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Supreme Court of Appeals
Richmond, Va

Record No. 5184

In the Supreme Court of Appeals of Virginia at Richmond

WALTER JUDSON NEWTON

v.

MARGARET LILLIAN WATTS NEWTON

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

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. 5184

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 21st day of April, 1960.

WALTER JUDSON NEWTON, Appellant,

against

MARGARET LILLIAN WATTS NEWTON, Appellee.

From the Circuit Court of the City of Norfolk

Upon the petition of Walter Judson Newton an appeal and *supersedeas* is awarded him from a decree entered by the Circuit Court of the City of Norfolk on the 6th day of November, 1959, in a certain chancery cause then therein depending wherein Margaret Lillian Watts Newton was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a *supersedeas* bond in the penalty of eight hundred dollars, conditioned according to law has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, an additional bond conditioned according to law is required in the penalty of five hundred dollars.

RECORD

* * * * *

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* * * * *

This cause came on this day to be heard upon the pleadings and exhibits filed, the several orders and decrees heretofore entered in the cause, the evidence introduced by the parties, the report of Moses Ehrenworth, the Commissioner in Chancery to whom the cause was duly referred, (which report was duly filed on the 31st day of October, 1956, and was argued by counsel;

On consideration whereof, it appearing to the Court that no exceptions to the report of said Commissioner have been taken or filed by either party and that the said report has been filed for more than ten days, it is hereby ORDERED that the report of said Commissioner be, and the same is hereby approved and confirmed;

And it further appearing to the Court from the report of said Commissioner, as well as from the evidence in the case, independently of the admissions of either party in the pleadings, or otherwise, that the parties hereto were lawfully married on the 23rd day of November, 1944, in Olathe, Kansas; that the complainant, on the date this suit was instituted, and for at least one year next preceding the commencement of the same, was an actual *bona fide* resident of and

page 26 } domiciled in the State of Virginia; that the parties last cohabited together in the City of Norfolk; that both of the parties are members of the white race; that on the 3rd day of January, 1955, the complainant, without legal justification, did wilfully desert and abandon the defendant, and remove herself without the State of Virginia, and has continued since to live separate and apart from him although requested by said defendant, on numerous occasions, to return to him; that no reconciliation between the parties is probable; that such desertion has continued, uninterrupted, for more than one year; and that the defendant now desires an absolute divorce from the complainant, and is entitled thereto, although the relief prayed in his Cross Bill, when filed, asked only for a divorce a *mensa et thoro,* with leave to apply for merger thereof into a divorce a *vinculo matrimonii* at the proper time;

It is ADJUDGED, ORDERED and DECREED that the said Walter Judson Newton be, and he is hereby, awarded a

PETITION.

To the Honorable Thomas M. Johnston, Judge of the aforesaid Court:

Your petitioner, Margaret Lillian Watts Newton, respectfully represents as follows:

1. That by Decree of this Court dated December 27, 1956 a certain written agreement previously entered into between the parties hereto was approved and confirmed by this Court and defendant, Walter J. Newton, was thereby ordered to support his children in accordance with the terms of said agreement.

2. That the sum so ordered by this Court to be paid as support money, so long as complainant had custody of one of the parties' children, amounted to $225.00 per month, payable in equal semi-monthly installments of $112.50 each on or before the 10th and 25th days of each month.

3. That since July 10, 1959 the defendant has paid to your petitioner the sum of only $37.50 at each installment date, or $150.00 per month less than the amount decreed by this Court.

WHEREFORE, your petitioner respectfully requests that defendant be ordered to pay to your petitioner all amounts that are in arrears under the said Decree of this Court of December 27, 1956 and in all respects to comply with said Decree.

MARGARET LILLIAN WATTS NEWTON
By THOMAS R. McNAMARA
Counsel.

Filed Oct. 28, 1959.

T. M. J.

* * * * *

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* * * * *

Filed Nov. 2, 1959.

T. M. J.

divorce a *vinculo matrimonii* from the complainant, Margaret Lillian Watts Newton, on the ground of desertion.

And it further appearing to the Court that the parties hereto have entered into a certain Property Settlement Agreement, an executed copy whereof has been duly filed in the cause with the report of the aforesaid Commissioner, marked "Defendant's Exhibit 1," which agreement provides for the custody, support and maintenance of the infant children of the parties, John Wallace Newton, aged 11, and Carolyn Mary Newton, aged 2, and that it is to the best interests of said children that their custody be awarded and their support provided for as outlined in said Agreement, as well

page 27 } as that the other provisions of said Property Settlement Agreement be approved.

