the sense that you bought it right after she was born, was the thought that the timber would be matured and you thought of it as something which probably some day would progress to apply as far as it would go toward a college education?

A. That's right, sir.

Q. Mr. Barnes, I notice on all these tax returns you have been claiming all three of these children as dependents ever since 1951, that is correct, is it not?

A. That is correct, sir.

page 128 } Q. Don't you know that for you to claim them as dependents you have to be able to prove that you contributed over one half of their total support?

A. No, sir, I didn't know that.

Q. You didn't know that? You don't think you do contribute over one half of their support, do you?

A. I wouldn't say that I did.

Q. So the fact that you listed them all as dependents cer-

tainly doesn't, you are not implying by that that you think you contribute more than half of their support, do you?

A. I think I'm the cause of contributing more than half of their support.

Q. What do you mean by that?

A. I mean I set up a trust fund which—

Q. How much income do you think they get from all the trust funds you have set up?

A. I can't answer that, but they have two tenants in one.

Q. Do you have any idea how much income they get from all the trust property you ever set up for them?

A. No, sir.

Q. Why do you say you think that is more than half of their support when you don't know how much it is?

A. I just said I thought it was. I think a lot of
page 129 } people in this world live beyond their means. So
I don't, I'd say three hundred dollars a month certainly would be more than half the support.

Q. But you don't contribute three hundred dollars a month, even.

A. I said I was the cause of it.

Q. Where do you think they get the other one hundred fifty dollars? You are not contributing but one hundred fifty dollars a month, nine months out of the year, are you? Where do you think they are getting the rest of the difference to make up three hundred dollars a month?

A. I don't consider—From their—You will have to ask somebody that knows more about it than I do, sir.

Q. You don't have any idea where they are getting any excess over what you pay them and three hundred dollars, even, a month?

A. They're getting it from their mother, I suppose.

Q. Right. Isn't it true, Mr. Barnes, that you know good and well that you are not contributing one half of their support; right now or at any time in the past.

A. I never thought of it in that way.

Q. I am asking you now that you are thinking about, you don't think you are, do you?

A. Yes. I'd say I'm contributing half of it.

Q. And your half is made up of what?
page 130 } A. The income of this rental property and—
Q. You don't know how much that is, do you?

A. No, sir, but I'm guessing.

Q. How much do you think it is?

A. I understand it's, I heard it's a hundred dollars a month

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rent for one house now, and I know they had two tenants in the other one a good portion of the time.

Q. How many houses has she got?

A. Two.

Q. No.

A. It was a double—

Q. She doesn't have but one house, does she?

A. She did have two until last year.

Q. I am talking about right now; how many houses does she have?

A. One.

Q. You think that is bringing in $100.00 a month rent?

A. I was told so. I don't know.

Q. Will you take my word for it if John Marchant says it is only $75.00 a month?

A. Definitely.

Q. All right. I think we can have it stipulated for the record that the rent isn't but $75.00 a month. You, of course, don't know what she is spending for taxes, upkeep

page 131 } roof, paint—inside and outside, that sort of thing?

Have you reviewed this report that John Marchant sent down to your lawyer, which has been delivered to him this morning?

A. No, I haven't.

Q. It sets out all the items he has had to spend.

A. I haven't looked at that letter. It hasn't been offered to me; I haven't seen it, sir.

Q. All right. Other than whatever rent they get from this house—but you don't know what it is and you don't know what the expenses are—what other money have you given them, other than the $150.00 a month nine months a year?

A. Well, I provided a good home for them in Urbanna in Virginia, and I really feel like that's where they should be, and have felt that way for a long time.

Q. Have you ever made any definite arrangements to get them to come up here and spend the entire summer?

A. Every summer.

Q. What arrangements have you made each summer?

A. I have called or written, and before school was out every year, since they have been away from here.

Q. How did you think they were going to get up here?

A. I told them I would come for them or send transportation; to let me know when they could come.

Q. Why do you reckon they never spent your

page 132 } money for the transportation that you offered them?

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A. Most times it was they were coming up anyway, not to come after them. And it was unpleasant.

Q. Didn't you know the mother needed the money for the transportation? That if you were offering to pay it that they would want the money?

A. It has never been a time that I haven't offered to pay it and ran into some stonewall—that they would be up here on a certain day and not to come after them, or she was driving up, or some excuse. And they have eventually got here every summer.

Q. Have you ever objected to their going to camp in the summer?

A. I was never asked about it. I never objected. I have never been asked if they could go.

Q. Don't you think it was in their best interest?

A. I really do. If their mother could afford to send them I think it was all right. If I had been asked to—

Q. Have you paid for the camp?

A. No, sir, they haven't asked me to.

Q. Do I understand that it is your contention that you ought to be able to discontinue the $50.00 a month payment in the summer, even when the children are in camp and you are not paying any of the cost while they are there?

A. I think I ought to be, should have had some
page 133 } voice in what the children did in the summer time.

Q. I understood you to say you think this was in their best interest to go to camp; you are not complaining about any camp they went to, are you?

A. No, sir.

Q. You contend that you ought to be able to stop your payments of $50.00 a month—

A. I never had any payments for summer months, sir.

Q. That's what I say, you haven't made any summer month payments.

A. I didn't have any obligation to pay that $50.00 a month during the summer months.

Q. I am asking you, it is your position that you are not obligated to pay any money in the summer even though they are in a camp that you say is for their best interest and even though you are not paying anything toward their care, is that correct?

A. I was thinking about something else. Would you do that over?

Q. That is disconcerting; I will try again. Is it my under-

standing that you contend that you should not have to pay $50.00 a month in the summer, even during the time that they are in a camp, and even though you approve of the camp they go to, and even though you don't pay any part of the cost they have going to that camp?

page 134 } A. I didn't have any obligations to pay that $50.00 a month, sir. If I had, I would have paid it, sir.

Q. Mr. Overton introduced a letter in evidence this morning from Mrs. Craig to you in which she reminded you that she would need the June and July payments since the children were not going to be spending that time with you. Did you ever reply to her about those payments?

A. I don't think I did, but I don't recall, sir. I didn't owe them. I do know that.

The Court: Let's recess for ten minutes.

Note: At this point a short recess is had following which the hearing continues as follows:

HAROLD G. BARNES,

resumes the stand for further examination as an adverse witness, and testifies further as follows:

DIRECT EXAMINATION.

By Mr. Blanchard: (Continuing)

Q. Mr. Barnes, you have stated that a school of the general caliber of Mary Washington would cost, in your opinion, about fifteen hundred dollars for room and board and tuition.

A. That is what I understand, sir.

Q. Do you have any ideas of the general range of what additional amount it takes to send a girl to school

page 135 } for her clothes, and books, and travel, and the general miscellaneous things of keeping them in school during a year?

A. I think so.

Q. About what would you estimate for that?

A. Four or five hundred dollars.

Q. And you understand, under the settlement agreement, when you do send one of the children to college you are relieved of the $50.00 a month payment for that child; you understand that, do you not?

A. As I understand that agreement if I pay as much as $600.00 towards that education I am relieved of it.

Harold G. Barnes.

The Court: Do I understand you gentlemen to mean that the Court is bound by any such agreement as that?

