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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6903

In the
Supreme Court of Appeals of Virginia
at Richmond

JOHN CARROLL ADDISON

v.

AUDREY SPENCE ADDISON

FROM THE CIRCUIT COURT OF HENRICO COUNTY

RULE 5:12—BRIEFS

§5. Numuer of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6903

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 29th day of February, 1968.

JOHN CARROLL ADDISON, Appellant,

against

AUDREY SPENCE ADDISON, Appellee.

From the Circuit Court of Henrico County
Edmund W. Hening, Jr., Judge

Upon the petition of John Carroll Addison an appeal is awarded him from a decree entered by the Circuit Court of Henrico County on the 9th day of October, 1967, in a certain chancery cause then therein depending, wherein Audrey Spence Addison 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 $300, with condition as the law directs.

RECORD

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page 1 }

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BILL OF COMPLAINT

TO THE HONORABLE JUDGES OF SAID COURT:

Your plaintiff, Audrey Spence Addison, respectfully shows the following case:

1. She and the defendant are above the age of 21 years, members of the White race and were lawfully married on August 19, 1949, in the City of Walterboro, State of South Carolina, County of Colleton.

2. Plaintiff has been domiciled in and an actual *bona fide* resident of the Commonwealth of Virginia for more than one year next preceding the commencement of this suit.

3. The parties last cohabited as husband and wife in a residence at Route 3, Box 65-A, Walterboro, South Carolina, at which abode the defendant continues to reside. Plaintiff is now residing at 1200-A Willow Lawn Drive, within the County of Henrico, Virginia, and the jurisdiction of this court.

4. Two children were born of this marriage, namely, James Rhode Addison, on July 12, 1963, and Carol Patricia Addison, on December 1, 1956.

5. Plaintiff has been a faithful and dutiful wife unto the defendant, her husband, but his continuing cruelty and her reasonable apprehension of bodily harm by him forced plaintiff to leave the matrimonial domicile with her said two children on or about August 7, 1964, and move to Henrico County, Virginia, into the residence of her sister, Mrs. Darrell Napier, Defendant, therefore, is guilty of deserting the plaintiff, which desertion has continued without interruption.

page 2 } Defendant's continuing cruelty and plaintiff's reasonable fear of bodily harm by him consisted of the following:

(a) During the year of 1960, defendant, who had been a heavy drinker of alcoholic intoxicants, began to drink to excess, not on weekends but every day after work. He seldom if ever came home in time to have dinner with his family. He was given to episodes of blacking out and physically passing out from over indulgence of liquor. He would purchase liquor in half pint bottles and have caches of them at various places

in and about the home. He refused to take treatment for his inebriation and refused to recognize that it was a problem interferring with his conjugal and fatherly duties and relationships.

(b) Defendent used abusive and vile language to the plaintiff and such opprobrium was uttered without regard to the presence of the children.

(c) Defendant had no desire and was apparently rendered incapable of having natural sexual relationship with plaintiff. On occasions he manifested a desire and attempted to engage in an unnatural sexual relationship with plaintiff, which was repulsive to her and refused by her. Defendant's relationship with his young daughter was also unnatural for she on occasions repulsed his fondling of her about the breast and pelvic areas.

(d) Defendant has made threats on plaintiff's life and on the last occasion, in July 1964, when plaintiff came home from the hospital and was in bed, he threatened to kill her and the children, went to the cupboard, took out the pistol, but was so drunk that he fell to the floor and passed out before pulling the tirgger.

(e) Defendant's conduct has affected the health of the two children and plaintiff to such an extent that all three sought medical attention and care when they arrived in Richmond, Virginia, in August 1964.

(f) Defendant is guilty of not supporting plaintiff and the two children for he has contributed only $40.00 to the support of the three of them since August 7, 1964.

6. WHEREFORE, your plaintiff prays that she be awarded a divorce from the bond of matrimony from the defendant on the ground of wilful desertion; that she be page 3 } awarded permanent custody of the two infant children; that defendant be required to pay to the plaintiff reasonable alimony for herself and support money for the children and to pay to her, through Harry P. Anderson, Jr., her counsel of record, reasonable fee for services hereabout and the cost of this proceeding.