It is hereby further ADJUDGED, ORDERED and DECREED that the custody of said children be awarded as is provided in said Agreement; that the defendant support said children in accordance with the terms thereof; and that said Agreement be, and the same hereby is approved and confirmed in all other respects, leave being hereby granted the defendant to at any time withdraw the executed copy of said Agreement from the papers in the cause and to substitute therefor a photostatic copy thereof.

And it is further ORDERED that the defendant pay the costs of these proceedings, including a fee to Messrs. Williams, Cocke, Worrell & Kelly, counsel for the complainant, in the total sum of Five Hundred ($500.00) Dollars, as well as a fee to Moses Ehrenworth, the Commissioner in this case, in the total sum of One hundred and seventy-five ($175.00) Dollars, all subject to credits for any sums heretofore paid by the defendant to said parties.

Neither party hereto shall marry again within four (4) months from the date of this decree unless they marry each other.

Nothing further remaining to be done in the cause, it is hereby ORDERED that the same be removed from the docket, with leave to reinstate the same at any time in the event that the interests of the minor children so require.

Enter Dec. 27, '56.

C. H. J., Judge.

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And it appearing to the Court from the statements of counsel for both parties, satisfactory evidence heard *ore tenus* before the Court, the terms of this Court's decree of December 27, 1956, and other documents pertinent to this controversy, that by the terms of said decree defendant was ordered to support the children of this marriage in accordance with the terms of a certain written agreement entered into between the parties prior to said decree and duly filed with the papers in this cause; that by said agreement defendant was obligated to pay to complainant the sum of $225.00 per month during such time as complainant had custody of one of the parties' two minor children, which was the custody arrangement existing during the period embraced by complainant's petition and at the date hereof; that since July 10, 1959 defendant has paid to complainant the sum of only $37.50 at each installment date, or $150.00 per month less than the amount decreed by this Court; that while page 38 } defendant admits that said agreement specifies total payments of $225.00 per month, he asserts that only a portion of this sum, namely $75.00 per month, was embraced by the mandate of this Court's decree of December 27, 1956 and that he has fully complied therewith; but it further appearing to the Court that while the said sum of $225.00 was by the terms of said agreement broken into increments of $75.00 and $150.00 for the purposes of said agreement, that the entire sum of $225.00 was intended by the parties to constitute money paid for the support of the child as contemplated by said decree and that the same does, in fact, constitute support money as contemplated in said decree, and that at the date hereof defendant is in arrears in said payments in the total sum of $525.00; it is accordingly ORDERED and DECREED that defendant, Walter Judson Newton, do pay over to complainant the total sum of such arrearages in the amount of $525.00 within sixty days of the date hereof, and that for so long as said decree shall remain unaltered by this Court defendant shall make payments in full compliance with said decree of December 27, 1956 as hereinabove construed, to which action of the Court defendant by counsel duly excepts;

And it further appearing to the Court that a controversy has arisen as to whether rights of visitation have by subsequent oral agreement been altered, the Court deeming it in the best interests of the infant children of the parties, doth further ORDER and DECREE that all provisions of said written agreement pertaining to custody and visits of said children be, and the same are hereby, confirmed and the

ANSWER TO COMPLAINANT'S PETITION.

Now comes the defendant by counsel and for answer to the complainant's petition, saving unto himself all just exceptions thereto, says as follows:

1. That the allegations contained in Paragraph numbered 1 are admitted.
2. That the allegations contained in Paragraphs numbered 2 and 3 are denied.
3. That the complainant's petition is insufficient in law and in equity as a basis for this Honorable Court's awarding unto the complainant any relief.
4. That the complainant should not be awarded any relief, for she is herself in contempt of this Honorable Court.
5. That the complainant should not be awarded any relief for she has failed to comply with the decrees entered herein by this Honorable Court.
6. That the complainant has failed and refused to permit the defendant to enjoy his right and privilege of visitation of the infant child now in custody of the complainant, as decreed by this Court.
7. That the defendant has mistakenly and inadvertently made overpayments to the complainant to the extent of One Thousand Fifty ($1,050.00) Dollars, and the defendant is entitled to a set-off or credit for this sum.

page 36 } WHEREFORE, the defendant prays that the complainant's petition be dismissed and the relief as therein sought be denied, and that the defendant have such other and further relief as the nature of his case may require or to equity may seem meet.