Mr. Blanchard: No, sir. We certainly don't think so, Judge, and we have a complete memorandum of the authorities on exactly that point. We submit the law is perfectly clear in Virginia by a fairly recent case of *McKeel* v. *McKeel.*

Chief Justice Eggleston wrote a very clear opinion. This very Court now has full authority to take a Florida decree and, incidentally, this McKeel case, which I have here, is precisely in point even to the point of being a Florida divorce, the same number of children we have, and every-
page 136 } thing, where a wife came to Virginia to proceed against the husband on a decree. It was decided that Virginia has full authority to adopt that Florida decree as its own and enter a decree adopting that decree. Now once it has adopted that decree it has the full power to do with that decree exactly what it could have done with it in the first place. It can enforce equity powers, and it can modify at any time it pleases, having in mind the circumstances of the parties and the needs of the children. Therefore, we have included in our complaint one count for modifying the decree and modifying the agreement.

Actually, it seems to us that what we are asking for at the moment really, we don't think, is a modification of the decree. In fact, we are asking him to do, if Your Honor please, exactly what the decree said he would do; that is, the agreement said he would endeavor to send them to college. We think "endeavor to send them to college" means just what it says. It means—for a man with the means Mr. Barnes has —to send them to college the way any of the rest of us would have to do.

If, on the other hand, Your Honor feels that the agreement is in any way not responsive to the present needs
page 137 } of the children, we think—and we think we have ample authority to support our position—that you can enter and modify the decree to whatever extent you deem practical and desirable to carry out the needs of the children, having in mind the circumstances of their parents.

The Court: We have cut some down. In the past we have cut some down. We have adopted the decree of these other states and then proceeded to cut down the payments.

Mr. Blanchard: You mean—

The Court: I am not saying that is what the Court would

do in this case. That is what we have done in some of the cases.

Mr. Blanchard: I agree with that. I think that is clear. I think, as a matter of fact, the way we come up here on a decree I think the matter before Your Honor is exactly like it would have been if we had come in here in the first place; all parties being before you. I think you have the complete power to cut down, or increase, or enforce it, or interpret it; whatever you would do if this were a Virginia decree in the first place, I think you can do right here.

By Mr. Blanchard: (Continuing)

Q. Mr. Barnes, do I understand, then, in final conclusion and summary of what we started out on in the
page 138 } first place, and that was your willingness to attempt to send your daughter to an appropriate school, that you do think it is appropriate and you would be willing to send her to a school of the general type of Mary Washington which would involve substantially $1,900.00, as I understand your figures, that is, $1,500.00 for room, board, and tuition, and roughly $400.00 for the other items, is that correct?

A. I would like to get something else straight here. I said I would endeavor to send them to college and I mean every word of it. But you brought up a lot, a lot of things a few minutes ago. I don't own this land. It's in my name. I have to work like I don't know what. I don't know what I can do until I'm consulted and asked for a definite amount, and then—I know this, that I can't borrow any more money. But I do have this one piece of timber that I think will take care of Lanthe, if I am allowed to say where she's going to school and share in the custody of her, like this decree says. I have to work. I don't know, I would say I have to make fifteen thousand dollars a year before I get five of it to spend for to live on.

By the Court:

Q. You mean you have to, or you choose to?

A. I either do that or I may not have something to provide for the two children—I have young children—or the present Mrs. Barnes. I mean it's a peculiar situation,
page 139 } Judge; nobody in the world works any harder than I do. I think I am the darndest fool a lot of times. I could sell some of this property, but what could I put it in any better? I wouldn't have any incentive to work if

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I didn't have to meet the interest payments, no taxes, and what not. I would like for you to get that clear in your mind, sir. I want to live up to every agreement I ever made, or better than that, sir. I think you will see by those children, the fact that they are with me now, and what you have already heard, that I want to do my part. I would also like to share in the custody of them, which it hasn't been the pleasure it should have been through the past years.

Q. You mean to think that you ought to have custody of the children by just paying $150.00 a month?

A. I think I could have gotten it, sir. I didn't think I should. And I still hated to come over here today. I mean I didn't, I think everything is easier. It is better up to a certain point. I think these children are going to need every dollar that—your time is being consumed, and these gentlemen, here—I think the children should have had that for their education because they're going to need it. I think this: And it's bad for them to be in it. I mean, so far they love us both, and they're fine children, but I thought time would take care of the things, and—

Q. Do you have any children by your present

page 140 } wife?

A. Two, sir. A little girl, three, and a little boy, five.

Q. That is what I thought.

A. And I live well. In other words I eat, but then again I work. I get up at 5:30 in the morning and very seldom eat my supper before 7:00 o'clock.

Q. Is that all you spend on them, $50.00 a month, a piece?

A. Now Mrs. Barnes gets, when the other children are with us, like it is now, she gets $60.00 a week for groceries and we have a maid at $25.00 a week, and we have a joint car. In other words the Saluda Lumber Company owns the car. All we have. I drive a pickup most of the time. She has the car available, I'd say, seven times out of ten when she would like to have it. But we live nicely.

The Court: All right.

A. (Continuing) Further background of this, if I can talk to you, sir—?

The Court: I do not want to lead you off to misrepresenting yourself. You have your attorney. He is representing you.

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Mr. Overton: I do not have any objection to his stating anything to you.

The Court: I didn't know what he was getting
page 141 } ready to say.

Mr. Overton: Anything he wants to say to the Court is all right with me.

The Court: My purpose in asking the questions is this: You appear to me to be sincere when you talk; your idea of your responsibilities in this matter and mine are so far apart.

Mr. Barnes: Judge, nobody has any more—

The Court: We are so far apart, I was wondering really whether you are serious about the argument you advance with all this property you have here and only paying $50.00 a month for the support of each of these children. Are you really serious? Do you feel that way about it?

Mr. Barnes: If her mother hadn't—It wasn't my thought that she should take off to Florida. I'll give you an example: If they can afford it I suppose it's fine—I don't even think it's fine then—but Lanthe goes to Richmond and buys two $25.00 pair of shoes. Now I wouldn't, if I had the money she could get one this week and maybe one next week, or—Things like that. In other words—

The Court: You feel she is extravagant?

Mr. Barnes: I know she's extravagant.

Mr. Blanchard: Not with your money.

Mr. Barnes: I think it is bad for the children,
page 142 } and I haven't been asked for anything other than this agreement up until now, and I couldn't get anything definite or this thing would never have come to court.

By Mr. Blanchard: (Continuing)

Q. You say you have never been asked for anything other than this agreement?

A. Other than this agreement I never been asked for anything. Three months out of the year they were supposed to be with me. We had a definite agreement, Mrs. Craig and I did. And if we had—

Q. I just asked you about the time in 1956 when she asked you for the June and July payment; you said you didn't owe it to her and you didn't reply to the letter.

A. That's the only occasion that it's ever been brought up to my knowledge, and the July payment, if there had been a July payment it wasn't due.

Mr. Blanchard: That is all the questions we have, Judge. We rest.

Mr. Overton: I might as well go on with him.

The Court: All right, Mr. Overton. Do whatever you want. He will be your witness now.

page 143 } HAROLD G. BARNES,
the defendant, testifies further in his own behalf as follows:

DIRECT EXAMINATION.

By Mr. Overton:

Q. Mr. Barnes, you say you had a definite agreement for the custody of the children; what was that agreement?

A. When Mrs. Barnes married Dr. Craig and was going to Florida, she said she wouldn't go to Florida unless she took the children. Peace at any price has been my theory of this thing all the way through. Well, I was to have the children in the summer and she would keep them while they were in school. I didn't think any judge in the country—She has been a wonderful mother to those children. I didn't think any judge in the world would let me do it under any circumstances. I felt like I didn't want them to go, I wanted them with me. And that was the only way that that could have been worked. She said all right. And it has never been a summer that I haven't made arrangements for them to come up here and have it knocked in the head.

