Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

210 VA 668

Record No. 7116

In the Supreme Court of Appeals of Virginia at Richmond

CLAYTON J. HALL

v.

LOIS CAREY HALL

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS

§5. Number 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. 7116

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 6th day of December, 1968.

CLAYTON J. HALL,

Appellant,

against

LOIS CAREY HALL,

Appellee.

From the Circuit Court of Fairfax County
Albert V. Bryan, Jr., Judge.

Upon the petition of Clayton J. Hall an appeal is awarded him from a decree entered by the Circuit Court of Fairfax County on the 20th day of June, 1968, in a certain chancery cause then therein depending, wherein the said petitioner was plaintiff and Lois Carey Hall 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

* * * * *

page 1 }

* * * * *

BILL OF COMPLAINT

To the Honorable Judges of Said Court:

Your complainant, Clayton J. Hall, respectfully represents the following:

1. That he is domiciled in and is and has been an actual *bona fide* resident of the Commonwealth of Virginia for at least one year next preceding the institution of this suit, and he is presently residing in the County of Fairfax at 3608 Franconia Road.

2. That the defendant, Lois Carey Hall, is a non-resident of the Commonwealth of Virginia and that to the best of your complainant's present knowledge and belief, the defendant's last known address was Box 181, Virginia City, Montana.

3. That complainant and the defendant are members of the Caucasian race, both are *sui juris*.

4. That the complainant is and the defendant is not a member of the Armed Forces of the United States.

5. That complainant and the defendant were lawfully married on June 26, 1954, at Goodfellow Air Force Base, San Angelo, Tom Green, Texas, and there were three
page 2 } (3) children born of the said marriage, to-wit: Tara Susan Hall, born June 9, 1955; Rose Mary Hall, born October 24, 1956; and Loleete Anne Hall, born August 31, 1957.

6. That the last matrimonial domicile and place of cohabitation of the parties in the Commonwealth of Virginia was at premises known as 3608 Franconia Road, Alexandria, in the County of Fairfax.

7. That on or about June 19, 1965, the defendant without just cause or excuse, willfully deserted and abandoned your complainant in that she, intending to desert your complainant, departed from the marital domicile, intending never to return; that notwithstanding the fact that your complainant has tried to bring about a reconciliation, the defendant has refused to return and live with your complainant; that

your complainant and the defendant have been living separate and apart since the aforesaid date of desertion; and your complainant believes that a reconciliation is improbable.

IN CONSIDERATION WHEREOF, your complainant prays that a divorce *a mensa et thoro* be granted in favor of the complainant on the ground of desertion as herein above alleged, with leave to enlarge the decree into a divorce *a vinculo matrimonii,* at the expiration of the statutory period; that the custody of the aforesaid three (3) minor children of the parties may be awarded to the com-
page 3 } plainant; and for such other and further relief as the nature of this case may require.

Clayton J. Hall
Complainant

* * * * *

Filed in Circuit Court Clerk's Office Dec 16 1965 Thomas P. Chapman, Jr.

* * * * *

page 4 }

* * * * *

MEMORANDUM

The object of this suit is to obtain a divorce *a mensa et thoro* on the ground of desertion without just cause or excuse and for their award of care and custody of the infant children of the parties hereto. An affidavit has been made and filed that the defendant is not a resident of this state. Her last known address is Box 181, Virginia City, Montana. It is ordered that she appear here within ten days after due publication of this order and do what is necessary to protect her interests herein.

Clayton J. Hall
By Counsel

* * * * *

page 6 } In the Clerk's Office of the Circuit Court of Fairfax County, Virginia, December 20, 1965.

* * * * *

ORDER OF PUBLICATION

The object of this suit is to obtain a divorce *a mensa et thoro* on the ground of desertion without just cause or excuse and for their award of care and custody of the infant children of the parties hereto.

An affidavit having been made and filed showing that the defendant in the above entitled cause is a non-resident of the State of Virginia, and that the name and address of the defendant is as follows; to-wit: Lois Carey Hall, Box 181, Virginia City, Montana.

Upon consideration whereof this Order of Publication is granted, and it is ordered that the above named non-resident defendant do appear here within ten days after the due publication of this Order and do what is necessary to protect her interest in this cause.

* * * * *

Ethan Allen Turshen
Counsel for Complainant
December 24, 1965

page 9 } Certificate of Proof of Publication
in
THE FAIRFAX HERALD
A Weekly Newspaper Published in
Fairfax County, Virginia
Fairfax, Virginia

Jan 21, 1966, 19

I hereby certify that the annexed advertisement re
Clayton J. Hall
v.
Lois Carey Hall
was published in The Fairfax Herald for Four successive weeks, commencing with the issue of December 24, 1965
W. L. Carne
Publisher.

* * * * *

Filed Jan 28 1966 Thomas P. Chapman, Jr., Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 11 }

* * * * *

DECREE OF REFERENCE

THIS CAUSE came on to be heard this day upon the Bill of Complaint, previously filed herein; upon service of process by publication duly executed as to the defendant in the Fairfax Herald, a newspaper published in the community of Fairfax and Fairfax County, Virginia, for four (4) successive weeks, as appears by a certificate duly executed by an officer of said newspaper and filed herein; by posting a copy of said order of publication at the front door of the Court House of Fairfax County, Virginia, as required by law, as appears by a certificate from the Clerk of this Court and filed with the papers in this cause; and upon the motion of Counsel for the complainant that the matter be referred to a Commissioner in Chancery for hearing; and it appearing to the Court that this cause has duly matured for a hearing; and for good cause shown, it is

ADJUDGED, ORDERED and DECREED that this cause be, and the same hereby is referred to Roy A. Swayze, a Commissioner of this Court, who is hereby directed to take the depositions of the witnesses and to report to this Court his findings and recommendations with reference to the truth of the allegations in the said Bill of Complaint filed herein.

page 12 } And This Cause is Continued.

Entered this 1st day of February, 1966.

A. V. B., Jr.
Judge

* * * * *

page 14 }

* * * * *

COMMISSIONER'S REPORT

The undersigned, Roy A. Swayze, Commissioner in Chancery, to whom this matter was referred for the taking of depositions and the making of certain inquiries respectfully reports unto the Court as follows:

Your Commissioner proceeded to take the depositions of the complainant, Clayton J. Hall, and his witness, Carole Price Haubner, at his office in the City of Fairfax, Virginia, on Tuesday, February 9, 1966, at 2:00 o'clock P.M. No notice was given to the defendant in this case, Lois Carey Hall, for the reason that she was proceeded against by order of publication, and no responsive pleading was filed on her behalf.

(1) Whether or not this Court has the jurisdiction to hear and determine this cause.

Your Commissioner reports that the complainant has lived at 3608 Franconia Road, Alexandria, Virginia (within Fairfax County, Virginia) for more than one year next preceding the institution of this suit on December 16, 1965. This property consisting of a house and lot was acquired by the parties to this cause by deed dated September 16, 1963, and recorded among the land records of Fairfax County, Virginia, on October 11, 1963, in Deed Book 2361 at Page 498. Although the depositions do not indicate that the address of 3608 Franconia Road is within Fairfax County, Virginia, your Commissioner has verified this fact by in-
page 15 } dependent investigation. Defendant, since June 19, 1965, has been a nonresident of the State of Virginia. The last place of cohabitation between the parties was Fairfax County, Virginia. Therefore, your Commissioner reports that this Court has jurisdiction to hear and determine the issues in this cause.

(2) Whether or not complainant is entitled to the relief prayed for in his bill of complaint.

Your Commissioner reports that complainant is a captain in the Air Force and that three children were born of his marriage to the defendant. On June 19, 1965, defendant went for a vacation to her family home in Virginia City, Montana. Soon thereafter complainant received a letter from the defendant (Complainant's Exhibit No. 3), stating

that she wished to obtain a divorce. About a month later, complainant received another letter from one Alex Yenny (Complainant's Exhibit No. 4), stating his intention to marry defendant. On December 23, 1965, complainant was served by mail with a summons from the Eighth Judicial District Court for Clark County, Nevada (Complainant's Exhibit No. 6). Complainant made no effort to involve himself in this litigation and on January 13, 1966, a final decree of divorce was entered by the Nevada Court, purporting to terminate the marriage between the parties to this cause. (See Complainant's Exhibit No. 8.) In the opinion of your Commissioner, the action of the Nevada Court is ineffective to dissolve the marriage between the parties. Exhibits submitted by the complainant in this cause, consisting of correspondence, clearly show that Lois Carey Hall was residing in Montana both before and after the *the* Nevada
page 16 } divorce action and that her residence, if any, in the State of Nevada would appear to be questionable. Moreover, since Clayton J. Hall, her husband, did not in any way submit himself to that jurisdiction, the jurisdiction of the Nevada Court to dissolve this marriage appears to be lacking.

As the time the Nevada decree was entered, this action was pending in the Circuit Court for Fairfax County, Virginia. Since the jurisdiction of this Court is firmly based, complainant should be entitled to pursue the equitable relief he seeks. Your Commissioner reports that the evidence before him indicates that the defendant without just cause or excuse therefor deserted and abandoned complainant as of June 19, 1965, entitling him to a divorce *A Mensa et Thoro* as prayed for in the bill of complaint.

(3) Anything else deemed pertinent by the Commissioner.

Your Commissioner reports that the three minor children born of the marriage are presently in the care and custody of the complainant. No effort has been made by defendant to dispute complainant's custody of these children who are now attending elementary school and appear to be well adjusted. Your Commissioner recommends that the permanent custody of these children be granted to the complainant.

Complainant has not requested settlement of the property rights of the parties, that matter still being in negotiation.