WALTER JUDSON NEWTON
By HENRY M. SCHWAN
Of Counsel.

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* * * * *

DECREE.

This cause came on this day to be heard upon the petition of complainant heretofore filed on October 28th, 1959, and was argued before the Court;

2. The Court erred in finding that the defendant is in arrears in child support payments in the total sum of $525.00.

3. The Court erred in decreeing that the defendant pay to complainant the total sum of child support payment arrearages in the amount of $525.00.

4. The Court erred in decreeing that the defendant's claim for set-off be denied, and in failing to allow the defendant a set-off or credit for the excess payments made by him to the complainant in the total amount of $1,050.00.

5. The Court erred in ordering the defendant to pay all costs of these proceedings and an attorney's fee in the sum of $250.00.

6. The Court erred in entering the decree of November 6, 1959.

WALTER JUDSON NEWTON
By HENRY M. SCHWAN
Of Counsel.

Filed 12-30-59.

HELEN M. ROMULUS, D. C.

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SUPPLEMENTAL AND ADDITIONAL ASSIGNMENT OF ERROR.

Pursuant to the Rules of the Supreme Court of Appeals of Virginia, defendant hereby designates as an Additional and Supplemental Assignment of Error, the following:

7. The Court erred in decreeing that the defendant shall make payments in full compliance with said decree of December 27, 1956, as construed in the said decree entered on November 6, 1959.

WALTER JUDSON NEWTON
By HENRY M. SCHWAN
Of Counsel.

Filed 12-31-59.

HELEN M. ROMULUS, D. C.

parties are ORDERED to comply with the same, to which action of the Court complainant by counsel duly excepts;

And it further appearing to the Court that certain sums in excess of the amounts ordered by the Court were page 39 } paid in the past by defendant and the defendant seeks to set off these excess payments against the arrearages *hertofore* mentioned, it is further ORDERED and DECREED that defendant's claim for such set off be, and the same is hereby, denied, to which action of the Court defendant by counsel duly excepts;

And complainant having moved the Court for an award of attorney's fee and costs incurred by her in the prosecution of this cause, necessitated by defendant's default in payments as aforesaid, the Court doth further ORDER and DIRECT defendant to pay all costs of these proceedings and an attorney's fee in the sum of $250.00.

The defendant, having indicated his intention of applying to the Supreme Court of Appeals of Virginia for an appeal from this decree, the execution thereof, in so far as the repayment of the arrearages on the sum of $525.00 and attorney's fee of $250.00 are concerned, is suspended for a period of 60 days, upon the defendant, or someone for him, posting a bond in the penalty of $800.00, with security to be approved by the Clerk of this Court.

Enter this Decree: Nov. 6, 1959.

T. M. J., Judge.

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ASSIGNMENTS OF ERROR.

Pursuant to the Rules of the Supreme Court of Appeals of Virginia, defendant hereby designates as his Assignments of Error, the following:

1. The Court erred in finding that the entire sum of $225.00 was intended by the parties to constitute money paid for the support of the child as contemplated by the decree entered by the said Court on the 27th day of December, 1956, and that the same does constitute child support money as contemplated in said decree.

made regular semi-monthly remittances to her in the amount of $175.00 each pursuant to the said written agreement until her release of this infant son to the defendant; following such release, the defendant made regular semi-monthly remittances to her in the amount of $137.50 each, until the Spring of 1959. The complainant admitted that for some months she was aware that the defendant, during the period of his semi-monthly remittances of $137.50, was thereby forwarding $50.00 more per month than he was required to pay pursuant to the written agreement. The complainant admitted further that she never discussed with the defendant or informed him of these overages which he was paying, but she testified that she assumed such additional monies were being paid by the defendant voluntarily, and she used them for the purposes set out in said written agreement. The complainant testified that, in the Spring of 1959, the defendant's semi-monthly remittances were reduced to the sum of $112.50 each, which was in conformity with her expectation under the provisions of the written agreement. The complainant testified that beginning with and since the semi-monthly installment due on or about the 25th day of July, 1959, the defendant forwarded to her only $37.50 semi-monthly or $75.00 per month for the support of the infant daughter of the parties in her custody; that the defendant was therefore in arrears to the extent of $525.00 for child support money pursuant to her view of the written agreement and the final divorce decree (entered in this cause on the 27th day of December, 1956). The complainant admitted that she had understood all of the terms of the agreement, including that the written agreement provided that if she had remarried or were to remary, the defendant's sole financial responsibility thereunder for support money for the said infant daughter would be only $75.00 per month; and that if the custody of both children were transferred to the defendant, all payments under said written agreement would terminate. Further responding, the complainant testified that she paid income tax on all money received from the defendant in excess of $75.00 per month for her infant daughter. The complainant denied withholding from the defendant his visitation rights with the infant daughter of the parties, saying that the defendant had promised not to interfere in any manner with this child's life. The complainant admitted that, during the Spring of 1959, she had been called upon at her place of employment without prior notice by the defendant's present wife and at that time refused permission