Q. What do you mean "have it knocked in the head"?

A. Well, the summer, the first summer, as I recall, I called and she said, "Don't come after them, I'll bring them up." The next time, well, that was when they were late two or three weeks, maybe a month, after they were supposed to arrive in Urbanna. The next year it was agreed, I called
page 144 } up and said, "I will be down to pick up the children." And I was tried to just—They tried to stop me before I got there, that they were coming up, not to come. Well, I didn't take—That time I was upset about the summer before. I wasn't taking any chances on not having them with me that summer. I got down to Florida, I wanted Lanthe to come, and it hurt me a lot that she didn't come.

Q. Did any of them come back with you?

A. Two of them.

Q. Which two?

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A. Emily and John.

Q. Mr. Barnes, you say your wife is extravagant; has she tried to cooperate with you toward the rearing of these children in any way?

A. Never had anything but unpleasantness. I mean not with the children in no way.

Q. Why didn't the children stay with you when they were supposed to stay with you, you say?

A. Well, they were left on their own for one thing. In other words, to do as they pleased, so far as their mother would tell them, which I didn't approve of. I know there were, it was some talk in Urbanna about Lanthe being up there and while I know she is a wonderful girl, she shouldn't have been on the loose. She should have been at home with me. She wasn't. She preferred to stay with her page 145 } grandmother and over at her aunt's. And I didn't have the custody of her. I couldn't plan anything.

Q. Did there come times during the summer when you planned things for these children?

A. Definitely. I mean this past summer, this summer right here, I was in Florida at her graduation. It was a wonderful thing. But they put me off five weeks after saying they would go home and get situated and all and would let me know when they were coming.

Q. What do you mean they put you off five weeks?

A. They said it would take approximately three or four days to get straightened out after school and all ready to come to Virginia. I think it was five weeks, and finally I give up and sent them a check and figured, well, if they do come, fine—a round trip ticket. But there has never been a year since they have been down there that I haven't offered transportation, or offered to come for them. And it's just been a hectic thing; not that the children were involved in it.

Q. You say this agreement you had with your wife took place at the time she was getting ready to get married and go to Florida?

A. That's right. When this original agreement was written it was understood, I mean it says so in there, I was to share in the custody of the children.

Q. Would you have consented to their going to page 146 } Florida if it had not been for this agreement you had?

A. Of course I wouldn't.

Harold G. Barnes.

Q. Mr. Barnes—

A. I almost didn't let them go then. I didn't like the setup, but it has worked out beautifully. I had hopes that time would heal all things, and it has proven I was right. The three are with me now, or have been for the last two or three weeks. We have had a lot of fun. I mean I have been busy but they have enjoyed it and I know they have, we have enjoyed it.

Q. Mr. Blanchard referred several times to the fact your wife in this letter says she thinks you ought to pay the June and July payments because she would be bearing the expense of sending the children to camp. Other than this reference to you paying her during the summer time, has there ever been any time in all these years that she has indicated to you that she thought you should have made summer payments or asked you for them in any way?

A. No, sir.

By the Court:

Q. Did you know they were going to this school here, this place?

A. No, sir. It was a Catholic—

Q. Did you know they were going to it?

A. No, sir. I knew when I heard—

Q. You thought they were going to a public

page 147 } school?

A. I knew they were going away to school. I didn't know they were going to a Catholic school.

Q. Did you know it was a private school, I mean?

A. I didn't know it until after they were there. I was never asked, never informed, never asked for any money or any advice or anything, sir. And I would like to add that I have changed my mind. I supposedly was brought up as a Presbyterian. I couldn't see it for a year or two my children going to a Catholic school. I have changed my mind. I think it has done a world of good. I'm just proud that I didn't kick my foot in it, and the same goes for the young man. I told him to go back for another year and I would see what I could do up at Christ Church for him. He has served his time and he might as well have fun over there. I mean the first year is always the roughest.

By Mr. Overton: (Continuing)

Q. What was your understanding with respect to this property which was to be transferred to the Trustee?

Harold G. Barnes.

A. As long as Mrs. Barnes was single it was hers to do with as the thing said.

Mr. Blanchard: If Your Honor please, we object to any testimony as to what he thought this settlement agreement meant on the subject of the property which goes in trust. We think it is clearly a document spelled out in page 148 } writing, was written by his own attorney, and it speaks for itself. We do not think he should be permitted to come in here now and try to tell the Court what he thinks the agreement means. It is unambiguous on its face. It seems to me Your Honor has already ruled on that.

The Court: The Court feels he ought to be able to testify as to what he thought about it. In all probability it would have something to do with his actions as to what he did, not as to what it actually means; but it would have some bearing on his actions.

By Mr. Overton: (Continuing)

Q. What understanding did you have with your wife with respect to that?

A. That it would be used for the children's education if it were necessary. And it has been used for that. I mean it proves out that the thing is right. So I understand. John's paid some of the school out of it.

Q. This matter of four thousand dollars, more or less—Let me see—

The Court: Did Mr. Marchant give somebody a deed for this property?

Mr. Overton: Yes, sir.

The Court: He gave a deed.

Mr. Overton: Yes, sir.

Q. Is that your check for $4,400.00? (Hand-
page 149 } ing check to witness)

A. Yes, sir.

Q. Was that paid to Mr. Marchant in settlement of this Court Order of Middlesex County winding up Mrs. Craig's interest in the property over there?

A. Yes, sir.

Q. Do you know what became of that $4,400.00?

A. No, sir.

Harold G. Barnes.

Q. Have you ever been informed of its being spent and if so what it was spent for?
A. No, sir.

Mr. Overton: I would like to offer that in evidence.
The Court: This is in settlement of the house where you live. That is agreed by everybody.
Mr. Barnes: I would like to tell the Court how I happened to get that place. I built it—
The Court: No, sir. I dont think you should go into that unless your counsel wants you to.
The Court: This will be defendants Exhibit No. 6.

Note: The above tendered check is now marked and filed as Defendants Exhibit No. 6.

Q. What you started to say, does it have any bearing on this matter here now, Mr. Barnes?
page 150 } A. Well, I don't believe it does.
Q. You stated in your testimony a little while ago that you, according to your books, are continually overdrawn at the bank; tell the Court the reason for that.
A. Well, nobody in the world could operate like I do. I have been doing it so long through my—

By the Court:
Q. Why did you put "Amen" at the end of this check?
A. If I made one hundred thousand dollars a year it wouldn't have been enough for one of my families. I shouldn't have paid this. I didn't want to go to Court and it was paid.
Q. That is your writing, this "Amen"?
A. Yes, sir. I thought that would wind up everything. And it wasn't flippant, sir. I just was that full. I forgot what your question was.
Q. I asked you to explain why it is that you are continually overdrawn at the bank.
A. Well, we have about, I guess, thirty men on the payroll at the saw mill. I don't concentrate on any one thing, Judge. I have been farming; I have had to stop that. I couldn't make enough money at the sawmill to farm. At least I couldn't meet the fertilizer bills and other things, and so I just, I wasn't making any money, anyway I wasn't losing any, so I

Harold G. Barnes.

page 151 } have stopped the farming. So I feel sure that in six months that will help. I'm really concentrating on my sawmill, which is all I know. I took some money that I got when I leased that property to Ruffin and Payne and built a feed mill, and that isn't panning out. I hate to stop it because there is a whole lot of machinery in it, and it is needed in the community, and I use it. I even got a broker's license but I don't, I am never there to get a customer, so I'm going to give that up and concentrate on my sawmill and one farm which is all in grass but—

Q. Is it your purpose to pay for all this property that you have enumerated here?

A. Absolutely. I have got to have a goal. I don't want any of these children to ever be, to want.

Q. According to what your evidence is now you have over one hundred thousand dollars in obligations there.

A. I owe over one hundred thousand dollars, too.

Q. What is the rate of interest that you pay on that?

A. All of that the bank has—six. Mr. Edmund Smith has a note of the other at five. He wants to raise it; I told him he couldn't.