Roy A. Swayze, Commissioner in
Chancery in and for the Circuit
Court of Fairfax County, Virginia

* * * * *

Filed Apr 14, 1966 Thomas P. Chapman, Jr., Clerk of the Circuit Court of Fairfax County, Va.
page 32 }

* * * * *

DECREE

THIS CAUSE came on to be heard this day upon the complainant's Bill of Complaint, service of process duly having been made by publication; upon a Decree of Reference; upon the depositions and exhibits filed herein; upon the Report of the Commissioner in Chancery to whom this cause was referred for hearing; and more than ten days having elapsed since the filing of said report; and

IT APPEARING to the Court that the complainant is now and has been a bona fide resident of and domiciled in the County of Fairfax, State of Virginia for more than one year next preceding the filing of this suit; and that the defendant herein is a non-resident of the State of Virginia; that the last place of cohabitation between the parties was Fairfax County, Virginia; that the defendant has failed to answer the Bill of Complaint filed herein within the statutory period allowed and after due notice by publication; that this Court has jurisdiction to hear and determine this cause; and

IT FURTHER APPEARING to the Court that the complainant and defendant were lawfully married on the 26th of June, 1954, in the County of Tom Green, Texas; that three children were born of said marriage, namely: Tara Susan Hall, born June 9, 1955; Rose Mary Hall, born October 24, 1956; and Loleete Ann Hall, born August 31, 1957; that both complainant and defendant are over
page 33 } the age of 21 years, and of the Caucasian race; that the complainant is in military service with the United States Air Force; that on June 19, 1965, defendant wilfully deserted and abondoned the complainant without just cause and with no intention of returning, such desertion continuing without interruption, to the present time; that there has been no reconciliation between the parties and that no reconciliation between them is probable; and that complainant therefore is entitled to the relief prayed for in his Bill of Complaint; and

IT FURTHER APPEARING to the Court that the said three minor children of the parties are in the care of custody of the complainant; that no effort has been made by the defendant to dispute complainant's custody; that the best interests of the said children appear to be well served in the custody of the complainant, their natural father; and it is therefore

ADJUDGED, ORDERED AND DECREED that the complainant, Clayton J. Hall, be and he hereby is awarded a decree of divorce *a mensa et thoro* from the defendant, Lois Carey Hall, on the grounds of desertion, with leave to merge said decree into a divorce *a vinculo matrimonii* at the end of the statutory period and in accordance with law, and it is further

ADJUDGED, ORDERED AND DECREED that the complainant be and he is hereby awarded permanent custody, maintenance and control of the three minor children of the parties hereto, namely, Tara Susan Hall, Rose Mary Hall and Loleete Anne Hall.

ENTERED the 15th day of April, 1966.

Bernard F. Jennings
Judge

* * * * *

page 34 }

* * * * *

PETITION FOR MERGER

COMES NOW Complainant, Clayton J. Hall, by counsel, and moves this Honorable Court for merger of the Decree entered herein on April 15th, 1966, into a final decree of divorce from the bonds of matrimony and states as and for his reasons the following:

1. On April 15, 1966, this Honorable Court entered a Decree granting to Complainant herein a divorce *a mensa et thoro* from Defendant.

2. Since the entry of said Decree Complainant and Defendant have not resumed matrimonial cohabitation and have been living separate and apart.

3. No reconciliation has taken place between the parties and none is probable.

4. The separation between the parties and the cessation of marital cohabitation have continued uninterruptedly since June 19, 1965, and have not been broken since the granting of the bed and board decree on April 15, 1966.

WHEREFORE, your petitioner prays that the Decree for divorce *a mensa et thoro* may be merged into a Decree for divorce *a vincula matrimonii;* that the Complainant be awarded permanent custody, maintenance and control of the three minor children of the parties hereto; and for such other and further relief as this Honorable Court may page 35 } deem just and proper and your petitioner will ever pray, etc.

Clayton J. Hall
By Counsel

* * * * *

Filed Jul 1, 1966 Thomas P. Chapman, Jr., Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 39 }

* * * * *

DECREE

THIS CAUSE came on to be heard upon the pleadings filed in the proceedings herein and upon the petition of the Complainant filed herein, praying that the Decree of divorce *a mensa et thoro* herein entered on the 15th day of April, 1966, be merged and enlarged into a Decree of divorce *a vinculo matrimonii* and upon the Affidavit of the Complainant and his witness in support thereof, and was argued by counsel for Complainant.

UPON CONSIDERATION WHEREOF, it appearing to the Court that on April 15, 1966 the Complainant was granted a Decree of divorce *a mensa et thoro* from the Defendant on the grounds that the Defendant did, without just cause or excuse therefor, desert and abandon the Complainant on or about June 19, 1965, and that more then one year has elapsed since the date of desertion by the Defendant; and it appearing from satisfactory evidence, taken and filed herewith, that the parties have not been reconciled to each

other since entry of the former decree herein, that no reconciliation is probable, and that the separation of the parties has continued without interruption and that they have not lived or cohabited together since the granting of the aforesaid Decree of divorce *a mensa et thoro;* and it further appearing to the Court since the entry of Decree herein on April 15, 1966 that the said three minor children
page 40 } of the parties hereto have been in the care and custody of the complainant; that no effort has been made by the Defendant to dispute complainant's custody or even to see and visit with said children; that the best interests of the said children appear to be well served in the custody of the Complainant, their natural father; and it is therefore

ADJUDGED, ORDERED and DECREED that the Decree of divorce *a mensa et thoro* entered in this cause on the 15th day of April, 1966, be and it hereby is merged and enlarged into a Decree of divorce *a vinculo matrimonii,* and that the said Clayton J. Hall and Lois Carey Hall be and they hereby are divorced each from the other from the bonds of matrimony and it is further,

ADJUDGED, ORDERED and DECREED that the Complainant be and he is hereby awarded permanent custody, maintenance and control of the three minor children of the parties hereto, namely, Tara Susan Hall, Rose Mary Hall and Loleete Anne Hall.

AND THIS DECREE IS FINAL.

Entered the 5th day of July, 1966.

A. V. B., Jr.
Judge

* * * * *

page 41 }

* * * * *

PETION

Comes Now the Defendant, Lois Carey Hall, by Counsel, and moves the Court in accordance with Section 8-78 of the 1950 Code of Virginia, as amended, to rehear the above

styled matter on the Decree of the Divorce entered herein, and for her grounds states as follows:

1. That the Defendant is a non-resident of the State of Virginia and was a non-resident at the time of the Bill of Complaint was filed herein, and at the time the Decree of Divorce was entered herein.

2. That service was attempted on the Defendant by Publication with the Fairfax Herald commencing with the issue of December 24, 1965 in accordance with Section 8-76 of the 1950 Code of Virginia as amended.

3. That on or about December 29, 1965 the Clerk of the Circuit Court of Fairfax County mailed a Notice of the within cause of action to the Defendant at Box 181, Virginia City, Montana, said notice was returned to the Clerk's Office with the Postal marking "Moved, left no address—" checked.

page 42 } 4. That the Defendant was not served with process nor did she appear in the case before the date of Decree *a mensa et thoro* or before the date of the Decree *a vincula matrimonii,* entered herein, nor was she represented in this matter at any time before the entry of said decrees.

5. That the two years limitation for a Petition to rehear has not expired and that she does have grounds to contest the aforesaid decrees.

Wherefore, your Defendant alleges that an injustice has been done in the preceedings and petitions that this cause be reheard and for such further relief as this Court may deem necessary.

Lois C. Hall
A/K/A Lois E. Yenny

By: John E. Kilcarr
Counsel

* * * * *

Filed Sep 1 1967 Thomas P. Chapman, Jr., Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 50 }

* * * * *

ANSWER AND OPPOSITION TO PETITION

Comes now the Complainant, Clayton J. Hall, by counsel, and files this as and for his Answer and Opposition to the Petition of the Defendant to rehear the within cause on the Decree of Divorce and respectfully represents to the Court as follows:

1. That the Petition filed herein by Defendant fails to state grounds upon which relief may be granted.

2. That the allegations contained in paragraph 1. of the Petition are admitted.

3. That the allegations contained in paragraphs 2., 3., 4., and 5. are denied.

4. Further answering and for an affirmative defense, the Complainant states that he proceeded against the Defendant by order of publication in accordance with the Code of Virginia of 1950, as amended, and in accordance with the Rules of this Court.

5. Further answering by way of traversing the said Petition filed herein, and for an affirmative defense, the Complainant states that the Defendant received actual notice of the Final Decree entered in these proceedings by registered mail and that this is the notice required and con-
page 51 } templated by Section 8-78 of the Code of Virginia (a copy of the letter of transmittal and mail receipt are attached hereto and made a part hereof).

6. Further answering, the Complainant denies that any injustice has been done in these proceedings and affirmatively states that the jurisdiction of this Court was well founded and it acted with integrity upon a complete disclosure of all facts and information available to the Complainant and upon an independent and thorough investigation of all the facts by the Court.

7. Further answering, Complainant states that the Petition filed herein neither points out, explains, alleges or gives evidence of any error of law or fact on or of the record in these proceedings which is required by the Code of Virginia and the Rules of this Court to maintain an inquiry or hearing upon the exceptional statutory remedy of a bill of review as contemplated by Section 8-78, Code of Virginia of 1950, as amended.

8. Further answering, Complainant states that the Decree of Divorce entered herein and the issues upon which it was based are *res adjudicata* and, in addition, there are no grounds to believe that a rehearing would result in a different holding by the Court, and that the Defendant is estopped from proceeding by laches.

WHEREFORE, having fully answered and having stated his grounds in opposition to the Petition filed herein, the Complainant prays that said Petition be henceforth dismissed and that the Complainant be discharged page 52 } from these proceedings with his costs and attorneys fees incurred and that your Complainant may be given such other and further relief in this matter as may seem just and proper to the Court.

Clayton J. Hall
By Counsel

* * * * *

Filed Oct 20 1967, Thomas P. Chapman, Jr., Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 62 }

Fairfax County Courthouse,
Fairfax, Virginia, 22030,
November 22, 1967.

Mr. Ethan Allen Turshen,
2060 14th Street, North,
Arlington, Virginia.

Mr. John E. Kilcarr,
1437 North Court House Road
Arlington, Virginia

Re: Hall v. Hall;
Chancery No. 22374

Gentlemen:

By agreement of counsel I have considered defendant's Petition to Re-Hear on the matters in the file and on the briefs submitted, without oral argument.