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Margaret Lillian Watts Newton.

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STATEMENT OF TESTIMONY.

This is to certify that on the 2nd day of November, 1959, the following testimony was heard *ore tenus* in the above captioned cause in connection with a petition filed herein by the complainant on the 28th day of October, 1959:

1. MARGARET LILLIAN WATTS NEWTON, the complainant, testified that since the separation of the parties, she had lived in and was then residing in the State of North Carolina; that she had not remarried; and that she was employed. She further testified that she and the defendant executed a written agreement (which was filed in this cause and marked "Defendant's Exhibit 1"), and that it was the mutual intention of both of the parties in executing this agreement that all provisions therein relating to monetary payments by the defendant to the complainant were to be for the support and maintenance of the two infant children of the parties. The complainant denied that any portion of these stipulated monthly payments was intended by the parties as separate maintenance and support money for herself insisting that the portion of said payments above $75.00 per month per child was intended by the parties to be used by the complainant to maintain a home for the said children who were in her custody. The complainant stated that only the six-year old infant daughter of the parties resided with her; that approximately two years ago when she was experiencing extreme financial hardship, she voluntarily turned over the infant son of the parties, aged fourteen
page 47 } years, to the custody of the defendant, and this son has resided with the defendant since. The complainant testified that, at the time of her releasing this child to the defendant, the parties orally agreed that neither would interfere with the other, it being particularly stipulated then in this oral agreement that the defendant would waive all visitation of and with the infant daughter in the care of the complainant, the complainant, in turn waiving all visitation of and with the infant son in the care of the defendant. The complainant explained that the defendant had

for the child to be taken then to Norfolk, Virginia, to visit the defendant who, as it was explained to her, had been stricken with illness, stating that she preferred that this child not be turned over to a stranger and that under advice of counsel she did not think the suggested trip was in the best interest of the child. The complainant denied telling the defendant's present wife on that occasion that she (complainant) was teaching the infant daughter that it had no father.

The complainant also admitted that on or about
page 49 } July 20, 1959, the defendant requested for the first
time to have this infant daughter visit him in Norfolk, Virginia, for thirty days during the Summer of 1959; that she advised the defendant that she would not agree to such a visit unless required to do so by the Court, and that the defendant should take the matter up with her attorney. The complainant admitted on cross examination that the Summer of 1959 was the first summer that defendant would be entitled to 30-day visitation under the terms of the written agreement. She testified that the request surprised her because of their prior oral agreement to the contrary and because it was made so late in the summer as to interfere with the child's plans for school.

PREAMBLE TO PARAGRAPH NO. 2: On the 23rd day of September, 1959, counsel for both of the parties and the defendant appeared before the Court in Chambers in connection with a Rule which had been issued by the Court against the defendant, and at that time the complainant's counsel asked the defendant if he (defendant) cared to modify, add to, alter, or take exception to this statement, which complainant's counsel then and there put to the defendant substantially as follows, to-wit: "That you (defendant) agreed that at the time of formulating the written agreement, you (defendant) intended that complainant should have custody of the children and a total of $350.00 per month to enable her to provide for them; that you (defendant) adopted this figure as the sum adequate to provide security for your children while in the custody of their mother and intended that it should be put to that general purpose and that your wife was to receive no sum which she was to be free to use independently of at least indirect benefit to the children; that this sum was broken into increments at the time of the execu-
tion of the written agreement solely for the pur-
page 50 } pose of providing for possible future changes of
custody and not for the purpose of limiting the

portion thereof which was intended to inure to the benefit of the children.'' The defendant made no comment.