AUDREY SPENCE ADDISON

By HARRY P. ANDERSON, JR.
SATTERFIELD, HAW,
ANDERSON, PARKERSON
& BEAZLEY
500 Travelers Building
Counsel for Plaintiff

Filed in the Clerk's Office the 28th day of Dec., 1965.

Teste:

HELEN C. LOVING, Clerk

....., D.C.

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page 5 }

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NOTICE OF MOTION TO DISMISS

TO: Harry P. Anderson, Jr.
500 Travelers Building
Richmond, Virginia
Counsel for Plaintiff

PLEASE TAKE NOTICE that I shall, by special appearance, on the 7th day of February, 1966 at 9:00 o'clock in the forenoon of that day move the above Court in the courtroom at 22nd and Main Streets, Richmond, Virginia, to dismiss this cause on the grounds that a final divorce decree has been entered by a Court of competent jurisdiction in the State of South Carolina, and that such decree is entitled to full faith and credit in this Court.

JOHN CARROLL ADDISON

By ROBERT P. JOYNER
SUTTON AND TOOMBS
1133 Mutual Building
Richmond, Virginia 23219

Dated: January 13, 1966

Legal and timely service of the above Notice is hereby accepted this 14th day of January, 1966.

HARRY P. ANDERSON, JR.

Filed January 20, 1966

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page 6 }

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PLEA IN ABATEMENT

Comes now the defendant and files his Plea in which he alleges:

(1) That the parties hereto are legally divorced by a prior decree of divorce entered in the Court of Common Pleas of Colleton County, South Carolina on or about the 20th day of January, 1966, which suit was instituted by the defendant herein, and that the parties have never remarried since that decree;

(2) That the plaintiff herein personally submitted to the jurisdiction of said Court and also appeared by counsel;

(3) That the defendant herein was granted custody of the two infant children of the parties by the aforementioned divorce decree.

WHEREFORE, your defendant says that the aforementioned decree is *Res Judicata* and is entitled to full faith and credit by this Court, and he further prays that this cause be dismissed and an appropriate order be entered affirming his right to custody of the children and such other appropriate relief as this Court deems proper.

JOHN CARROLL ADDISON

By ROBERT P. JOYNER
Counsel

Received & filed in Office Apr. 20, 1966.

Teste HELEN C. LOVING, Clerk

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page 8 }

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ANSWER AND CROSS-BILL

Comes now the defendant and for answer to the Bill of Complaint filed against him herein, answers and says:

(1) That the prior decree of divorce and custody of chil-

dren entered in the Court of Common Pleas in the County of Colleton, State of South Carolina, on or about the 20th day of January, 1966 is valid and enforceable in this Court, and is entitled to full faith and credit and is *Res Judicata;*

(2) That your defendant admits the allegation of Paragraph One;

(3) That your defendant denies the allegation of Paragraph Two;

(4) That he admits the allegations of Paragraphs Three and Four of the plaintiff's Bill of Complaint.

(5) That he denies the allegations in Paragraph Five.

By way of petition for affirmative relief, the defendant alleges that the plaintiff left their home in Walterboro, South Carolina on or about the 7th day of August, page 9 } 1964, taking with her the two infant children of the parties, and that the plaintiff's actions in leaving the home provided by defendant were without just cause or provocation on the part of defendant; that the plaintiff herein has been and continues to maintain the infant children of the parties in an unwholesome and immoral atmosphere and that she is not a fit person to have custody of the two infant children; and that the defendant owns his own home, earns a sufficient income, and has always conducted himself as a loving and devoted father to his two children, and that he is ready, able and willing to provide them with a proper home.

The defendant prays that the plaintiff's Bill be dismissed and that an order be entered affirming his right to the custody of James Rhode Addison and Patricia Carol Addison.

JOHN CARROLL ADDISON

By ROBERT P. JOYNER
Counsel

Received & filed in Office April 20, 1966.

Teste HELEN C. LOVING, Clerk

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page 10 }

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REPLICATION TO PLEA IN ABATEMENT

The plaintiff, Audrey Spence Addison, in reply to the plea

in abatement, filed by the defendant, respectfully shows the following:

1. She denies that the parties were legally divorced in the State of South Carolina on or about January 20, 1966, as alleged in paragraph 1 of the plea, for the reason that no service of process was had upon her personally, upon her duly authorized attorney in South Carolina, upon the appearance of either in court, or by registered mail and notice published in a newspaper of general circulation in Colleton County, South Carolina, for a period of three weeks as per court order, all of which is required by the law of South Carolina.