I believe Va. Code Ann. Sec. 8-78 (1957 Repl. Vol.), as

construed by *Robertson* v. *Stone,* 199 Va. 41, 97 S.E.2d 739 (1957) requires a rehearing at which the defendant will be entitled to make any defense she could have made prior to the entry of the *a mensa* divorce decree of April 15, 1966. Following such a rehearing a determination can be made as to whether or not the existing divorce decrees should be vacated or altered. At the rehearing evidence will be considered on the issues raised by the Petition and the Answer and Opposition thereto.

Mr. Kilcarr should prepare a decree embodying the foregoing and present it for entry after submission to Mr. Turshen for approval as to form. I suggest that counsel then have the case set at the next Civil Docket Call.

Very truly yours,

Albert V. Bryan, Jr.

AVB: elc

page 63 }

* * * * *

ORDER

THIS CAUSE came on to be heard on the Defendant's Petition to Rehear and the Complainant's Answer and opposition to said Petition, this matter being submitted on brief's without oral argument, and

UPON CONSIDERATION THEREOF, it is the opinion of the Court that Section 8-78 of the 1950 Code of Virginia, as amended, requires a rehearing at which the Defendant will be entitled to make any defense she could have made prior to the entry of the *A Mensa* divorce of April 15, 1966 and thereafter a determination to be made as to whether or not the existing divorce decrees should be vacated or altered, it is

ADJUDGED, ORDERED and DECREED that the Defendant's Petition to Rehear, filed herein, be and the same is hereby granted, and that a date be set for the presentation of evidence on the issues presented by the Petition and the Answer and opposition thereto.

AND THIS cause is continued.

A. V. B., Jr.
Judge

December 18th, 1967.

* * * * *

page 64 } Seen:

John E. Kilcarr
Counsel for the Defendant
1437 N. Court House Rd.
Arlington, Virginia

Seen, Objected to, and Excepted to:

Ethan Allen Turshen
Counsel for the Complainant
2060 14th Street
Arlington, Virginia

* * * * *

page 66 }

* * * * *

PETITION FOR CUSTODY

To the Honorable Judges of Said Court:

Your Petitioner Lois Carey Hall, now known as Lois Carey Yenney, respectfully represents:

1. That on July 5, 1966 in this Honorable Court, there was a Decree of Divorce *A Vinculo Matrimonii* awarded in the above styled cause.

2. That the parties to this suit have re-married since the aforesaid Decree, that the Defendant-Petitioner presently resides in Virginia City, Montana and that the Complainant, Clayton J. Hall, resides at 3608 Franconia Road, Alexandria, Virginia.

3. That the aforesaid Decree of July 5, 1966 provided for custody of the three minor children of the parties, to-wit: Tara Susan Hall, Rose Mary Hall and Loleeta Anne Hall.

4. That on or about August 31, 1967, the Petitioner herein filed a Petition to rehear and dismiss the aforesaid Decree of *A Vinculo Matrimonii,* and that the said Petition was granted by this Court on November 22, 1967, and further

that the said Petition to rehear has been set on the Court's Docket for May 8, 1968, for hearing on the merits to dismiss.

5. That the Complainant, Clayton J. Hall, is a member of the Armed Forces of the United States and has received permanent orders for a change of duty to the
page 67 } State of Hawaii commencing on or about the 1st day of June, 1968 which will necessitate the moving of the aforesaid children from the jurisdiction of this Court.

6. That notwithstanding the Court's decision on May 8, 1968 concerning the Petition to dismiss the Decree *A Vinculo Matrimonii* your Petitioner hereby moves the Court to hear and determine the matter of custody of the aforesaid minor children of the parties jointly with the said hearing on May 8, 1968.

WHEREFORE, the Petitioner Lois Carey Hall, now known as Lois Carey Yenney, having made arrangements to travel from the State of Montana to the State of Virginia for the hearing on May 8, 1968, and further, considering that the Complainant has received a change of duty station requiring his permanent removal of the children from the State of Virginia, effective on or about June 1, 1968, your Petitioner prays that time is of the essence in determining the matter of custody and the welfare of the children, and therefore files her Petition, by Counsel, to have both matters adjudicated at the hearing on May 8, 1968.

Lois Carey Hall
A/K/A Lois Carey Yenney
By Counsel

* * * * *

Filed Apr 22 1968-W. Franklin Gooding-Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 68 }

* * * * *

ANSWER AND OPPOSITION TO PETITION

Comes now the Complainant, Clayton J. Hall, by counsel, and files this as and for his Answer and Opposition to the

Petition of the Defendant for Custody and respectfully represents to the Court as follows:

1. That the allegations contained in paragraph 1 of the Petition are admitted.

2. That the allegations contained in paragraph 2, concerning the Complainant, are admitted but the allegations concerning the Defendant-Petitioner are neither admitted or denied.

3. That the allegations contained in paragraph 3 are admitted.

4. That the allegations contained in paragraph 4 are denied. Further answering, the Complainant states that there has not been filed a petition to dismiss the decree of divorce *a vinculo matromonii* nor has any such decree been awarded in the above-styled cause. This Court has agreed to hear evidence concerning the petition of the Defendant herein and the opposition of the Complainant filed heretofore on the possible rehearing of the decree already granted.

page 69 } 5. That the allegations contained in paragraph 5 are admitted.

6. That the Complainant denies that a petition to dismiss the decree *a vinculo matrimonii* was awarded in the above-styled cause or was even filed by the Defendant-Petitioner. Further answering, the Complainant maintains that the court should not hear and determine the matter of custody jointly with the hearing on May 8, 1968 because such action would unnecessarily confuse the legal issues before the Court and would adversely affect the infant children involved with whose best welfare the Court, counsel, and all parties hereto are charged with protecting.

WHEREFORE, having fully answered and having stated his grounds in opposition to the Petition filed herein, the Complainant prays that said Petition be henceforth dismissed and that the Complainant be discharged from these proceedings with his costs and attorneys fees incurred and that your Complainant may be given such other and further relief in this matter as may seem just and proper to the Court.

Clayton J. Hall
By Counsel

* * * * *

page 71 }

* * * * *

ORDER

THIS CAUSE came on to be heard on complainant's motion and affidavit for Writ of *Subpoena Duces Tecum* for the school records concerning Tara Susan Hall, an infant of the age of twelve years, to be produced before this Court on May 8, 1968.

IT APPEARING that said records are material and proper to be produced, it is

ORDERED, ADJUDGED and DECREED that the Clerk of this Court do forthwith issue a Writ of *Subpoena Duces Tecum* requiring the custodian of the records, Mark Twain Intermediate School, 4700 Franconia Road, Alexandria, Virginia, or someone acting for him to produce before this Court at its courthouse at 10:00 a.m. on Wednesday, May 8, 1968, all school records concerning Tara Susan Hall; and then and there to testify and the truth to say on behalf of the complainant in the above-entitled cause.

Entered this 7th day of May, 1968.

Percy Thornton, Jr.
Judge

* * * * *

page 73 }

* * * * *

ORDER

THIS CAUSE came on to be heard on complainant's motion and affidavit for Writ of *Subpoena Duces Tecum* for the school records concerning Rosemary Hall, an infant of the age of eleven years and Loleette Ann Hall, an infant of the age of ten years, to be produced before this Court on May 8, 1968.

IT APPEARING that said records are material and proper to be produced, it is

ORDERED, ADJUDGED AND DECREED that the Clerk of this Court do forthwith issue a Writ of *Subpoena*

Duces Tecum requiring the custodian of the records, James V. Luscavage, principal of the Wilton Woods School, 3701 Franconia Road, Alexandria, Virginia to produce before this Court at its courthouse at 10:00 a.m. on Wednesday, May 8, 1968, all school records concerning Rosemary Hall and Loleette Ann Hall; and then and there to testify and the truth to say on behalf of the complainant in the above-entitled cause.

Entered this 7th day of May, 1968.

Percy Thornton, Jr.
Judge

* * * * *

page 87 }

* * * * *

DECREE

THIS CAUSE came on to be heard on May 8, 1968 on the Petition of Lois Carey Hall, now Yenny, filed herein, to rehear the matter of the Decree *A Mensa Et Thoro,* entered herein on the 15th day of April 1966 and the Decree *A Vinculo Matrimonii* entered herein on the 5th day of July 1966 and further on a Petition for the custody of the three minor children of the parties filed herein by the said Lois Carey Hall, now Yenny, upon the presentation of evidence *ore tenus* in the presence of this Court; and, upon argument of Counsel, and

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the aforesaid Decree *A Mensa Et Thoro* and the said Decree *A Vinculo Matrimonii* should be vacated and that permanent custody of the three minor children of the parties should be awarded to the Petitioner, Lois Carey Hall, now Yenny, it is

ADJUDGED, ORDERED and Decreed that the Decree *A Mensa Et Thoro* entered by this Court on the 15th day of April, 1966, and that the Decree *A Vinculo Matrimonii* entered by this Court on the 5th day of July, 1966, be and the same hereby are vacated, and it is further

ADJUDGED, ORDERED and DECREED that the Decree of Divorce entered by the Eighth Judicial District Court of the State of Nevada on the 13th day of

page 88 } January, 1966, and filed herein, be and the same hereby is recognized by this Court and Ordered binding upon the parties hereto as a Decree of Divorce dissolving the bonds of matrimony created by the marriage on the 26th day of June, 1954, in the City of San Angelo, State of Texas, and it is further

ADJUDGED, ORDERED and DECREED upon the hearing of evidence and argument of Counsel that the permanent custody of the minor children of the parties, to wit: Tara Hall, age 12; Rose Mary Hall, age 11 and Lollete Hall, age 10, be and the same hereby is awarded to the Petitioner, Lois Carey Hall, now Lois C. Yenny, and that the said children be delivered by the Plaintiff, Clayton J. Hall, to the said Lois C. Yenny upon the expiration of the present school term, and it is further ORDERED, that the aforesaid children visit with the said Clayton J. Hall for the last three (3) weeks of August 1968 in the State of Hawaii, and it is further

ADJUDGED, ORDERED and DECREED that the said Clayton J. Hall pay to John E. Kilcarr, Esquire, Attorney for Lois C. Hall, now Yenny, the sum of Three Hundred and Fifty Dollars ($350.00) for attorney fees payable within thirty days (30 days) from the signing of this Decree and the costs of this hearing.