WALTER JUDSON NEWTON,

the defendant, testified that he had remarried and was a resident of the City of Norfolk, Virginia. He further testified that when he and the complainant executed the aforesaid written agreement, it was the mutual intention of both of the parties that he should pay the sum of $75.00 per month per child to the complainant as child support money, and that all sums in addition thereto mentioned in this agreement were intended as support money for the complainant to use for the purpose of maintaining a private household for herself and the children and that this agreement as prepared and executed expressed such intent. Testifying further, he stated that his intention at that time was to afford the complainant, as custodian of his children, a measure of financial security by agreeing to make monthly monetary payments to her for her sole and individual support and maintenance; that it was his belief at that time that should the complainant suffer or go wanting, the infant children living with her under her care might be detrimentally affected; that he intended to forestall such eventuality. He also testified that approximately two years ago the complainant gave up the care and control of the infant son of the parties, transferring the custody of this son to him at that time; that when this occurred, he and the complainant neither entered into any oral agreement nor had any understanding modifying, abridging or altering his visitation rights with said infant daughter remaining with the complainant. He denied entering into any agreement by which the parties consented not to interfere with one another or with the child in the care and under the control of the other. He testified that after this transfer of custody of the infant son to him, he made semi-monthly remittances to the complainant of $137.50 each until the Spring of 1959 when he consulted different legal counsel and ascertained that, pursuant to the said written agreement, such payments had been $50.00 per month more than stipulated therein. He testified that he never possessed a copy of the said written agreement; that such $50.00 monthly overpayments to the complainant were made by him mistakenly on an erroneous recollection of this written agreement; that the complainant never told or indicated to him that he was remitting more than had been agreed upon; that he did not intend such overpayments as a gift; that he would

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formed the complainant of her request and the reason therefor, but the complainant refused the witness's request and stated that she (complainant) was teaching the infant daughter of the parties that she (the infant daughter) had no father.

page 53 } It was stipulated by respective counsel that the aforesaid overpayments made by the defendant to the complainant as of the Spring of 1959 were in the total amount of $1,050.00, and that his underpayments from July, 1959, to the date of the hearing amounted to $525.00.

THOS. M. JOHNSTON, Judge.

I certify that counsel for the defendant tendered to me a Statement of Testimony on the 4th day of January, 1960, and that the same was revised in the foregoing form, counsel for both parties being present, and that this revised Statement of Testimony was signed by me on the 14th day of January, 1960.

THOS. M. JOHNSTON, Judge.

I certify that the foregoing Statement of Testimony was delivered to me on the 14th day of January, 1960.

W. R. HANCKEL, Clerk.

* * * * *

"DEFENDANT'S EXHIBIT 1."

THIS AGREEMENT, Made this 26th day of June, 1956, by and between Walter Judson Newton, of the first part, and Margaret Lillian Watts Newton, of the second part:

WHEREAS, the parties hereto are husband and wife, and are the parents of two infant children, John Wallace Newton, aged ten, and Kathleen Mary Newton, aged two, but said parties also have pending between them a divorce suit in which each of the parties has charged the other with a breach of their marital duties and prayed for a divorce a *vinculo matrimonii;* and

WHEREAS, the party of the second part, who is the complainant in such suit, has been awarded temporary custody of

not have remitted such additional monthly sums had he known the written agreement provided to the contrary. He testified that the total amount of all such $50.00 monthly overpayments was $1,050.00. Ascertaining his error, he testified he thereafter remitted to the complainant the sum of $112.50 semi-monthly or $225.00 per month. He testified that in the Spring of 1958 he was stricken with illness and sent his present wife to North Carolina to arrange with the complainant for her (the present spouse of the defendant) to bring the infant daughter of the parties to Norfolk, Virginia, to visit him; that said daughter never came for this visit. He further testified that about July 20, 1959, he telephoned the complainant in North Carolina, requesting that she allow the infant daughter of the parties to visit him during that Summer for thirty days, but the complainant categorically refused his request, told him she would never allow him visitation unless made to do so by the Court, and suggested that he take the matter up with her attorney. He testified that page 52 } on receiving such information from the complainant, he did not communicate with her attorney, but felt she had not fulfilled her obligation under the written agreement and consulted his own attorney; he thereafter began to remit to her only $37.50 semi-monthly or $75.00 per month which he understood was the agreed upon sum for the support and maintenance of the infant daughter in the custody of the complainant; that the first such payment was forwarded on or about July 25, 1959. He testified that he was displeased that the complainant was and had been employed, stating that he had agreed to pay sums to the complainant monthly for her individual support and maintenance so that she might remain at home with and personally supervise whichever children of the parties were in her custody.