In the alternative, plaintiff denies that said divorce decree supposedly and legally entered by a court of competent jurisdiction in South Carolina on or about January 20, 1966, bars her from prosecuting her divorce action against the defendant in the State of Virginia, which action was commenced on or about December 22, 1965, prior to the alleged entry of the said South Carolina decree.

2. Plaintiff denies that she was personally served with process in the suit for a divorce from the bonds of matrimony allegedly instituted by defendant in the State of South Carolina or that she personally submitted to jurisdiction of the court in said suit. She further denies that any attorney authorized to represent her was served with process in said suit or that she or said attorney personally appeared in such cause.

She admits that in a suit for a legal separation instituted by her husband, the defendant, on or about April 27, 1965, that she accepted service of the summons and complaint on or about May 7, 1965, and did appear before the court in this cause in the State of South Carolina for a hearing regarding the custody of the two infant children of the parties and their support.

page 11 } However, in order to validly amend said action for a divorce from bed and board or legal separation into a divorce from the bonds of matrimony, or to institute a separate suit for a divorce from the bonds of matrimony, it is necessary under South Carolina law for the defendant to this cause to obtain personal service upon the plaintiff, have her appear before the court personally in said action, have her authorized counsel in South Carolina accept service, have said counsel appear in the cause as such, or obtain it by publication according to law, none of which defendant was able to accomplish.

3. Plaintiff denies that any valid custody award was made to the defendant of their two infant children and further

says that the Juvenile and Domestic Relations Court of the County of Henrico entered an order, which is now on appeal, awarding custody of the two infant children to plaintiff and money for their support which is *res judicata* of these issues until this court enters a decree adjudicating custody of the children and their support.

4. WHEREFORE your plaintiff prays that the plea in abatement of defendant be denied and that she be awarded her reasonable costs expended in this cause.

Received & filed in Office April 28, 1966.

Teste HELEN C. LOVING, Clerk

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page 12 }

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ANSWER TO CROSS-BILL

The plaintiff for answer to the cross-bill filed by the defendant respectfully shows the following case:

1. She denies the allegation that she left the matrimonial domicile in Walterboro, South Carolina, on or about August 7, 1964, without "just cause or provocation on the part of defendant" but, to the contrary, alleges that she was forced to leave by the actions of the defendant as stated in paragraph 5 of the bill of complaint and was forced to remove the children from said matrimonial domicile for their protection, interest and welare.

2. She denies the charge that the said two infant children are being raised in "an unwholesome and immoral atmosphere and that she is not a fit person" to have their custody and alleges that these issues were raised by the defendant in the Juvenile and Domestic Relations Court of the County of Henrico, resulting in said court awarding custody of the children to the plaintiff and, after investigation of the charges by a case worker of the Henrico Welfare Department, denying the motion of the defendant to change such order of custody.

3. Plaintiff admits that defendant owns his residence in South Carolina, has a substantial income, and is able to provide support for the two children. Accordingly, the Juvenile and Domestic Relations Court of the County of Henrico awarded to the plaintiff the sum of $30.00 per week for the support of the said two children of the parties, which order

for support, as well as the order for custody of the children, above stated, is *res judicata* until this court enters a decree adjudicating the custody of the children and their support.

page 13 } 4. Plaintiff denies that defendant has conducted himself as a loving and devoted father and alleges that he has conducted himself quite to the contrary as set forth in paargraph 5 of her bill of complaint.

5. WHEREFORE plaintiff prays that defendant's cross-bill be dismissed and that she be awarded her reasonable costs in this behalf expended.

AUDREY SPENCE ADDISON

By HARRY P. ANDERSON, JR.
SATTERFIELD, HAW,
ANDERSON, PARKERSON
& BEAZLEY
500 Travelers Building
Counsel for Plaintiff

Received & filed in Office April 28, 1966.

Teste HELEN C. LOVING, Clerk

page 14 }

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STIPULATION

The parties by counsel make the following stipulation:

1. Plaintiff waives her right to all issues alleged in her bill of complaint filed herein on December 22, 1965, except the allegations contained in said bill relating to custody of the two infant children of the said parties, namely, James Rhode Addison, thirteen years of age, and Carol Patricia Addison, ten years of age. Said bill shall be treated as a suit for custody of the said children of the parties and support for them.