TO ALL OF WHICH actions and rulings of the Court as herein above set out, the Plaintiff, Clayton J. Hall, objects and excepts; and Plaintiff having indicated his intention to petition the Supreme Court of Appeals of Virginia for an appeal from said Decree, upon his motion, it is ORDERED that the execution of the terms of this Decree be and the same hereby are suspended for a period of sixty (60) days and thereafter until a Petition shall have been presented and acted upon by the Supreme Court of Appeals of Virginia, if such Petition is actually filed with-
page 89 } in the specified time, provided Plaintiff or someone for Plaintiff shall give or file a bond in the Clerk's Office of this Court, without surety to be approved by the Clerk of this Court in penalty of $10,000.00 and conditioned in accordance with Section 8-465 of the Code of Virginia, and designating the Clerk as his agent for service of process in any suit thereon, to which action of the Court Counsel for Lois Carey Hall, now Yenny, Defendant-Petitioner, objects and excepts.

AND this Decree is final.

ENTERED this 20th day of June, 1968.

A. V. B., Jr.
Judge

* * * * *

page 90 }

* * * * *

SUSPENDING BOND FROM DECREE IN EQUITY

Know All Men By These Presents:

That I, CLAYTON J. HALL, am held and firmly bound unto Lois Carey Hall in the sum of Ten Thousand Dollars ($10,000.00) to the payment whereof, well and truly to be made to the said Lois Carey Hall, I bind myself and my heirs, executors, administrators and successors, firmly by these presents.

Sealed with my seal and dated this 21st day of June, 1968.

The condition of the above obligation is such that, whereas at the Circuit Court of the County of Fairfax, on the 20th day of June, 1968, in a certain action in equity then pending in the said Court between Clayton J. Hall, Complainant, and Lois Carey Hall, Defendant, in Chancery No. 22374, a Decree was entered vacating the decree of divorce *a mensa et thoro* entered by the Court on the 15th day of April, 1966, and the decree of divorce *a vinculo matrimonii*
page 91 } entered by the Court on the 15th day of July, 1966, including all references of custody of the three minor children of said parties; ordering that the Decree entered by the Eighth Judicial District Court for the State of Nevada on the 13th day of January, 1966, be recognized as binding upon the parties as a decree of divorce dissolving the bonds of matrimony; awarding permanent custody of the three minor children of the parties to Lois Carey Hall, Defendant herein; ordering that said children be delivered to the Defendant at Virginia City, Montana, after the conclusion of the school term; and further ordering that said children visit Clayton J. Hall, Complainant herein, for the last three weeks of August, 1968 in the State of Hawaii, and;

WHEREAS, it is the intention of the said Clayton J. Hall to appeal the decision of the Court aforesaid rendered on the 20th day of June, 1968, and to present a petition for an appeal and *supersedeas* from said Decree to the Supreme Court of Appeals of Virginia.

NOW, THEREFORE, if the said Clayton J. Hall shall pay all actual damages as may accrue to the said Lois Carey Hall, by reason of said suspension, as provided by law, in case an appeal and *supersedeas* to said Decree be not petitioned for within 60 days, or thereafter within the time provided by law, or if so petitioned for, shall not be allowed and be effectual within the time so specified, then the above obligation to be void or else to remain in full force, provided this bond being given, without surety, the said Clayton J. Hall hereby appoints W. Franklin Gooding, the Clerk of this Court, as his agent for service of process, in the page 92 } event it becomes necessary for the said Lois Carey Hall to bring an action to enforce the provision of this bond.

WITNESS my hand and seal this 21st day of June, 1968.
Clayton J. Hall

* * * * *

Filed Jun 21 1968 W. Franklin Gooding Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

page 93 }

* * * * *

NOTICE OF TENDERING WRITTEN STATEMENT

Lois Carey Hall
Defendant
and
John E. Kilcarr, Esq.
Counsel for Defendant
1437 N. Court House Road
Arlington, Virginia

YOU ARE HEREBY NOTIFIED that on the 16th day of August, 1968, at 10:00 o'clock a.m., the undersigned will

tender to the Honorable Albert V. Bryan, Jr., Judge of the Circuit Court of the County of Fairfax, Virginia, at his chambers, a written statement in narrative form of the testimony adduced at the trial of the above entitled cause, together with the official transcript of additional proceedings in said cause held on the 20th day of June, 1968, and will respectfully ask the Honorable Albert V. Bryan, Jr. to certify the same as a true and correct statement of the evidence presented in the above entitled cause.

Betty A. Thompson
Counsel for Plaintiff

* * * * *

page 121 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To:
W. Franklin Gooding
Clerk
Circuit Court of Fairfax County
Fairfax, Virginia

NOTICE is hereby given that Clayton J. Hall, Plaintiff herein, appeals from the final Decree entered herein on the 20th day of June, 1968.

The following are the errors assigned:

1. The trial court erred in transferring the custody of the three minor children from the father to the mother, with whom they had had no contact in almost three years, contrary to the wishes of the children, in the absence of any evidence that such a transfer would promote the children's welfare and in the face of positive testimony of the dangers involved to the children.

2. The trial court erred in setting aside its former decrees herein awarding custody of the three minor children to the father, there being no evidence of a material change in circumstances which substantially affected the welfare and best interest of said minor children requiring a modification.

page 122 } 3. The trial court erred in failing to give

any consideration to the expressed wishes of the minor children, they all being of an age of discretion.

4. The trial court erred in the exercise of its discretion in reaching a conclusion unsupported by the evidence and contrary to what appeared best calculated to promote the welfare and best interests of the minor children.

5. The trial court erred in failing to give full faith and credit to its former decrees herein awarding custody of the three minor children to the father.

Clayton J. Hall
By Counsel

* * * * *

Filed Aug. 19 1968 W. Franklin Gooding Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

Dep.
page A }

* * * * *

Depositions of Clayton J. Hall and Mrs. Carole Price Haubner, taken before Roy A. Swayze, a Commissioner in Chancery for the Circuit Court of Fairfax County, Virginia, in his office in the City of Fairfax, Virginia, on Tuesday, February 9, 1966, at 2:00 P.M. to be read as evidence in behalf of the Complainant, and used in making a Commissioner's Report in the above-entitled cause.

Present:
Ethan Allen Turshen, Counsel for the Complainant, and the Complainant, in person.

Dep.
page 1 } Before the taking of these depositions, the reporter, Eleanor L. Chesley, made oath that she would correctly take and transcribe the same.

Clayton J. Hall

CLAYTON J. HALL, being first duly sworn, deposes and says as follows:

Questions by Mr. Turshen:

Q. Would you please state your full name and address?

A. Clayton J. Hall, 3608 Franconia Road, Alexandria, Virginia.

Q. You are the Complainant in this matter?

A. Yes, sir.

Q. And Lois Carey Hall is the Defendant in this matter and she is your wife?

A. Yes, sir.

Q. How long have you lived at your present address?

A. Since August, of 1963, about two and a half years.

Q. You have lived there continuously during that time?

A. Yes, sir.

Q. What is your wife's present address so far as you know, to the best of your knowledge and belief?

A. Box 181, Virginia City, Montana.

Q. She is a non-resident of the State of Virginia?

A. That is right.

Q. You and your wife are over 21 years of age and both members of the Caucasian Race?

A. Yes, sir.

Q. Do you consider yourself an actual bona fide resident of the State of Virginia?

Dep. page 2 } A. Yes, sir.

Q. And you have been since when?

A. Since 1963.

Q. When were you married?

A. 26 June, 1954.

Q. I show you this document and ask if you can identify it?

A. Yes, sir, it is a certified copy of the marriage record of Tom Green County, Texas.

Mr. Turshen: I will ask that that be submitted as Complainant's Exhibit No. 1.

Commissioner: It will be marked Complainant's No. 1.

Q. You are a member of the armed forces of the United States?

A. Yes, sir.

Clayton J. Hall

Q. Would you please tell the Commissioner your rank, grade, serial number and duty station?

A. I am a Captain in the Air Force, FR58964, and I am stationed at Air Force Technical Application Center, at 6801 Telegraph Road, Alexandria, Virginia.

Q. Is your wife a member of the armed forces of the United States?

A. No, sir.

Q. Were there any children born to you and your wife during your marriage?

A. Yes, three girls.

Q. Names and ages, please.

A. Tara Susan Hall, 10, born 9 June, 1955; Rosemary, 9, she was born 24 October, 1956; and Loleette Ann, she was born 31 August, 1957.

Q. Where are these children currently living?

A. 3608 Franconia Road, with me.

Dep. page 3 } Q. You have present custody of these children?

A. Yes, sir.

Q. Will you identify this please?

A. Yes, sir. This is a Court Order by the Virginia Juvenile and Domestic Relations Court, Fairfax County, giving me custody of the children.

Q. We would like to submit this as Complainant's Exhibit No. 2.

Commissioner: It will be received as Complainant's Exhibit No. 2.

Q. Did there come a time when you and Mrs. Hall ceased living together?

A. Yes, sir.

Q. When was that?

A. Approximately 19 June, 1965, when she went home for a vacation.

Q. When was the first indication you had when she was not returning to live with you?

A. Around the 20th of July when I received a letter saying she wasn't coming back.

Q. Can you identify this correspondence?

A. Yes, it is the letter I received from her. 1

Q. In that correspondence she indicated what? How do you identify that?

Clayton J. Hall

A. By her handwriting and by address.
Q. What is the address?
A. Box 181, Virginia City, Montana.
Q. What is the postmark date?
A. July 22, 1965.
Q. I will ask that the letter be submitted as Complainant's Exhibit No. 3.
A. It will be received as Complainant's No. 3.