Q. Is it correct, then, that you pay somewhere in the neighborhood of five thousand dollars a year in interest?

A. Yes, sir.

page 152 } Q. And is that necessary in order to try to pay for all this property?

A. Absolutely. There is over two thousand dollars a year taxes besides the fire insurance and other—In other words, I have to make fifteen before I get five to live on. But I'm still optimistic. I have made money on the sawmill.

Q. Are you making payments on these various places each year?

A. Yes, sir. Doing the best I can. Nobody pushes. My credit is good. I have never fallen down at any bank or any other obligation that I know of.

By the Court:

Q. But you can go out here and sell a little of this property and you can wipe out all of this, can you not? All you have to do is go out here and sell two or three pieces of this property.

A. I have been trying to.

Harold G. Barnes.

By Mr. Overton: (Continuing)

Q. If you do that, Mr. Barnes, would you have anything left if you sold enough to pay all your debts?

A. I have been—No, sir.

Q. In other words, this property that you paid, one piece of property you testified you paid fifteen thousand dollars for and you think it is worth thirty or thirty-five thousand dollars now; what is your reason for not selling page 153 } that?

A. Well, I'm still healthy and I enjoy work, and one of these days if I don't do better than I have done in the last couple years somebody is going to sell it if I don't, but, as I say, I'm optimistic and I enjoy work.

Q. Is it your purpose to build up a nice estate for your children?

A. Absolutely. My Will, the way I have got it fixed, will bear it out. Not that I think they ought to have a dime; I think they ought to have to work for it, but in case—

Q. Mr. Barnes, did you or did you not in the winter of this year have conversations with your daughter, Lanthe, about going to college?

A. In Florida we discussed it.

Q. Is that the basis of these letters that you have from her here that she was referring to plans to go to college?

A. I would say so, sir.

Q. It hasn't changed any since she last talked to you?

A. No, sir. Not in my mind, sir.

Q. Did the mother sav anything to you about it along through that period at all?

A. No, sir.

Q. What was your idea when you were dis- page 154 } cussing and writing this young lady about her plans to go to college: what was your plan then?

A. I wanted to have a say in where she went to college or at least be consulted.

Q. Was it your plan to pay for it?

A. If I could. If I could agree to it, or if I could find the money, or—I just wanted to have some say and then I could say what I would do, whether I could or not, but I'm sure I could because—

Q. You have been asked about Mary Washington and the fifteen hundred dollar item; do you know whether or not that includes clothing and transportation, or whether it's exclusive?

A. I don't know definitely.

Harold G. Barnes.

Q. Your daughter was writing you these letters along through the Spring, and I believe even she testified and her mother, too, that you all had some conversation at about the time of her graduation; as of the time of her arrival here in Virginia, had she ever made any definite plans, as far as you were informed, as to what college she wanted to go to?

A. I believe she said in one of those letters that Marymount, which is a school up in New York and very expensive and exclusive school.

Q. The letters didn't definitely say she had
page 155 } decided to go there.

A. No, sir.

Q. At the time she came to Urbanna in July, had she indicated in any way any definite plans as to which school she wanted to go to?

A. I think she said the University of Florida was the only one. And I said, "Little Rebecca Orr in Saluda is a good student and she goes to Randolph Macon." I told her if she wanted to go to Randolph Macon and her mother had fifteen hundred dollars for to send her to Randolph Macon and she could get in, I said, "Lanthe, I got fifteen hundred I will give you." I sent her with my brother and this mutual friend's daughter, who goes to Randolph Macon, up to my brother's home, up for the weekend. Her cousin took Lanthe over to Randolph Macon. Since that time there has been a lady teacher in Urbanna visiting the Joneses that I had Lanthe go down to talk to her.

Q. Was it at your instance that she went to Randolph Macon to put in her application?

A. Yes, sir. Absolutely. That was before her mother came up.

Q. What is the status of that application?

A. I don't believe she's going to get in. She might get a transfer if somebody drops out.

Q. Did they accept her conditionally that it
page 156 } depends on whether or not somebody already
accepted doesn't—

A. I think she will have a good chance to get in if somebody drops out at the first of the mid-term; but I wouldn't count on it this year.

Q. You sent her up to Randolph Macon College?

A. Yes, sir.

Q. Other than to file this suit against you, has the mother been to you and asked, tried to have any discussion with you about plans for paying for her college education at all?

Harold G. Barnes.

A. No, sir. I understood the mother was so prosperous that she didn't need the father's help.

Q. Has Mrs. Craig, at any time through the years, indicated to you that she needed extra money for the children in any way?

A. No, sir.

Q. Have you from time to time sent them money, as well as presents, and given to them when they were here?

A. Very little because it has been, I mean they are very small. It would be a ten or fifteen dollar check. And it has been very small because, to tell you the truth, I very seldom have any money, and I know they're not lacking or not wanting. They have even refused money on several occasions, say they have money and, "We don't need it, Daddy." I know that that has been this summer on several occa-
page 157 } sions they did. I insisted that they should have a little spending money and would give them a ten dollar bill apiece.

By the Court:

Q. While I am thinking of it, let me ask you this question, sir: This present wife, is she a woman of means in her own right?

A. No, sir.

Q. You said she signed this large note.

A. She did that because—

Q. She did that because she is your wife?

A. She was my wife.

Q. She does not have large holdings of her own.

A. No, sir. I would say Mrs. Barnes in her own right, well, she just doesn't have anything.

Q. I see. She just signed the note because she was your wife.

A. That's right, sir.

Q. How old a woman is she?

A. Barbara must be thirty-eight. She is a good friend of my kid sister's. I got to know her through my sister. That is how I happened to get in.

Q. You have two children?

A. Yes, sir. You don't know, of course, whether there will be any more or not.

A. I figure, I'm going to be seventy now when
page 158 } this little girl—

Q. What did you say?

A. I'm going to be seventy, now, when this little girl, about

the time she's in college. I don't know, sir, but I, we're not planning for any more, sir.

The Court: All right.

By Mr. Overton: (Continuing)

Q. Mr. Barnes, tell us something about the times that these various children have stayed in your home. They certainly aren't very definite about it, any of them.

A. It's been in and out and most disconcerting, as though—

Q. One of them says that she spent three weeks out of every summer in your home, that was Emily; what about that?

A. I think the first summer they stayed considerably longer, all three of them were there. I remember Lanthe, the oldest daughter, had a birthday party and I remember it was some, I'm sure that they were all three there the first summer. The second summer I thought they were all three there and Lanthe didn't want to go to Wyoming. I believe that is the year I went out there, during the Frontier Days, and visited my sister. I know two of them did, they were there.

Q. Which two went to Wyoming with you?

A. The younger children, Emily and John. They were there, I would say, a couple months that summer,
page 159 } at least. I don't recall. But then from then on it began to get worse. In other words, I would try to make my plans to go after them, or get a definite date that they would come to Virginia so I could be planning things during the summer. Mrs. Craig would say, "Well, I'm driving up. There is no point in your coming. It would be a lot better or a lot easier for me to bring them." And then we never did know what to expect, Judge. I mean this past summer Lanthe wanted to go to New York when I was down in June. I told her Barbara had to go to see her mother, who lives up above New York, and she would love to have her go up there and she could go. She said she would go. We waited ten days trying to find out when they were coming, when we had to go. And they were five weeks later than I expected them this past summer.