2. Plaintiff waives her right to contest the legality and validity of the decree of divorce from the bond of matrimony entered by the Court of Common Pleas of the County of Collerton, State of South Carolina, on January 20, 1966, with the qualification that the portions of said decree relating to custody of the infant children of the parties and their support is not *res judicata* and shall be fully inquired into and judi-

cially determined by the Circuit Court of the County of Henrico in the above styled cause now pending.

3. Motion of the defendant to dismiss this cause from the docket, notice of which is herein filed, shall be overruled insofar as it pertains to the question of divorce but it shall be treated as a motion to dismiss the suit for custody on the ground of *res judicata* and full faith and credit.

page 15 } 4. Plea in abatement filed by the defendant shall be overruled insofar as it pertains to the divorce decree, and said plea in abatement shall be treated as if it pertained only to the question of custody.

5. This cause shall be consolidated for the purpose of trial and hearing with the appeal styled Audrey Spence Addison v. John Carroll Addison in the Juvenile and Domestic Relations Court of the County of Henrico perfected by the defendant excepting to orders entered by said court on February 7, 1966 and March 31, 1966, awarding custody of the said two infant children to the plaintiff and requiring the defendant to pay to the plaintiff the sum of $30.00 per week for their support and maintenance.

AUDREY SPENCE ADDISON

BY HARRY P. ANDERSON, JR.
Counsel for plaintiff
JOHN CARROLL ADDISON

BY ROBERT E. SHEPHERD, JR.
ROBERT P. JOYNER

Filed the 31st day of March, 1967.

E. W. HENING, JR., Judge

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page 18 }

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FINAL DECREE OF CUSTODY AND SUPPORT

This cause, which has been regularly matured, docketed and set for hearing, came on this day to be heard upon the bill of complaint; upon proof of proper and legal service of process upon the defendant; upon plea in abatement filed by defendant; upon motion to dismiss filed by defendant; upon

answer and cross-bill filed by defendant; upon answer to cross-bill filed by plaintiff; upon replication to plea in abatement filed by plaintiff; upon stipulation filed by both parties; upon depositions of witnesses on behalf of the plaintiff, regularly taken after proper and legal notice to the defendant and filed in accordance with law; upon evidence heard *ore tenus* by the court on June 21, 1967, at which, both parties and witnesses on behalf of the plaintiff, Mrs. Virginia Agnes White, Mrs. Patricia Napier, Mr. Darryl Napier, testified and the two children James Rhode Addison and Carol Patricia Addison were interrogated by the court out of the presence of the parties and counsel, pursuant to agreement; and was argued by counsel.

Upon consideration whereof, the court pursuant to said stipulation in treating this cause as a suit for custody of the two infant children of the parties, namely, James Rhode Addison and Carol Patricia Addison and support for them, doth overrule and deny the plea in abatement and motion to dismiss and doth ADJUDGE, ORDER and DECREE that

page 19 } custody of the said infant children, be and is hereby awarded to the plaintiff, Audrey Spence Addison and ORDERS the defendant to pay unto the plaintiff the sum of $30.00 per week for the support of said children on Friday of each week, commencing with Friday, June 23, 1967.

The court doth further find that defendant is in arrears in the support payments required of him by the Juvenile and Domestic Relations Court of Henrico County in its order requiring support of $30.00 per week commencing with May 1, 1966, which order and case was appealed by defendant to this court and such appeal numbered M 814 was consolidated for the purpose of taking evidence with this cause, in the sum of $1,210.00.

It is ADJUDGED and ORDERED that plaintiff, Audrey Spence Addison, recover and have judgment against defendant, John Carroll Addison, in the sum of $1,210.00, with interest thereon from this date at the rate of 6% per annum, and that until such judgment is paid in full and the support payments ordered herein are current, defendant shall not have any visitation rights with his said two children.