Dep. page 4

Q. Did you next have any further correspondence from your wife or anyone else?
A. Yes, sir. I received a letter from Alex Yenny.
Q. I will ask if you can identify that?
A. Yes, it is the letter dated 31 August, 1965, from Alex Yenny.
Q. What is the sum and substance of this letter?
A. That he and Lois want to get married and make a life of their own and to let them alone and that she is not coming back and he will not let her come back here.
Q. Did you have any knowledge of this relationship prior to receipt of this letter?
A. No, sir, other than the fact that when I made a telephone call to her when I got back she indicated Alex had asked her to marry him and she wasn't coming back here.

Mr. Turshen: I will ask that this letter be received as Complainant's No. 4.
Commissioner: It will be received as Complainant's No. 4.

Q. Did you make any attempt to bring your wife home in order to reconcile this marriage?
A. Yes, I went out after I received the first letter and talked to her. I spent about twenty days out there trying to convince her to come back, which I failed to succeed. I asked for both of us to talk to the priest, which she refused to do. I talked to the family doctor there but she wouldn't listen to anybody. She had made up her mind she wasn't coming back.
Q. Did you again hear from your wife?
A. Yes, sir. I got a letter sometime in November.
Q. I will ask you to identify this letter and the return address and the postmark?

Clayton J. Hall

A. Yes, sir. This is a letter the wife wrote to the girls from Ennis, Montana.

Dep. page 5 } Q. Where is Ennis Located?

A. About seventeen miles from Virginia City. The return address was Virginia City, Montana.

Q. Did she indicate in that letter she was intending to return?

A. No, sir.

Mr. Turshen: I will ask that this be received as Complaianant's No. 5.

Q. That was received on or about November 30?

A. Yes, sir.

Commissioner: This letter will be received as Complainplainant's No. 5.

Q. What did you do then, Mr. Hall?

A. I turned the letters over to you and I came in and talked to you and put in for a divorce action through the courts in Virginia.

Q. After you filed for divorce, I think the record will show the divorce action filed December 16, 1965, did you then again hear from your wife?

A. Yes, sir. On the 23rd of December I received a summons from Nevada on divorce proceedings.

Q. I ask you if you can identify these papers, sir?

A. Yes, sir. This is a copy of the summons for the divorce action in Nevada.

Mr. Turshen: I ask that this be marked Complainant's No. 6 and accepted.

Commissioner: This summons will be marked Complainant's No. 6.

Q. Did you then again hear from your wife?

A. Yes, sir. We got a Christmas present, the girls did, around the 27th of December.

Dep. page 6 } Q. I will ask if you can identify this paper?

A. Yes, sir. This is wrapping that came off the Christmas present to the three girls. The address

is from Hall Alex Yenny, postmarked Las Vegas, Nevada, December 26, 1965. It is an insured wrapper.

Mr. Turshen: I will ask that this wrapper be received as Complainant's No. 7.

Commissioner: The wrapper will be marked Complainant's No. 7.

Q. You again heard from your wife?

A. Yes, sir. I got a copy of the divorce decree which she had obtained from the State of Nevada.

Q. I will ask if you can identify this?

A. It is a copy of the decree of divorce, County of Clark, in Nevada.

Mr. Turshen: I will ask that this be marked Complainant's No. 8, and received into evidence.

Q. Then again you heard from your wife, again after you received a copy of the decree?

A. Yes, sir. We got a letter a couple of weeks ago.

Q. I will ask you to identify that?

A. It is a letter to the girls from the wife where she was in Las Vegas, Nevada, dated the 17th of January, 1966.

Q. What is the sum and substance of that letter?

A. That she and Alex are now married.

Q. What does she say about her residence?

A. To write her 5329 West Mountain View Drive, Las Vegas, Nevada, and that they will be there until January 28, then send mail to Virginia City, Montana.

Mr. Turshen: I will ask that this be received as Complainant's No. 9.

Commissioner: The letter will be received as Complainant's No. 9.

Dep.
page 7 } Q. Did you again hear from your wife?

A. Yes, sir. She called the house on the 31st of January and I talked to her briefly on the phone.

Q. How did you identify her?

A. Through voice.

Q. What did she say?

Clayton J. Hall

A. She said they were in Flagstaff.

Q. They, meaning?

A. She and Alex.

Q. Where?

A. Flagstaff, Arizona. She said they were going back to Montana.

Q. To the best of your knowledge, information and belief, other than the brief time indicated through the documents we have introduced through the record, where has your wife continued to reside, to the best of your knowledge and belief, and made her home, residence and domicile?

A. In Montana.

Q. While you and your wife were living together as husband and wife, did you always endeavor to be a true, dutiful husband to her?

A. Yes, sir.

Q. Do you now want the custody of your three minor children made permanent by this Court?

A. Yes, sir.

Q. Do you have a suitable home and a manner in which to take care of the children?

A. Yes, I do.

Dep. page 8 } Q. Would you tell the Commissioner how you can provide for the children?

A. I have a four bedroom house at 3608 Franconia Road, and my sister will be coming out here, with her husband, to stay with us within thirty days. She has been here and had to go to settle property and get furniture. They have agreed to stay with me as long as necessary to help with the family.

Q. Are your children going to school?

A. Yes, sir.

Q. Where?

A. At Wilton Woods Elementary School across the street from where we live. They are doing very fine in school.

Q. Are your children in good health?

A. Yes, sir.

Q. Is there any property owned jointly between your wife and yourself?

A. Yes, four city lots in Virginia City, Montana, and the property at 3608 Franconia Road.

Q. Has any property settlement been entered into between you and your wife?

Clayton J. Hall

A. Not as yet.

Q. Do you intend to negotiate a settlement between you and your wife?

A. Yes, sir.

Questions by the Commissioner:

Q. Why was it that your wife went out to Montana in the first instance?

A. For a vacation.

Q. No indication she was going to stay there?

A. None whatsoever.

Dep. page 9 }

Q. Did she know Mr. Yenny at that time?

A. Yes, sir.

Q. When she went on this vacation, what did she tell you about the children?

A. She took the children with her.

Q. How did it happen you got the children back in your custody?

A. When I went out I saw the living conditions, the trailers, and I brought the children back with the view in mind not only that I could provide for them much more than they were—

Q. Did your wife object to that?

A. Not too much, she did object, yes.

Q. What effort, if any, has she made since you took the children to get the children back?

A. None whatsoever.

Q. You have introduced Exhibit No. 2, an Order of the Juvenile and Domestic Relations Court, dated September 29, 1965, awarding temporary custody of the three children to yourself?

A. Yes.

Q. Was this Order obtained after any notice to her?

A. I believe they mailed notice to her.

Q. Was there any responsive pleading or contest of this?

A. No, sir.

Q. Other than the letter from Mr. Yenny introduced as Exhibit 4, has there been any correspondence from your wife or from Mr. Yenny requesting the custody of these children?

A. Other than the summons that we received from Montana, they requested that the courts award her custody of the children.

Mrs. Carole Price Haubner

Q. It is true, however, that the Nevada Court did not make any disposition of the custody of the children?

Dep. page 10 } A. That is right.

Q. Is it your belief that your wife went to Nevada for the sole purpose of obtaining a divorce?

A. Yes, sir.

Q. Have you proceeded here with the idea in mind that you want a valid, binding decree of divorce?

A. Yes, sir.

Q. Did you ever give your wife any cause to refuse to come back home?

A. Not that I know of.

Q. Have you endeavored to the best of your ability to be a good husband to her?

A. Yes, sir.

Q. Can you assign any reason for her conduct?

A. No, sir, other than maybe emotional. She has had problems with emotional problems where she was in Warm Springs State Hospital for a time. She was sick quite a bit even here—I don't know. I have tried to search it over in my mind what went wrong and I can't figure it out. Neither can our friends she was close to.

Q. There was nothing you can blame yourself for, however?

A. No, sir. I have done a lot of soul-searching and I feel my conscience is clear.

And further this Deponent saith not.

Clayton J. Hall

By Roy A. Swayze
Commissioner

Dep. page 11 } MRS. CAROLE PRICE HAUBNER, being first duly sworn, deposes and says as follows:

Questions by Mr. Turshen:

Q. Would you state your full name and address?

A. Mrs. Carole Price Haubner, 3700 Franconia Road, Alexandria, Virginia.

Mrs. Carole Price Haubner

Q. What is your relationship to the Complainant, Mr. Hall?

A. I am his next-door neighbor.

Q. You know his street address?

A. 3608 Franconia Road.

Q. How long have you been next-door neighbors with the Complainant?

A. Two years.

Q. You are married?

A. Yes, I am.

Q. Do you have a family of your own?

A. Yes, three pre-school children.

Q. While you have been living there were you in contact with Complainant, Mr. Hall, and his wife and their children?

A. Yes.

Q. Were you a frequent visitor at their home?

A. Yes, quite frequently.

Q. Did there come a time when you knew that Mrs. Hall was no longer living there?

Q. Yes.

Q. Approximately when was that?

A. June, of 1965.

Dep. page 12 }

Q. Have you seen Mrs. Hall since that date?

A. No, I have not.

Q. You have visited their home?

A. Yes, I have.

Q. Have you seen any evidence of her having been there?

A. No, I have not.

Q. Have you heard from Mrs. Hall since that time?

A. I had a letter from her early in November.

Q. Where from?

A. Virginia City, Montana.

Q. Do you have a copy of that letter?

A. No, I am afraid not.

Q. Can you tell the Commissioner how you identified the letter?

A. I recognized the handwriting.

Q. Can you tell what the sum and substance of the letter was?

A. She was explaining to me, although I don't know why she felt she owed me an explanation, of why she wasn't coming back. She felt she could no longer live with Captain Hall and that she was sorry but she couldn't bring herself to come back.