HAZEL NEWTON,

wife of the defendant, called as a witness for the defendant, testified that in the Spring of 1958 she traveled to North Carolina to make arrangements with the complainant for her (the witness) to transport the infant daughter of the parties to Norfolk, Virginia, to visit with the defendant who was then stricken with illness. She further testified that while driving to North Carolina, she had attempted unsuccessfully to reach the complainant by telephone to afford her notice of this intended mission. She testified that she was first able to talk to the complainant at her (complainant's) place of employment in North Carolina; at this time, the witness fully in-

have the daughter of the parties so visit him for such period, after she shall attain the age of five years; and, similarly, in the event of a future change in custody, the party of the second part shall thereafter have the same rights of visitation with and by said children as presently afforded the party of the first part; but in neither case are such visits to be construed as changes in custody.

FOURTH: Said parties further agree that the party of the first part will pay unto the party of the second part the sum of $75.00 each per month for the individual support and maintenance of each of said children while said children are in the custody of the party of the second part, as herein above provided; and the party of the first part further agrees to pay to the party of the second part the additional sum of $200.00 per month for her separate maintenance and support on condition that she will use such sum for the further purpose of maintaining a private household for herself and said children, such latter payments to continue until either (a) the remarriage of the party of the second part, (b) the death of either of the parties, hereto or (c) the termination of custody of both children in said party of the second part in accordance with the terms hereof. In the event of termination of such custody of one child, the other remaining in the custody of the party of the second part, said additional sum payable to the party of the second part shall be reduced to $150.00 per month. It is further specified that all such payments shall be made by the party of the first part to the party of the second part in equal semi-monthly installments on or before the 10th and 25th days of each month ensuing the date hereof.

FIFTH: It being the understanding of both parties that the aforementioned additional payments to the party of the second part for her separate maintenance and support will constitute income taxable against said party of the second part, it is further agreed that said party of the second part will compute all taxes on the payments thus received as though the same were income taxable against her, and will pay the sum thus arrived at to the proper tax collection authority, but in the event that by future ruling of the proper taxing authorities income tax on the sums thus paid be deemed the debt of the party of the first part, and not the debt of the party of the second part, then said party of the second part will pay said sum to said party of the first part.

said infant children and has removed herself and said children to Greensboro, North Carolina, and

WHEREAS, said party of the second part desires to continue living in the City of Greensboro, North Carolina, and the parties desire to effect a settlement between them of their property rights and to provide for the future care and custody of their said infant children;

NOW, THEREFORE, in consideration of their mutual promises herein contained, the parties agree as follows:

FIRST: The parties agree that all proper court costs, and such attorney's fees as may be allowed by the Court to counsel of record for the party of the second part, shall be paid by the party of the first part as soon as practicable.

SECOND: The parties further agree that the party of the first part will assume and discharge all existing joint notes and debts due by the parties hereto to others at the time of their separation, and the party of the second part agrees that she will execute and deliver to the party of the first part a proper deed conveying to him all of her interest, including her contingent dower rights, in the house and lot owned by the parties on Sewells Point Road, Norfolk, Virginia.

THIRD: The parties further agree that subject to the approval of the Court the custody of their infant children shall continue in the party of the second part throughout their minority unless sooner terminated in accordance with the terms hereof; Provided, however, that each child upon reaching the age of fourteen years shall have the absolute right at any time to decide with which of its parents it desires to reside permanently, and the parties hereto agree with the approval of the Court to abide by such decision when expressed. However, after having expressed its original decision, or any subsequent decision requiring a change in custody, that child shall, for a period of 60 days thereafter remain in the custody of the parent in whose custody he or she was at the time of such decision and all obligations and conditions of this agreement shall remain unchanged during such period. It is further specified that the party of the first part shall have the right to visit said children at all reasonable times, and that, effective forthwith, the party of the first part shall have the further right to have his son visit him for a period of one month during the summertime of this and each year hereafter and shall also have the right to

And the parties hereto do further agree that this property settlement agreement, etc., shall be incorporated in the terms of any decree which may be entered by the Court in the present divorce suit now pending between them.

Witness the following signatures and seals this the 26 day of June, 1956.

WALTER J. NEWTON (Seal)
MARGARET LILLIAN WATTS NEWTON (Seal)

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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