Q. During the first years after your divorce you were not married; did you maintain your home there then for these children during the summer?

A. Absolutely. My aunt was my housekeeper.

Q. You were ready there to take them and keep them whenever they came?

Harold G. Barnes.

A. Yes, sir.

Q. You have been asked about your adjusted gross income on these income tax returns.

Mr. Overton: If Your Honor please, what I
page 160 } would like to do is put in the record the net income after the deductions, and if Mr. Blanchard will take these, I have a list of them, and check me as I go along, the deductions each year there—

The Court: What do you call net income?

Mr. Overton: Net income is the adjusted gross income after taking off necessary expenses, interest, taxes, and so forth.

Mr. Blanchard: Deductions for children? Are you going to take that off, too?

Mr. Overton: We won't count that.

Mr. Blanchard: That is one of the deductions he has listed.

Mr. Overton: This figure is the adjusted gross income less your expenses, interest and taxes. Those deductions come off after you determine net income.

You got a gross income of $22,697.37 for 1951, less deductions of $4,004.30, a net income of $18,675.07 All right, 1952.

The Court: The $4,000.00, that includes interest payments?

Mr. Overton: Yes, sir, and taxes. 1952, I have a total figure of $22,786.99 less deductions of $3,896.22.

Mr. Blanchard: That is $16,490.77, is that
page 161 } what you said?

Mr. Overton: No. After deductions the net income is $18,890.77.

Mr. Blanchard: That is the net income.

Mr. Overton: That is the net income. Right. For 1953: $16,918.71 net. Then for 1954: $9,005.32.

Mr. Blanchard: $10,809.79.

Mr. Barnes: That is the State figure, isn't it?

Mr. Overton: Wait a minute. You jumped '54 and '55. You have '56 there.

Mr. Blanchard: Excuse me. '54 is $9,005.32.

The Court: Do you see the 1955 figure there?

Mr. Blanchard: All right.

Mr. Overton: $8,451.00 even.

Mr. Blanchard: $8,451.00. Right.

Mr. Overton: Then there is the 1956 figure of $10,809.79.

You had that a minute ago. The 1958 net income was $7,193.97.

Mr. Blanchard: $7,193.97? Did you get that figure out of these? What are his deductions? Can you find them?

Mr. Simmons: Your Honor, while they are looking for that I would state to the Court that it will be necessary, of course, to go back through these and refigure the capital gains which are not considered.

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Mr. Blanchard: There is nothing on this one. There is nothing on that back page. I don't know where they brought that over from.

Mr. Overton: I believe that is all, if Your Honor please.

The Court: If there are no further questions you can step down.

Mr. Blanchard: If Your Honor please, I did have several things I want to clear up.

CROSS EXAMINATION.

By Mr. Blanchard:

Q. Mr. Barnes, I am not clear. When Mr. Overton asked you how long they had stayed every summer you kept emphasizing they stayed longer and longer. Are you contending they stayed a long time and therefore you get a whole lot of deductions of these $50.00, or are you contending they haven't stayed a long time?

A. No, sir.

Q. They have not stayed long enough?

A. Not to suit me, sir.

Q. Right. Have you taken this up with the children, specifically, and tried to get them to stay longer?

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A. Well, their mother had plans for them. I recall on one occasion we had Emily up, Mrs. Barnes and I had Emily up in New York and somebody called us and said Emily had to be home the next day to go to Florida; they had to get back.

Q. Right.

A. We got Emily home and it was a week before they left Urbanna.

Q. Are you contending she has persisted in the slightest measure to influence the children as to whether they would all stay with you or not?

A. I am not contending that, sir.

Q. Why do you contend they haven't stayed with you?

Harold G. Barnes.

A. Because they haven't had anybody to tell them what they should do. I mean—

Q. Who was supposed to do that, you or her?

A. Their mother was supposed to.

Q. She is to make them come and stay with you?

A. Not make. It wouldn't have been necessary. All she would have had to have done is told them of our agreement instead of saying you don't have to go if you don't want to.

Q. You think she should have told the children, "Every summer you are to go to Virginia and stay with your father until school starts," period?

page 164 } A. That's right hard.

Q. That is the hard question you all have had to face. Do you think that is what she should have done?

A. I think I should have had custody of them those three months which we had a definite agreement.

Q. Have you tried to get it?

A. Absolutely.

Q. Who did you try to get it from?

A. The children and their mother.

Q. What I am asking you—

A. Their mother.

Q. Do you contend that she has ever exercised any influence over those children to keep them from coming with you, ever?

A. Well, something must have happened.

Q. Why?

A. Because. Just because.

Q. Because they didn't spend all summer with you and you didn't know what their plans were—You knew they had all sorts of plans for going to camp and all types of plans like all young people do, the complicated plans of life—

A. All they would have had to have done was to come to Urbanna and made that their headquarters. Nobody wants them to have any more fun than I do. I could have provided their fun.

page 165 } Q. Have you insisted, to the children themselves, that they give up whatever plans they might have for the summer and come and stay with you the whole summer in Urbanna?

A. No, I haven't insisted.

Q. Why not?

Harold G. Barnes.

A. I don't like fusses. I have had them—

Q. Then you—

A. —and I still have them.

Q. You have been satisfied with what they did, have you not?

A. No, sir. Definitely not satisfied.

Q. Whose fault was it?

A. I would say Mrs. Craig's.

Q. Because she didn't make them come the first day of the summer and stay up there?

A. It wouldn't have been necessary to make them.

Q. Do you think she kept them from coming?

A. It's a hard question, sir.

Q. Mr. Overton asked you if you had ever heard anything about any of this back support money, or college, until this suit was instituted; hasn't Mr. Hickson, Mrs. Craig's lawyer in Florida, been writing to you for over a year, and haven't I been in correspondence with you for almost nine months?

A. I would say you would know that better than I.

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Q. Haven't you been to Richmond to talk to me about it on several occasions?

A. Yes, sir, and over to White Stone to talk to the other gentleman there.

Q. Isn't the main reason that Lanthe cannot get in Randolph Macon right now is because she didn't apply early enough?

A. Could be, sir.

Q. How did you think Lanthe was ever going to be able to let you know anything definite, as you put it, about her college education and her plans if she did not know definitely where the money—and how much—it was coming from?

A. She—

Q. You stated she never let you know definitely what her college plans were, is that not right? You said she never let you know definitely what she was going to do.

Mr. Overton: He said she was going to school where she wanted to go to school. That is the question I asked him.

Q. How could she let you know definitely where she was going to school unless she knew how much money she had? That determines where you want to go to school in a large part, does it not?

A. I would say so, or the parent.

Harold G. Barnes.

Q. You stated you had interest payment of
page 167 } about five thousand dollars. You don't dispute the interest deductions in 1958 of $3,092.00, do you?

A. No, sir. Not if they are on that paper. That's all I could—

Q. You stated you have a sawmill and a feed mill. Where are they? Were they in the list of things you gave us before? Where is your sawmill?