Mrs. Carole Price Haubner

Q. Did you respond to that letter?

A. No, I did not. Within a matter of days after that I went into the hospital for over two weeks.

Q. You know Captain Hall and his circumstances? Do you know his sister?

A. Yes, I do.

Q. Has she been living at Mr. Hall's home?

A. Yes, she was.

Q. Do you feel Mr. Hall can provide, if he is granted custody of his three children, a suitable and appropriate home for the upbringing and welfare of the children?

Dep. page 13 } A. Yes, I do.

Q. You know that Captain Hall has been living at the present address where he now lives for how long?

A. We have lived there since December, of 1963.

Q. And he has lived there continuously since that time?

A. Yes.

Q. So far as you know he is a bona fide resident and domiciliary of the State of Virginia?

A. Yes, that is right.

Q. Do you have any knowledge you can give to the Commissioner as to why this marriage was not successful or why it broke down?

A. No, Mrs. Hall never mentioned to me any plans for leaving, any dissatisfaction and we were very good friends, very close friends, and she never mentioned—it all came as a surprise to us, a complete shock.

Q. This letter you referred to came in explanation of her lack of explaining to you prior?

A. Yes.

Commissioner: No questions.

And further this deponent saith not.

Carole Price Haubner

By Roy A. Swayze
Commissioner

Commissioner: Do you both consent that I may sign your name to the deposition when it is written up?

Both Witnesses: Yes, sir.

I hereby certify that the foregoing is a correct transcription of said depositions.

Eleanor L. Chesley

Fee for the foregoing deposition paid Eleanor L. Chesley 2/9/66—$30.00.

Dep.
page 14 } State of Virginia,
County of Fairfax, to-wit:

I, Roy A. Swayze, a Commissioner in Chancery for the Circuit Court of Fairfax County, Virginia, do hereby certify that the foregoing depositions of Clayton J. Hall and Mrs. Carole Price Haubner were duly taken and sworn to before me at the time and place and for the purposes noted in the caption hereof.

Given under my hand this 9th day of February, 1966.

Roy A. Swayze
Commissioner in Chancery as aforesaid

Narrative
5/8/1968
page 1 }

* * * * *

WRITTEN STATEMENT OF ORAL TESTIMONY

BE IT REMEMBERED that on the 8th day of May, 1968, in the Circuit Court at the Courthouse in the County of Fairfax, State of Virginia, the Honorable Albert V. Bryan, Jr., Judge of said Court presiding, the above entitled cause came on for trial on the Petition of Lois Carey Hall, Defendant herein, to rehear the matter of the Decree *A Mensa Et Thoro* entered herein on the 15th day of April, 1966, and the Decree *A Vinculo Matrimonii* entered herein on the 15th day of July, 1966, and on the further Petition of said Defendant for custody of the three minor children of the parties hereto. (The parties will be referred to herein as they appear in the caption of this suit).

Appearances:
Ethan Allen Turshen, Esq. for the Plaintiff
John E. Kilcarr, Esq. for the Defendant

The following proceedings were had and evidence presented:

Narrative 5/8/1968 page 2 }

The Court thereupon proceeded to hear evidence on the matter of Defendant's Petition for a rehearing of the Decrees of Divorce entered herein:

The Defendant, Lois Carey Hall, Petitioner herein, called as a witness on her own behalf, being duly sworn testified to the following facts:

Direct Examination

That on June 14, 1965, while then married to the Plaintiff, Clayton J. Hall, she left the State of Virginia, and went to Virginia City, Montana for a vacation accompanied by the three minor children of the parties, namely, Tara Hall, Rose Mary Hall, and Lollete Hall. She drove the automobile owned by Plaintiff. While in Montana, she wrote her husband that she was not returning to the State of Virginia, indicating she was tired of his belittling, bickering and physical abuse.

On approximately August 2 or August 3, 1965, the Plaintiff, Clayton J. Hall, went to Montana and stayed with the Defendant for approximately seven (7) days during which time they discussed a reconciliation. Mrs. Hall did not want one, stating she was afraid of her husband. She stated that in Virginia City, Montana, during the month of August, 1965, she refused to share her husband's bed and he knocked her down and kicked her in the back. She testified, however, that during the seven days that the parties were together, she did share the bed with her husband. Plaintiff then left for Washington State and returned to Montana and stayed another four (4) days.

Plaintiff then returned to Virginia, his wife remaining in Montana. He consented for Mrs. Hall to keep the children. On approximately September 14, 1965, Plaintiff re-

Narrative 5/8/1968 page 3 }

returned to Montana. He stayed approximately five (5) minutes and asked to take the children for the weekend.

Defendant testified she did not know where the children were for six days, and called the Sheriff. On the sixth day, Plaintiff called and said he had the children with him, one of whom had a mastoid infection. Mrs. Hall stated she never agreed for her husband to have custody.

In late September, 1965, Mrs. Hall, accompanied by one

Alex Yenny, her now husband, went to Flagstaff, Arizona and then to Las Vegas, Nevada, arriving there on October 16, 1965. They took up residence with Doris and Marvin Brooks. While residing in Nevada, Mrs. Hall worked at the Department of Motor Vehicles until January 31, 1966.

Mrs. Hall went to see an attorney on October 16, 1965. On December 13, 1965, she filed a Bill of Complaint for divorce. Her husband was served with process out of state on December 23, 1965. No answer was made by him. Mrs. Hall told the Judge at the hearing that they had come to Las Vegas to stay and become residents. A final Decree was entered on January 13, 1966.

Mrs. Hall wrote to the children on or about January 29, 1966, while in Nevada. She sent the letter to Virginia City Montana to be forwarded to the children because she didn't want the Plaintiff to know where she was.

Lois Hall and Alex Yenny were married in Las Vegas in January, 1966, and left Nevada on approximately January 31, 1966, giving as a reason that her mother had a major operation. Mr. Yenny was unemployed at this time and, as a matter of fact, he had only worked a couple of days during his entire stay in Las Vegas. The Defendant and Mr. Yenny now have a son one month old born of this marriage.

Narrative 5/8/1968 page 4

Mrs. Hall stated that she and Alex Yenny returned to Virginia City, Montana, and took up residence. She first knew of Clayton Hall's Virginia divorce in August of 1966 (Defendant's Exhibit 1) when Clayton Hall wrote her. Mrs. Hall contacted four attorneys and finally retained John E. Kilcarr. She did everything she could to have the case heard, including contacting Congressman (Defendant's Exhibit 2).

Mrs. Hall stated she was a good and dutiful wife while living with Plaintiff.

Cross-Examination

Mrs. Hall stated that she had lived continuously in Virginia City, Montana, since February 4, 1966, after leaving Las Vegas. She stated that on February 3, 1966, they stayed one or two nights in Arizona with Mr. Yenny's mother, Julia Yenny. Before that time they had resided at the Brooks home in Las Vegas. Mrs. Yenny was related to Mr. Brooks by marriage. She stated her job at the Department of Motor Vehicles in Las Vegas was a temporary job. It was the beginning of period for license distribution.

When they first returned to Virginia City, they lived with her grandmother Shountz approximately one week to ten days and then moved to Ennis, 14 miles south of Virginia City where they rented a furnished home from Neil Morgan by the month. They moved from Ennis on May 1, 1966, and went to Wisconsin where they stayed with her brother-in law for one month. While there, they kept Virginia City as their home address. They left Wisconsin on approximately May 28 and went back to Virginia City and moved into a trailer they had purchased. They remained in the trailer until June, 1967, when they moved into a home they had purchased in Virginia City where they still reside. (She is certain she did not return to Nevada on February 9, 1966).

Narrative 5/8/1968 page 5

Defendant denied mailing a letter to her hus- (Plaintiff's Exhibit 7), but she admits it was in her handwriting. She stated that she prepared it for mailing.

The witness testified that when she and Yenny arrived in Arizona on September 21, 1965, and then on October 15, 1965, left for Las Vegas, that during this time she had no place she considered a permanent home. She never intended to return from Las Vegas.

Defendant remembered three times when Plaintiff abused her. In 1958, she was doing the dishes when Plaintiff pushed her agains the wall. In August 1965, he knocked her down when she refused to share his bed. In 1962 in Japan, Plaintiff threw her into his car after a card game. Defendant had decided to walk when her husband wouldn't wait for her.

Defendant decided in July, 1965, that she was not going to return to the State of Virginia. She stated there was nothing that Plaintiff did at that particular time, she was just unhappy with him and decided to terminate the marriage.

The witness admitted that on August 11, 1966, she wrote a letter to Clayton Hall stating she felt she had been rooked. She had worked for a long time and also felt she was entitled to the children. She stated Hall was not a doting father. She stated that she may have said in the last paragraph of the letter that Plaintiff was trying to blackmail her.

Defendant heard about her mother's illness approximately January 12 or 13, 1966.

Re-Direct Examination

Defendant stated that Mr. Brooks testified regarding her residence in Nevada.

ALEX YENNY, the present husband of Defendant herein, called as a witness for Defendant, being duly sworn, testified to the following facts:

Narrative
5/8/1968

page 6 } *Direct examination*

Mr. Yenny testified that Defendant arrived in Montana in the summer of 1965 and that he was living there at the time. In September, 1965, he and Defendant went to his mother's and took everything they owned; and that they left for Las Vegas where they stayed at the Brooks' residence.

The Bill of Complaint was signed by Defendant in Nevada approximately December 1, 1965; that she had taken up residence in mid-October, 1965.

The Defendant was employed at the Department of Motor Vehicles but he could not find work. Mr. Brooks was Defendant's witness at the hearing and testified that she had lived in Nevada the required six weeks.

That he and Defendant left Las Vegas the end of January, 1966, because of illness of Defendant's mother. They went to Arizona for a visit on their way back to Montana.

That letter introduced in evidence (Plaintiff's Exhibit 5) was written in Las Vegas.

Mr. Yenny stated that at the time they went to Nevada, they had intended to remain there and make it their home. They looked at other places to live in Nevada while they were staying with the Brooks. They contributed to living expenses at the Brooks' home. Mr. Yenny did not get Nevada driver's license or tags. He sought employment as an apartment manager which would have been a year round job. However, this job never materialized. They heard about the illness of Mrs. Hall's mother near the end of their stay in Nevada.