When said judgment is paid in full and defendant is current in the support payments ordered herein, he may visit his said children on a Saturday or a Sunday, but not both, of one weekend during each month commencing with the month of July, for a period of three hours in the home of Mr. and Mrs. Darryl Napier, 5303 West Grace Street, Richmond, Virginia, on the third weekend of each month, provided such

weekend does not fall on a national holiday, religious day or birthday of the children and provided further that it does not interfere with their religious training, activities or education. Defendant shall notify the plaintiff of which day on the third weekend of each month, that is, a Saturday or a Sunday, that he desires to visit the children and the hour he desires to commence his visitation and plaintiff shall see to it that the children are present in the home of the Napiers on said date and time for the visitation.

page 20 } It is further ORDERED that defendant shall pay to plaintiff's counsel of record, Harry P. Anderson, Jr., the sum of $350.00 for his fee and the sum of $50.50 for court costs, for services he rendered to the plaintiff hereabout and expenses advanced by him for the due prosecution of this suit.

And this cause is now ordered removed from the pending chancery docket, with the right of either party to reinstate for cause and upon notice.

The defendant, by counsel, excepts to all of the terms of this decree.

The clerk shall file a certified copy of this decree in the appeal case styled *Addison* v. *Addison,* # M 814 and such shall be a final adjudication in that case also.

I ASK FOR THIS:
HARRY P. ANDERSON, JR., p.q.

SEEN AND OBJECTED TO:
ROBERT E. SHEPHERD, JR., p.d.
ROBERT P. JOYNER, p.d.

ENTER: 10/9/67.

EDMUND W. HENING, JR., Judge

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page 21 }

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO: Mrs. Helen Clevenger Loving, Clerk of the Circuit Court of the County of Henrico, P. O. Box 3-V, Richmond, Virginia 23207

NOTICE is hereby given that John Carroll Addison appeals from a final judgment rendered by this Court on the

9th day of October, 1967, and announces his intention of applying for a Writ of Error and *Supersedeas* to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERROR

The Trial Court erred in overruling Defendant's Plea in Abatement asserting that a decree of divorce and custody entered by the Court of Common Pleas of Colleton County, South Carolina on the 20th day of January, 1966, was *Res Judicata.*

The Trial Court erred in overruling Defendant's Motion to Dismiss on the ground that the prior South Carolina decree was entitled to Full Faith and Credit.

The Trial Court erred in admitting into evidence, over the objection of the Defendant, testimony relating to the actions of the parties prior to the 20th day of January, 1966, the date of the South Carolina decree.

The Trial Court erred in awarding custody of the two infant children of the parties to the Plaintiff since there was no change in the circumstances of the parties subsequent to the decree of the South Carolina Court.

page 22 } Given under my hand this 4th day of December, 1967.

JOHN CARROLL ADDISON

BY ROBERT E. SHEPHERD, JR.
Of Counsel for Defendant

Received & filed in Office December 5, 1967.

Teste M. B. BAKER, Dy. Clerk

* * * * *

STATEMENT OF EVIDENCE HEARD ON JUNE 21, 1967, BY HONORABLE EDMUND W. HENING, JR., JUDGE

APPEARANCES
Harry P. Anderson, Jr.,
Attorney for the Plaintiff

Robert E. Shepherd, Jr.
Robert P. Joyner,
Attorneys for the Defendant

Mr. Anderson in his opening statement pointed out that

there were two cases before the Court, an appeal from the Juvenile and Domestic Relations Court, which granted custody of the two children of the parties, James Rhode Addison and Carol Patricia Addison, to the plaintiff and order the defendant to pay $30.00 a week in child support, and the second a divorce case filed by the plaintiff asking for custody of the two infant children. By stipulation the only issues before the court is the custody of the children.

Mr. Shepherd in his opening statement reiterated that the defendant's position was more legal than factual—that the South Carolina decree bars this Court from hearing the custody question and, in the alternative, even if this Court can inquire into the facts it cannot look behind the South Carolina Decree and can only grant custody to the plaintiff based on a change of conditions since that decree was entered on January 21, 1966.

The papers in Appeal Case M814 relating to the South Carolina decrees were admitted into evidence as exhibits for the defendant on the Motion to Dismiss and Plea in Abatement.