A. That is Saluda Lumber Company property. I mean personal property, whatever you want to call it.

Q. Is that in the list of personal property that you valued at—

A. No. This sawmill and feed mill, and what-not, belongs to the Saluda Lumber Company.

Q. How much do you think they are worth?

A. Whatever I said the stock was.

Q. Twenty-five thousand dollars total?

A. I think I'd take that, sir, gladly.

Q. For the sawmill, feed mill, personal property, everything that the Saluda Lumber Company owns, you will sell for twenty-five thousand dollars?

A. That's right. And if it were sold by somebody I doubt if it would bring that. So am I in trouble with the State Corporation Commission?

Mr. Blanchard: I don't know. You will have to ask your lawyer about that, Mr. Barnes. I don't know.
page 168 } If Your Honor please, that is all the questions I have at this time.

Mr. Simmons: Your Honor, we have observed in these tax returns, we have got in the record the gross income and we have got the net income as defined under the tax regulations.

We observe that the business which Mr. Barnes is engaged in is typical as purchase of timber and sale of timber, purchase of real estate and sale of real estate, results in long term capital gains. In arriving at these figures only half of that gain that is realized in any year is reported in either of those two figures. In other words, computation has already been made before the Court of simply getting the gross income or net figure. In order to complete the picture it would be necessary in each year for which we have a return filed—since we are not filing the returns in evidence—to read into the record the amount that has been claimed for the

long term capital gains. I would like to go through the returns year by year, if I may, sir, to complete the record in that respect.

Mr. Overton: I have the whole thing right here. (Handing typewritten sheet of paper to Mr. Simmons)

page 169 } Mr. Blanchard: If Your Honor please, we will read into the record a column entitled "Long Term Capital Gains" on a schedule that we would like to introduce in a few moments.

This is 1951—$1,353.25; 1952—$8,314.17; 1953—$4,059.29; 1954—$57.00; 1955—$5,812.70; 1956—$3,568.00; and 1957 is missing; 1958 is $9,258.89.

We would like to state for the record we would like to tender this as Plaintiff's Exhibit 1, which is, by stipulation of counsel, a summary of the pertinent items on the income tax returns of Mr. Barnes that we have been reading from this afternoon.

The Court: It will be admitted as Plaintiff's Exhibit No. 1.

Note: The above described schedule is now marked and filed Plaintiff's Exhibit No. 1.

By Mr. Blanchard: (Continuing)

Q. Mr. Barnes, do I understand that the value that you place on your stock in the Saluda Lumber Company is after taking into account the losses that it has had all through the years?

A. Now it had—

Q. I assume you couldn't take into account anything else.

page 170 } A. When other stockholders were in this corporation it had a lot of false, I would say false surplus the first two or three years. It has now, I think, lost all its surplus. If it doesn't do something it's going to be losing that forty thousand.

Q. What I am getting at is any loss that the corporation has taken is, of course, a loss to the corporation and not to you, except insofar as it has decreased the value of your stock in the Saluda Lumber, is that correct?

A. I wouldn't say so. If I made twelve thousand and it lost twelve thousand, I haven't made a dime. I mean regardless of what our books show. That's the reason I think my credits gotten so I can't go to the bank and borrow a dollar without putting a deed of trust on something.

Harold G. Barnes.

Mr. Blanchard: If Your Honor please, we object to any introduction of any loss record of the Saluda Lumber Company since it is clearly shown that it is a corporation in which he merely owns stock, and which he has now listed in his assets, he has listed the present estimated value of the Saluda stock. Now it certainly is very misleading and erroneous, it seems to us, in addition to including the depreciated value of the stock to put in some additional income losses, if it shows that he has taken these losses personally. He has taken the loss in the sense that the value of the stock has gone down.

The Court: It is admitted on the ground
page 171 } that it tends to show that the stock that he now owns he now values at $25,000.00; if the present trend continues it probably will not be worth $25,000.00 but some point less.

By Mr. Blanchard: (Continuing)

Q. Mr. Barnes, do you realize that the Saluda Lumber Company, the last year before 1958, paid personal property taxes on a valuation of your personal property in the amount of $31,000.00? In other words the tax people have valued your property at $31,000.00. Have you made any attempt to get that assessment lowered, or have you acquiesced in that valuation with the county? I take it you acquiesced in it?

A. I would say so.

Q. Don't you understand that they assess on a forty per cent valuation basis?

A. I believe I do. Or heard tell.

Q. On a forty per cent valuation, $31,000.00 would, of course, be equal to—you can figure it in your head—roughly $75,000.00, would it not? Two and a half times $30,000.00 say?

A. They say figures don't lie, but you can make them do anything you want to the way you're operating now. If you want to buy the Saluda Lumber Company I'll gladly sell it to you.

Q. I do not have the slightest interest in buying
page 172 } it; let's make that clear for the record. I am curious, though, to know why you have made no attempt to get that valuation lowered, when they are valuing it, in effect, at a $75,000.00 value.

A. Well, I can't conceive why I haven't put it all in one place. I see no reason for the Saluda Lumber corporation. That way it would have saved me a lot of taxes. The way it's

going on—I have been hoping for better days. If anything would happen to Ruffin and Paye I would have something to offer to somebody.

Q. Mr. Barnes, I hand you your 1958 Saluda Lumber Company income tax return and call your attention to the schedule of capital assets; does it show in 1958 that it had capital assets with a depreciated value of $34,000.00?

A. It evidently does, sir. You got it right there.

Mr. Blanchard: No further questions.

Mr. Barnes: Judge, I think how I happen to be living in a $30,000.00 home should come, should have some bearing on this thing. In other words, the old home place in Maryland that I got from my family I sold that shortly after I settled in Urbanna and built this house with the proceeds from it.

By the Court:

page 173 } Q. Are you from Maryland?

A. I was born there, sir. My grandfather was up there. In Harford County between Bel Air and Aberdeen.

Q. That is a rich county.

A. That was good country, sir.

Q. Race horse country.

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Overton:

Q. Mr. Barnes, look at your 1956, 1957 and 1958 returns and say whether or not they show losses of $12,753.99 for 1956?

A. Yes, sir. On '56 that's what it says.

Q. How much is it in '57?

A. $818.00.

Q. And for 1958?

A. $6,732.87.

Mr. Overton: I think that is all.

Mr. Blanchard: Mr. Overton, you stated for him to read the amount that is stated on the return, the loss; you meant, of course, the corporate return of the Saluda Lumber Company and not Mr. Barnes' personal return?

page 174 } Mr. Overton: Yes, sir.

Harold G. Barnes.

RE-CROSS EXAMINATION.

By Mr. Blanchard:

Q. What was the amount of depreciation deducted in each of those years?

A. Depreciation in '56 was $7,349.45; depreciation in '57 was $10,067.88; 1958—$7,999.86. We've got a bunch of old trucks. That's why we're not so happy right now. We've got a lot of old timber trucks that's all broken down, worn out.

Q. Mr. Barnes, there is one other thing I want to ask you about this matter with respect to which your wife testified, the hospitalization; do you carry that or not?

A. Yes, sir. I have had Blue Cross for twelve or fifteen years in force.

Q. Does it cover the three children in Florida?

A. Yes, sir. Yes, sir.

Q. Have you ever gotten a claim of any sickness from them?

A. No, sir.

Q. Have you ever wondered why that was?

A. Well, there was a doctor in their home in which they were living, I would say.

Q. Have you ever thought to be courteous to let
page 175 } them know you carry hospitalization that would maybe cover some of their hospital bills?

A. It's right in that agreement. They know I carry it.

Q. I mean from just your own knowledge, wouldn't you have thought that the three children would have gotten sick sometime in eight years?