Re-Direct Examination

Mr. Yenny stated that Defendant had obtained a Nevada driver's license. Mr. Yenny's license and tags were still good. After Mr. Yenny and Defendant were married, they stayed in a motel for two weeks, having moved from the Brooks home.

Narrative
5/8/1968
page 7 }

Re-Cross Examination

Mr. Yenny stated that his occupation is an apartment or development manager.

When he and Defendant left for Las Vegas, he took all clothing, encyclopedia, sporting equipment. He returned to the same job in Virginia City, which he hadn't exactly quit before leaving.

There being no further evidence presented on the question of the Petition to re-hear, the Court thereupon proceeded to hear argument of counsel.

Counsel for Plaintiff and Counsel for Defendant having presented argument, the Court thereupon ruled as follows:

The Divorce Decree entered by the District Court for the Eighth Judicial District of the State of Nevada on the 13th day of January, 1966, in favor of Lois Carey Hall against Clayton J. Hall, is entitled to full faith and credit by this Court and, accordingly, the Decree *a mensa et thoro* entered by this Court on the 15th day of April, 1966, and the Decree *a vinculo matrimonii* entered by this Court on the 15th day of July, 1966, are hereby vacated and set aside.

WHEREUPON, the Court proceeded to hear the evidence on the matter of the custody of the three minor children of the parties hereto:

The Defendant, Lois Carey Hall, being recalled to the stand in her own behalf, testified to the following facts:

Direct Examination

She doesn't drink or smoke.

Narrative 5/8/1968 page 8 } The defendant stated that she is presently living in Virginia City, Montana. She had the children with her in a trailer prior to September, 1965. As of July, 1965, the children's school marks were good.

Mr. and Mrs. Yenny now live in a five-room house in Montana. They have applied to FHA for a loan to buy and refurbish a new home which they will move into. The new home is 31′ by 54′, frame, has nine rooms and two baths. Virginia City has a population of 130 to 150 people. Virginia City is the county seat. The County is 4800 square miles. Their home is one-half block from a school and 14 miles from a hospital.

The Defendant testified that her children love Mr. Yenny.

Mr. Yenny makes $500.00 per month, out of which they pay $50.00 per month rent for present home. It is cheaper to live there than here.

Defendant is a Catholic and attends church every Sunday. When she and Plaintiff were living together, attendance at church was infrequent.

The Plaintiff was very indifferent to the children, but never physically abused them. They were raised by Defendant who was with them until September, 1965, except for a three or four month period when she was hospitalized. She loves the children.

Defendant is in good health and capable of taking care of the children.

Cross-Examination

Defendant is very happy living in Virginia City. The local school is a nine-room school with two teachers. There are no movies or clothing stores.

Narrative 5/8/1968 page 9 } Defendant stated she didn't go to church while living in Virginia because of a fight with Plaintiff which involved religion.

Defendant went to psychiatrists because she had been unhappy with Plaintiff for many years. Plaintiff would not meet with them. She used to have migraine headaches weekly, but had not had one in three years.

Defendant was not a meticulous housekeeper. Plaintiff helped her approximately every other week.

When she lived in Virginia, she was active with the PTA and Girl Scouts. She is not involved in community activities in Montana.

Defendant's last letter to the children was in August, 1967. She was not sure they received the letter. She did not send them any Christmas presents in 1967, but put money in something for them in Montana.

Defendant stated she left the children alone at Plaintiff's direction. She was not drunk unless one can of beer will make you drunk.

She is 34 years of age. Joined Armed Services from Virginia City because of patriotism. Her father lives in Nevada City. Defendant, two sisters and her mother live in Virginia City.

Defendant admitted she had not seen her children since early September, 1965 to May 4, 1968, and during all this time she made no attempt to see them. She stated she had never been to Virginia to see the children. Plaintiff would not allow children to go out with her last Saturday. She didn't want to come here and then find out she couldn't see the children.

Re-Direct Examination

Defendant stated that her present husband joins every-

thing. Her former husband was never active in any community activities.

Re-Cross-Examination

Narrative 5/8/1968 page 10 } In October, 1957, Defendant stated she went to State Hospital in Warm Springs, Montana. She stated she had seen several psychiatrists. Her condition had something to do with her relationship with her mother. She and her mother didn't agree on many things in the past.

ALEX YENNY, recalled as a witness for Defendant, testified to the following facts:

Direct Examination

He stated that he works for Virginia City Trading Company and earns $500.00 per month. He and the Defendant are buying a large old two-story frame building. They are active in community affairs. He has been in the area since 1960. He is financially able to raise the children and wants them.

He denied being intimate with Defendant's mother who is 55 years of age.

He has tried to talk to Plaintiff about the children, but quotes Plaintiff as saying he didn't want to talk to the S.O.B.

Cross-Examination

Mr. Yenny stated that he is a high school graduate. He has known the Defendant since 1963. He first kissed her in August, 1965. When they went to Nevada, they stayed in the same motels but in separate rooms. He had kissed the Defendant in the presence of the children before they went to Nevada.

He stated that he was a Catholic and attended church regularly.

He denied that he ever owned a Thunderbird.

Narrative 5/8/1968 page 11 } Although there is a store in Virginia City, they shop in Sheridan to save money and have more of a selection.

The Defendant-Petitioner, having no further evidence to offer in support of her Petition for custody, the Plaintiff, Clayton J. Hall, then presented the following evidence in opposition to Defendant's request for custody:

The Court thereupon interviewed each of the three minor

children in chambers, individually, in the presence of counsel for both parties.

The children were interviewed as follows:

TARA HALL is 12 years old and in the 7th grade. When interviewed by the Court, she expressed a desire to stay with her father.

LOLLETE HALL (hereinafter sometimes referred to as Leta) is 10 years old and in the 5th grade. When interviewed by the Court she expressed a desire to stay with her father.

ROSE MARY HALL (hereinafter sometimes referred to as Rose) is 11 years old and in the 6th grade. When interviewed by the Court, she expressed a desire to stay with her father.

All three children testified they were happy about the prospective trip to Hawaii with their father.

BARBARA HALL, Plaintiff's present wife, called as a witness for Plaintiff, being first duly sworn, testified to the following facts:

Direct Examination

Narrative 5/8/1968 page 12

She stated that she is the present wife of Plaintiff and that they have been married for 18 months. Mrs. Hall was born on March 11, 1932 in Alexandria, Virginia. She married James Keene on June 1, 1952, in Alexandria, Virginia and was divorced on January 17, 1967. She obtained the divorce on grounds of desertion. She has three children (two girls and one boy) by her first marriage. Barbara Hall married Clayton J. Hall on or about January 29, 1967 and they presently reside in Alexandria, Virginia.

She met Clayton J. Hall in the fall of 1965 while she and her three children by a previous marriage, were staying at Lem Anderson's home, Franconia Road, Alexandria, Virginia.

She spends full time taking care of the Hall home. She has devised a fairly strict work schedule whereby her household duties are completed. However, her schedule is not so strict that it is inflexible. It can be rearranged so that she can give extra time to new situations as they arise.

She stated that they are one big happy family. Each child has duties to perform, they are all treated the same, and they

are well adjusted children. They live in a good home and it is well organized. The children each have their own responsibilities in the home (clean room, wash dishes, empty trash, etc.). They all usually do their school lessons before dinner. Mrs. Hall was amazed that the Hall children (Rose, Tara and Leta) could not cook well. She teaches the girls to cook, sew and fix their hair.

Dinner time is approximately 5:30 p.m. every evening. Since the whole family is together, they are able to discuss many topics which may range from school projects, to where the next family outing should be. Each child is granted the opportunity to voice his or her opinion on the subject matter discussed.

The girls are very interested in their appearance. Therefore, Barbara Hall spends much time with each girl, individually, teaching them to care for themselves. This also affords her the opportunity to listen to any problems the girls might have and advise them as to the way it should be handled. Barbara often finds herself confronted with a question on sex or a school subject. Consequently, she must respond, almost immediately, with the answer sought.

Narrative 5/8/1968 page 13

The children have varied activities. They go to church every Sunday and sing in the choir. Rose and Leta go to Girl Scouts on Mondays and are interested in gardening. Tara is interested in writing and art. All of the children enjoy doing things together.

In observing the girls, Barbara Hall has been able to notice their individual personalities. Tara seems to be two people; one minute she is very distant, then she is an affectionate little girl. She is often stubborn and finds it difficult to finish any project. She is very interested in her appearance and Barbara Hall spends much time teaching Tara how to care for her appearance. Rose is very independent and a dreamer. She is very affectionate and adores her father. She loves the outdoors and enjoys cooking and sewing. Leta is a clown. She follows either Tara or Rose and requires a lot of attention from Mrs. Hall. It was difficult for Leta to give up her status as the baby in the family, but she has accepted the younger child.

Barbara Hall likes being a mother to the girls and she is very affectionate with them. They all call her "mom" and kiss her goodnight. They have displayed their love and respect for her.

Cross-Examination

Mrs. Hall was divorced from her first husband in January, 1967, in Virginia. She does nothing to foster the children's interest in their mother, the Defendant. She was opposed to the children having dinner with the Defendant last Saturday because of her intuition.

Her final decree of divorce from her first husband was entered on January 17, 1967. She married Clayton J. Hall on January 29, 1967. Plaintiff has been in the service for 20 years. Barbara Hall dated him prior to her filing for divorce.

Narrative 3/8/1968 page 14 }

Mrs. Hall stated that the girls received music lessons. However, the girls received them through Michele, their step-sister, who obtained lessons from a music teacher. Son takes lessons at school. Mrs. Hall stated that she dated Clayton Hall while he was separated.

DR. DAVID POPE, called as a witness for Plaintiff, after being duly sworn, testified to the following facts:

Direct Examination

Regarding his qualifications, Dr. Pope stated that he is a British subject and has been in the United States for eleven years. He received his M.D. degree in 1957 from the University of Saint Andrews in Scotland. He did his internship at Mercy Hospital in Baltimore, Maryland, and his three year residency in psychiatry at the University of Oklahoma Medical Center. Dr. Pope taught for one year at the University of Texas Medical School, Dallas, Texas. He was also a medical officer in psychiatry at D. C. General Hospital in 1962.