The first witness to testify was Agnes White, a Probation Officer of sixteen (16) years experience in the Juvenile and Domestic Relations Court who made an investigation on the order of that Court for a hearing on April 25, 1966. She visited and interviewed the plaintiff and the children during March, 1966. She found that the physical setup was adequate and the children expressed a desire to remain with their Mother. Their clothes were adequate and clean and they had separate bedrooms. She recommended that the children remain in the custody of the Mother with visitation rights to the Father. Her written report was received without objection as Plaintiff's Exhibit 1. On Cross-examination she testified that she made no visit to defendant in South Carolina nor did she talk or correspond with him. Her visits were made after telephoning for an appointment with the plaintiff and there was nothing to give her reason to believe that anyone in the plaintiff's house was a homosexual. She went to the house on several occasions, without appointments and observed that the same conditions of cleanliness prevailed.

Audrey Addison, the plaintiff, testified next that she lived at 5207 W. Grace Street in the County of Henrico, Virginia. She left South Carolina, with her two children on August 7, 1964, and she went back for a court hearing on August 9, 1965, and did not go back for any hearings in December of 1965 or January of 1966. At this point counsel for the defendant objected to the admission of any testimony relative to events or facts that occurred prior to January 21, 1966, but this

objection was overruled and exception was made to the ruling. Mrs. Addison testified that she and the children were extremely nervous and were under a doctor's care when they came to Virginia. Upon arrival, the attending physician for both children was Dr. Stanley Meade of Richmond, Virginia, and the boy Jim was being counselled by Family and Childrens Service. At the time of the hearing, Jim was in excellent condition, has not missed a day from school and is in an accelerated section. Carol, who was a frightened child in 1964, has improved and is now maturing and more independent. Both of the children are now doing well in school, they are happy and less nervous. Her home in Richmond has four bedrooms, a dining room, living room, kitchen and two bathrooms. She, the two children and her mother live there. The defendant drank every night and usually to the point of intoxication or blacked out; he rarely ate with his family and threatened to kill her and the children and used abusive and vile language. He had contributed little to their support since they left and is considerably in arrears under his support order in the Juvenile and Domestic Relations Court which granted one weekend of two days per month visitation to him. He has visited them only twice. In 1964 he acted improperly with the girl and on occasions lay on the bed with Carol and put his hands on her private parts and complained to the boy about his sex life not going well. When she objected he got abusive. On Cross-examination Mrs. Addison testified that she has been married prior to her marriage to defendant. She agreed that both children have always done well in school. In August, 1965, she testified before a Commissioner in South Carolina in a proceeding which she thought was one for legal separation and not one for divorce and brought out his excessive drinking and cursing but did not mention his sexual improprieties with the children. She had never consulted the sheriff about his threats or drinking. Defendant had a good job with the federal government and admitted to being an alcoholic but refused to see a doctor. It was 450-500 miles from South Carolina to Richmond and defendant had only visited the children twice. She instructed the children that it was their duty to visit with their father but she denied violating the original South Carolina Court order except to prevent defendant from taking the children away. In August, 1965, the children visited defendant for one week and he returned them as scheduled to Richmond. She never told children not to talk to their father but she doesn't think defendant has her phone number. The children were upset on their return from South Carolina. In response to a question from

the Court she stated that the defendant works in one county from 8:30 A.M., to 5:00 P.M., but he was sometimes gone from 7:00 A.M., to 2:00 A.M.

Mrs. Darrell Napier testified for the plaintiff and she lives at 5303 W. Grace Street in Richmond. Over the defendant's objection and exception she testified that in July, 1964, she visited the parties in South Carolina with her daughter for two weeks. She stated that the defendant drank heavily, was rude to everyone, took few meals at home and used vile language to the children and once at a birthday party it was terrible. On another occasion, the very day Mrs. Addison had returned from the hospital and while still in bed, the defendant began an argument by insisting that Mrs. Addison make dinner, after which the witness saw the defendant get a pistol and say "I'll show you" (meaning Mrs. Addison, the kids and the witness). This witness had seen the defendant on the couch with the young girl, and when defendant got up, he asked the witness for help. The witness advised him to stop drinking. She testified that at that time both children were very nervous but since their arrival in Richmond they have both improved physically and emotionally. They have a nice home in Richmond. On Cross-examination she testified that she had not visited South Carolina since 1964 and that she is the sister of the plaintiff. The plaintiff is 47 and the defendant is 49.

Mr. Darrell Napier testified that he is Mrs. Addison's brother-in-law and is a golf professional at the Country Club of Virginia. He testified over the objection and exception of the defendant that in August, of 1964, the children were emotionally upset and they had improved tremendously and were now happy and well-adjusted. He had been almost their sole support when the plaintiff and the children arrived in Richmond and he owns the home they live in now and sees them almost every day.