A. Why, of course.

Q. Who did you think was paying for it?

A. Well, if—This hospitalization would have taken care of it.

Q. Would have; they didn't put in a claim.

A. That's right, sir. As far as I know. That stuffs getting expensive, too, now. It's the complete works—surgeon and everything.

Q. I have just one more question: You have furnished us all these tax returns except 1957.

A. Well, I tried to get that, sir. That's no better than these last two or three years. I can assure you.

Q. You made no more net income in 1957 than you did in 1958?

A. I think maybe I had a harder time. It has been rough

for the last three years. The Crozet Lumber Company, which used to be my father's business—

Q. I am interested in that one question. You
page 176 } do not think—

A. No, sir.

Q. You do not think 1957 was substantially better, more income than 1958?

A. No, sir.

Mr. Blanchard: Right. That is all.

Witness stood aside.

EMMETT HUGH HOY, JR.,
introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Overton:

Q. Will you please state your name, sir?

A. Emmett Hugh Hoy, Jr.

Q. What is your occupation?

A. Clergyman of the Emmanuel Episcopal Church.

Q. Your age?

A. Forty.

Q. Where do you reside now?

A. Alexandria, Virginia.

page 177 } Q. Have you resided in Middlesex County?

A. Yes, sir.

Q. Have you served as minister there?

A. Yes, sir.

Q. Do you know Harold Barnes?

A. Yes, sir.

Q. How long have you known him?

A. Since 1950, I think it is.

Q. Do you own a home in Middlesex County at this time?

A. We are buying it, yes.

Q. Mr. Hoy, do you know Harold Barnes' reputation for truth and veracity in Middlesex County?

A. Yes, sir.

Q. Is that reputation good or bad?

A. It's good.

Q. Knowing that reputation would you believe him on oath?

A. Yes, sir.

Emmett Hugh Hoy, Jr.

Mr. Overton: These gentlemen may have some questions they will want to ask you.
Mr. Blanchard: No questions.

Witness stood aside.

page 178 } Mr. Overton: That is the case for us, if Your Honor please.

The Court: All right, sir. Gentlemen, do you have anything else? Do you want to argue?
Mr. Blanchard: Yes, sir.
The Court: All right. You may proceed, gentlemen.

Note: At this point the case is argued by counsel, during which the following issues are discussed:

Mr. Blanchard: Could I ask whether or not, I am thinking about this argument, as to exactly what we should go into. I have not heard you say anything about it. Do you have any different views as to the law other than what I have stated on the subject of the Florida decree and the power of this Court in the premises?
Mr. Overton: No, I think we are in accord on that.
Mr. Blanchard: Right. There is no need to go into that any further.
Mr. Overton: No, sir.
page 179 } Mr. Blanchard: If Your Honor please, at the outset I would like to repeat very briefly what I have already said as to my understanding as to what the law is. I understand Mr. Overton agrees that—subject to my being corrected—that what we have is a Florida decree that was entered with personal jurisdiction of all the parties at that time, which is not a question of some foreign decree which did not get service on one of the parties. All of the parties were before the Court. The Court adopted and entered as a part of its decree a settlement agreement, which is now before us.

Looking first at the back support money, by the evidence of the defendant, the amount that has not been paid through 1958 is $3,000.00; for the three summer months of 1959, the year we are in now, would be an additional $450.00. So the total amount that has not been paid to date is $3,450.00.
Now against that amount it seems to me that the only

question left is whether or not Mr. Barnes is entitled to any credit, or any offset against that $3,450.00.

On that question we submit the decree and the page 180 } settlement agreement are perfectly clear. The agreement did not state, and bear in mind—I think this is most important to bear in mind—with respect to this settlement agreement the uncontradicted testimony is that this settlement agreement was drawn by Mr. Barnes' attorney. Mrs. Barnes obviously was in the typical situation of signing whatever was given to her in the way of agreement, and I cannot help but believe that Your Honor is as impressed as I am when you hear the testimony and see the property that this man had in 1951 at the time of this divorce.

We submit that the record is perfectly clear on the back support money, that Mr. Barnes certainly owes them the amount of $3,000.00.

Secondly the agreement provides, as we have read before, that the husband will endeavor to provide a four year college education for each of the three children.

I do not see that we need devote any real argument on that. Mr. Barnes has been perfectly candid and perfectly honest—you have every reason to be able to believe him—he states flatly that he has never had any other intention other than he was going to provide these children a college page 181 } education, and he is still going to do it. The one trouble, Your Honor, the same old problem, our problem has been right where we are now. Mrs. Craig and everyone else has gotten right to this point. Mr. Barnes is just as cooperative as he is on this stand. He says in all good honesty and good faith, "I am gonig to do just what I was going to do in the agreement." The trouble is, we want to know and want to see that he does it.

There is only one other thing we are asking for—the usual thing any time that the attorneys for the wife have had to go to court and have had to come and get the father to pay for support—and that is for attorneys fees, which are well settled in this same case, *McKeel* v. *McKeel.* It is an identical case. The lawyers come up here from Florida, go in and get a new decree entered against the father, they get the Court to adopt that decree and enforce it against the father, and in that case it is decided that the wife is entitled to get a reasonable attorneys fees.

We do not know what that amount is, Judge, at least at this stage. I am perfectly satisfied to leave that entirely up to you.

They seem to me to be the only three points we
page 182 } are asking for in this suit.

The Court: You are not asking for any increase in the $50.00 a month for John and Emily?

Mr. Blanchard: No, sir, we are not asking for that at the moment. We did not bring it on that theory. We brought it on the theory that he pay us the $3,000.00 that is past due, and he make the payments in the future that he was supposed to have been making in the past, and start sending Lanthe to college, and help at the moment Emily and John are supposed to start, we would go along on the rest. That seems to me to be an extremely reasonable position. It seems to me to be a position that is simply just unassailable when you look at the property this man has.

It seems to me the very least this Court can do is to direct him to give them the kind of education that his kind of station in life demands.

The Court: I think you gentlemen should tell the Court in final argument what you have done, give the Court some idea of what you have done, all that sort of thing. I do not know how much time you have spent on this case. I just tell you that in passing, Mr. Simmons.

page 183 } Mr. Overton: If Your Honor please, I am in a little bit of an unusual situation here. I do not like to take this kind of position in a sense. I would much rather fuss about something, but very frankly, if the plaintiff's position is what Mr. Blanchard says it is with respect to education and the trust fund, I cannot complain too much about what he is asking for.

Mr. Barnes has always taken the position that he wants to educate his children, and that as long as he is able to do so he will do so.

I think it is significant that in this case here this child comes here and the only school outside of Florida that she seems to be interested in is one in Virginia to which her father sent her to make an application.

With respect to this back money, if Your Honor please. I am not in accord with the proposition that it is a debt. My understanding of the law is that the Court is not required *ipso facto* to enter up judgment for such amounts which may be found owing and unpaid in any such case. That certainly is my understanding of the law.

page 184 } At this point I think we have a very important point before the Court here as to which we have

some, to my mind, convincing points. First of all is this suit in Middlesex County. This suit was brought after, according to her own testimony, and if you can believe what she says, there was an arrears of alimony in 1952; the suit was pending there for six months on the docket in the Circuit Court of Middlesex County, and as far as the arrears of alimony in 1952 were concerned, not a word was said about it.

If Your Honor please, the question is here estopped by the failure to include, by *res judicata,* and they cannot recover it where one sues another on one transaction, and you have several various aspects of it and you leave out one aspect of it, then I think the judgment in your favor, or against you, is *res judicata* as to the one left out.