Counsel for the parties agreed that it would be unwise for the children to testify in open court and be subject to cross-examination and they agreed that the court could talk to the children in the absence of counsel and the parties. With the exception of their testimony the plaintiff rested.

The defendant, Carroll Addison, testified that he lived in Walterboro, South Carolina, and works as a soil conservation agent for the U.S. Department of Agriculture. He admitted that he was in arrears on his support payments of about $500.00, as he had not had an opportunity to visit his children since 1966, once in June and again in December. The children told him at that time that the plaintiff forbade them to ride in a taxi with him. The plaintiff would not leave the room

while he visited with them. From August, 1964, to August, 1965, he sent money to the children in the approximate amount of $450.00 as long as they were allowed to write to him. In August, 1965, a hearing was held before a referee in South Carolina and the judge talked to the children in the presence of the attorneys but not the parties. On Cross-examination, he stated that he recognized his son's handwriting and plaintiff's Exhibit 2 was admitted into evidence over the objection and exception of the defendant. He testified that the children told him that the plaintiff would not let them contact him. On one occasion, a Friday, when he had no visitation rights, visitation on that day was permitted by Mrs. Addison on advice of her attorney. He made $7,000.00 per year and owns timberland with no income but $300.00 per year from the soil bank. The land is worth about $50,000 and he owes about $21,000 on it. He feels some of his letters do not reach the children and he has no objection to paying support if he can call and see the children. In response to questions by the Court he stated that he lives alone and owns his own house worth about $15,000. He wants custody of the children, his parents are living and he has one brother and 3 sisters within 50 miles of his home. He could come up to Richmond to visit children every few months. He admitted that he drank beer occasionally but never to extent plaintiff said he did. If he got custody, his brother with children about the age of his own would keep the children. *t*he defendant rested.

In chambers and in the absence of the parties and the attorneys by agreement the Court talked with the children. Jim Addison will be 14 on July 12, 1967, is doing o.k. in school. He likes being in Virginia and there are more children and friends around. Two days before coming to Virginia, his mother asked the children about coming up and they agreed. He is happiest, living here (Virginia). In South Carolina his father drank nearly every night, got drunk on weekends and argued with his mother. The last six months his father drank almost every night and was mean to his mother. There was a terrible home situation and it got worse as he got older so that he could notice it. His mother told him to tell the truth. He doesn't want to go back to South Carolina as everything is better here and he wants to be in the custody of his mother as he loves his mother more. His sister is scared of their father and she doesn't want to go back either. On his last trip to Virginia, his father had been drinking and he was afraid he would take them back. He wants to be an artist. He likes his grandmother who lives with them and his father was mean to her. He likes Mr. and Mrs. Napier and their four children. He wants to be in the custody of his mother and

does not want to visit his father in South Carolina or here except as ordered by Court.

Pat Addison testified that she was 10 and likes reading and stories. She likes living in Richmond better than South Carolina because her father got drunk and she never felt safe. She wondered whether her father would hurt her mother. She likes school and does well. She has friends here at school and in the neighborhood. There are more here than in South Carolina. She wants to be in the custody of her mother and she loves her mother. She likes the Napiers. She does not want to go back to South Carolina to be with her father who makes her nervous and would prefer not to visit with him or see him, but if required to see him, she would prefer to see him here.

The Court overruled the Motion to Dismiss and Plea in Abatement as narrowed by the stipulation filed March 31, 1967. The custody of the children is given to the plaintiff with rights of visitation to defendant at a neutral place in Virginia on Saturdays or Sunday on one weekend per month provided: 1) The arrears owed by defendant is paid in full and 2) the defendant is not drinking on such visits. The defendant is to pay $30.00 per week for child support.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded	1
Record	2
Bill of Complaint	2
Notice of Motion to Dismiss	4
Plea in Abatement	5
Answer and Cross-Bill	5
Replication to Plea in Abatement	6
Answer to Cross-Bill	8
Stipulation	9
Final Decree of Custody and Support	10
Notice of Appeal and Assignments of Error	12
Statement of Evidence Heard on June 21, 1967 by Honorable Edmund W. Hening, Jr., Judge	13