That to me is the strongest and most significant point in the whole case.

Mr. Simmons: In closing, Mr. Blanchard has taken the view that the $50.00 that is being paid for the benefit of these children we are not seeking a reformation of that.

page 185 } I think that is true; yet, I am obliged to tell the Court before I sit down that my colleague and I differ on this particular point only. This Court has complete jurisdiction to look at this situation, to look at these assets, and look at the needs of these children as represented by the children and Mrs. Craig.

If Your Honor in reviewing this should feel we have understated these children's case, as I personally am inclined to feel perhaps we have, we do ask the Court to review our actions and if the Court should feel, having in mind these assets and the needs of these children, that $50.00 a month is a ridiculously, shockingly small amount for them to get, we are not going to interpose any objection to the Court's increasing that amount.

As to the attorneys fees. We would try to represent to Your Honor that this has been an unusual, difficult case in that the parties have been widely separated, which necessitated a large number of long distance phone calls between here and Naples, and between here and Richmond; it has necessitated Mr. Blanchard spending two days down here and remaining over night last night, aside from the work which

page 186 } he has done in Richmond in searching the law. For my part I have worked on the pleadings with him prior to these last few days, and all in all we suggest a figure that does not cover what we will have to charge. Very frankly there will be an additional amount. We would ask the Court to consider from $250.00 to $500.00.

We will take, frankly, whatever the Court feels proper we should accept. We tell the Court, for our labors, we will have to ask somewhat probably more than the Court will allow.

Thank you, sir.

The Court: Gentlemen, I cannot help but feel that this defendant here has gained in dollars and cents tremendously at the benefit of these children during the last seven or eight years. I do not see how in the world that any impartial court could listen to the amount of property that this man has accumulated here and has only been paying this woman this small amount for the support of these children.

When he testifies he talks or impresses me as being perfectly sincere about this thing; that he feels like that he has done well by them. I just really believe that his sense of values are just way out of proportion. Maybe he

page 187 } isn't conscious of it but these nice children here, these are three nice children, and during this time when they are getting this splendid education down there, and this wonderful training? My dear Mr. Barnes, we have these cases right along. I do not know how many cases we have involving children and all this money. We have a lot of them. Mr. Overton has been in several within the last month to six weeks.

I have never had a case where I was more impressed by children. That is the truth. They are wonderful children. How in the world, with all this property, you could be happy with just putting in some twelve or fourteen hundred dollars a year, I just cannot see how you would be happy doing that. It looks like to me you would have wanted to have shared in the expense of these children. Maybe there is some reason, but be that as it is. We cannot change this back figure; but we can take care of the future.

It is the judgment of this Court that the Court here in Lancaster County confirm this decree here. When you prepare your decree you let it show that this Court ratifies and confirms everything that was done down in Florida. In the preparation of the decree you copy the entire decree and copy the entire agreement in the Virginia decree.

page 188 } Then you let the decree show that on the evidence adduced here today pursuant to the law of this State we have increased the amount to John and Emily to $75.00 a month a piece instead of $50.00 a month; make an allowance of $300.00 a month for this girl, this one that is going to college. That would be $3,600.00 for her. I believe you will need it all when you talk about college; you are not going to have too much left. We are going to award judgment against you for the $3,000.00.

Now I think he ought to pay some of this $300.00 payment for the benefit of this girl who is going to school in advance. I think he ought to pay at least five months of that in advance so the lady will have $1,500.00 to start with.

It is the judgment of this Court that the mother should decide as to what college the girl goes to and she will make the decision as to what college she goes to. I do not believe the father has too much knowledge about it. He doesn't have to feel badly about that. I have some step-daughters, I have a girl now going out there to Randolph Macon College. I give you my word I didn't have any more to do with it than the sheriff over there in making the decision. So it isn't anything unusual about it. I do not profess

page 189 } to know anything about the girls schools. My wife is a ex-school teacher; she went to college herself. I am willing to trust her about those things. I do not think it is any reflection on you. If you go to dilly-dallying back and forth about what school she will attend it is going to be unpleasant, and they maybe will want one thing, you another, and you just won't get anywhere. We haven't got time for that. It is too late. We have got to go ahead or we will not be able to get the girl even in the Mary Washington School. They are not able to get her in Randolph Macon this fall, so they are going to have to do the best they can do.

I think that $500.00 attorneys fees is plenty little.

Now, when can you pay this judgment? I don't know that the Court has any right to order you to pay that money within any particular time. That is a judgment against you and it just has to be docketed. I don't know that we have the power to issue execution against you.

Note: At this point colloquy between Court and counsel is had which the reporter records but does not here incorporate into this transcript in the interest of brevity, following which the Court states as follows:

page 190 } The Court: I do not think anything of this deducting payments when the children stay with him a little bit. I do not think that should be done.

You are a very successful man. I am afraid you do not appreciate it. You have a lot of property. You have the knack of making money. You know how to do it. You are blessed in that respect. I do not feel like it is fair to your children for them to be coming down here and then shaving off a little bit of support money. You are plenty able, when they come down there once a year, to feed them and take care of them.

Mr. Simmons: May it please the Court it has been pointed out to me by Mrs. Craig that it is necessary to make a deposit of approximately half of the tuition for the year at some of the colleges. For that reason it might be well if the decree provided for maybe half payment in August and January.

The Court: It is the judgment of this Court that the defendant, Mr. Barnes, pay the judgment for $3,000.00 with interest from today; $500.00 attorneys fees; $75.00 a month effective, we will say, the first day of September for John and Emily; and effective the first day of September $300.00 a month for Lanthe. This is $450.00 a month.

page 191 } And that he pay $1,800.00 of this $450.00 per month in advance.

Mr. Overton: You mean by September 1st?

The Court: I do not mean by September 1st. He might need a few more days than that. About how much time will he need to raise the $1,800.00 plus the $500.00 attorneys fees?

Note: At this point Mr. Overton and the defendant, Mr. Barnes, confer in private, following which Mr. Overton states as follows:

Mr. Overton: If Your Honor please, Mr. Barnes says that he thinks that he can, by the sale of a piece of property, raise this $1,800.00 and $500.00 attorneys fees by September 1st.

I take it Your Honor will give him further time following that?

The Court: All right. He will pay the lady $1,800.00, which will be four monthly payments of $450.00 in advance, and the $500.00 attorneys fees by September 1st. The balance to be paid in what time after that?

Mr. Overton: Sixty days?

The Court: That is all right.

Mr. Sheriff recess until 11:00 o'clock tomorrow morning.

Tendered and presented October 12, 1959.
Signed—October 19, 1959.

DANIEL WEYMOUTH, Judge.

Received Oct. 22, 1959.

Teste:

O. B. CHILTON, Clerk.

* * * * *

PLF. EX. #1.

D. W., Judge.

Harold G. Barnes

Tax Year	Adjusted Gross Income	Deductions	Net Taxable Income	Income Taxes	Long-Term Capital Gains
1951	$22,679.37	$4004.30	$18,675.07	$5436.29	$1353.25
1952	22,786.99	3896.22	18,890.77	5342.66	8314.17
1953	20,747.66	3828.95	16,918.71	3480.34	4059.29
1954	13,532.11	4526.79	9,005.32	1109.18	57.00
1955	13,871.93	5420.93	8,451.00	855.22	5812.70
1956	14,634.44	3824.65	10,809.79	1374.15	3568.00
1958	12,152.89	4958.92	7,193.97	549.44	9258.89

A Copy—Teste:

H. G. TURNER, Clerk.

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