Dr. Pope is presently engaged in private practice in Fairfax, Virginia. His practice has been exclusively psychiatry since 1963, mainly psycho-therapy. He is on the Psychiatric Staff of Fairfax Hospital and has been affiliated with the Washington Psychoanalytic Institute for the past four years. He spends two hours weekly evaluating the emotional problems of children at the Arlington County Clinic for Retarded Children.

Regarding the Hall family, Dr. Pope stated the following: He received a call from Plaintiff ten days ago asking for a professional opinion as to the present state of emotional health of the Hall children and the consequences if they were separated from their present home.

He stated his findings as to the children, the Plaintiff and Plaintiff's present wife as follows:

Narrative
5/8/1968
page 15 } 1. Clayton J. Hall—concerned over the children; no pathological defensive findings regarding Plaintiff. He is mature and his judgment is good.

2. Barbara Hall (Plaintiff's present wife)—frail, but not just physically. Found her to be happy with new family of six children, and capable of handling the family. Patient and understanding.

3. Hall children—likeable, quickly at ease. No pathological defensive mechanisms; talked about their mother and stepmother. They want to stay where they are. They like their mother; there was a vacation-like atmosphere in Montana in the summer of 1965, but they were left to themselves too much. Court business is a threat to them. They are quite anxious about these proceedings; they are a threat to their security and stability. They think that going with their mother might be fun, but they wouldn't want to stay. They are entirely normal emotionally now.

Dr. Pope testified that all three children have accepted the present Mrs. Hall, and that they appeared happy and secure.

Dr. Pope was of the opinion that it would be a painful disruption to their present family life if the children are sent back to Montana. It would be to their detriment asking them to do the whole thing over again.

narrative *Cross-Examination*
5/8/1968 On cross-examination, the Doctor testified that
page 16 } the Plaintiff, Clayton J. Hall, gave him a history of neglect of the children by Defendant and their unhappiness as the reasons for his bringing the children back from Montana. Dr. Pope also stated that Plaintiff told him of the Defendant's breakdown in 1957.

The doctor stated that he thought the children could make the change and that they would "adapt", but it would "leave emotional scars". He stated he spent 35 minutes with each child, one visit with each; that his visit with Plaintiff lasted approximately 40 minutes. He did not talk with the three children of Plaintiff's present wife. He stated he would think it important to talk to the Defendant only if children appeared to be "torn" to make a decision. He stated he did not pursue feelings of the children regarding their going to Hawaii. He testified no tests were run on the children as no pathology indicated.

Re-Direct Examination

On re-direct, he stated the children told him they did not like Alex Yenny, the Defendant's present husband.

MR. JAMES V. LUSCAVAGE, called as a witness for Plaintiff, after being duly sworn, testified to the following facts:

Direct Examination

He has been principal of Wilton Woods Elementary School since fall of 1963. The school's enrollment is 600 to 630 pupils. He has observed Leta and Rose who attend this school.

Narrative 5/8/1968 page 17 } He believes they are well adjusted and doing very well in school—seem very happy, have many friends.

At the beginning of school term in fall 1965, children were late in starting school, he called and the third week of school term, Plaintiff brought them in and explained situation. Rose Mary had some difficulty for first month of school—unhappy and often would leave school—problem has cleared up.

Cross-Examination

On cross-examination, Mr. Luscavage admitted Leta's grades had improved.

MR. ROBERT R. TABOR, called as a witness for Plaintiff, after being duly sworn, testified to the following facts:

Direct Examination

He is the principal of Mark Twain International School. He presented Tara's school records to the Court.

MRS. SUSAN OBLON, called as a witness for Plaintiff, after being duly sworn, testified to the following facts:

Direct Examination

She is a sixth grade teacher at Wilton Woods Elementary School. She taught Tara in 1966-67 and presently teaches Rose.

She stated Tara is scholastically superior to Rose. She has talked with her more and is closer to her. In her relationship with the girls, she observed the following:

Tara is well adjusted and happy; self assertive, self-

confident and has good relationship with others. She stated Tara had artistic ability and would stay after school to work on various art projects. She found Tara to be very excited and happy about her father's remarriage.

Narrative 5/8/1968 page 18 }

She found Rose to be more average as far as ability but more social than Tara. She stated she found both to be extremely respectful and polite. Both girls, she said, seemed to be resourceful and often brought exhibits to school which related to school projects.

Cross-Examination

On Cross-examination, Mrs. Oblon stated the children could adjust to any school.

REVEREND SAMUEL F. GOULDTHORPE, JR., called as a witness for Plaintiff, after being duly sworn, testified to the following facts:

Direct Examination

He is the Rector of Saint Marks Episcopal Church, 6744 South Kings Highway, Alexandria, Virginia.

He is familiar with the Plaintiff and his family. First met the Hall family in January, 1967, when they came into his church and filled up one entire pew. The family attends church every Sunday and all three of Plaintiff's children and two of present wife's children sing in the choir. The church provides work and study programs for the youth and the Hall children have attended about 80 percent of the time and are always prompt.

Rev. Gouldthorpe stated he had been in the Hall's home. He says that the children take responsibility well and are very enthusiastic when participating in youth activities. Stated they helped out at picnic and at home. They are on time for choir and confirmation classes. He stated children are well adjusted; are receptive to teachings of church; and work well together. At first Tara was reserved; now the two families are integrated and work well together. He sees them at least twice a week. Tara and Rose were confirmed in his church.

Narrative 5/8/1968 page 19 }

Cross-Examination

Rev. Gouldthorpe stated that the children seem to adapt well.

MRS. PHYLLIS PIERON, called as a witness by Plaintiff, being first duly sworn, testified to the following facts:

Direct Examination

She is a neighbor of the Hall family and lives three houses away. She has known the Hall family since January, 1965. She visited in the Hall home in the summer of 1966.

She met the Defendant, the ex-Mrs. Hall, for the first time when driving for the Girl Scouts. The witness stated her daughter, Regina, baby sat for the ex-Mrs. Hall on one occasion. She stated that on a Sunday afternoon the Defendant came to her home to pay Regina (for baby sitting). She testified she observed the Defendant ascend and descend the front entrance of her home. The Defendant appeared to have been drinking and appeared to stagger when she spoke to the witness. The witness stated that she refused, thereafter, to let her daughter baby sit for the Defendant. 1

She stated that the Plaintiff's mother came to the Hall home in the summer of 1966 to care for the children. His mother kept the house and children neat and clean. She also stated that since Barbara Keene Hall (Clayton J. Hall's present wife) has become a part of the family, she has kept a clean and neat home. The second Mrs. Hall has also kept the children neat and clean. She stated she was amazed at the change in appearance of the children when the second Mrs. Hall took over the responsibility as the children's mother. When Defendant cared for her children, they were not always neat and clean. She stated that the children are well mannered and well dressed. Plaintiff is a fine father.

Narrative 5/8/1968 page 20 } She testified the six children are well adjusted; they are a happy family; and that they get along famously together.

MRS. CAROL HAUBNER, called as a witness for Plaintiff, being duly sworn, testified to the following facts:

Direct Examination

She stated she is a former neighbor of the Hall family; before moving to her present address, she lived next door to the Halls for three years. Halls were helpful to her in getting settled; she stated she was very close to their family; was friendly with the ex-Mrs. Hall. She observed the home kept by Defendant. She stated that Defendant "did not keep best house in the world". She stated that the Defendant told her she didn't care for house work and didn't devote much time to it.

Mrs. Haubner testified that the Defendant suffered from migraine headaches; often didn't feel well. Once every two weeks or oftener, the Defendant complained of feeling "poorly"; she would lie down or see a doctor. On one occasion, she was so weak that she could not stand and Mrs. Haubner had to take her to the hospital. Defendant complained to her about Plaintiff using time for school and recreation room.

Defendant often confided in Mrs. Haubner. Defendant told her that when she lived in Virginia City, Montana, she was unhappy; wanted to get away and that was why she joined the Air Force.

The Defendant told Mrs. Haubner that she was often upset and nervous and that she had a nervous breakdown when Clayton Hall was in O.C.S.

Narrative 5/8/1968 Defendant told her she was upset over the fact that her parents did not live together. She was concerned about her father living with a young girl and about her mother seeing Alex Yenny (Defendant's present husband.)

Virginia City was described by Defendant to Mrs. Haubner as a town with a population of 198, having a two-room school house and if you wanted to go shopping, you had to drive a long distance.

When Defendant went to Virginia City with the children, she told witness it was just for a vacation. Witness stated she was shocked when she heard that Defendant had filed for divorce and was not returning.

She stated that the next morning after the children returned from Virginia City, they were delighted to be back—were hugging their father. Rose told Mrs. Haubner that she never wanted to see another hamburger again because that was all they ate while in Virginia City. The children told her they "hated" the school in Virginia City. They told her they often saw their mother kissing Alex Yenny.

The witness stated that Plaintiff saw the children off to school and that he came home early so that he was there when they returned. She testified she was astonished at how the two families fitted together; they acted as one family, the children get along "beautifully"; girls call Barbara Hall "mom". The girls seem to respond to the second Mrs. Hall. The witness stated that the Defendant didn't as "meticulously care for the children" as Plaintiff's new wife does.

Cross-Examination

Mrs. Haubner stated the Defendant is a fit mother—they

are still friends, but she doesn't think the girls would stay in Montana. She stated that the Defendant was frequently ill. On one occasion she saw the Defendant stagger when she complained of dizziness and couldn't stand up. She said she took Defendant to the hospital.

Narrative
5/8/1968
page 22 } MR. LEM ANDERSON, called as a witness for Plaintiff, being first duly sworn, testified to the following facts:

Direct Examination

Mr. Anderson testified that he is in Public Relations and lives on Franconia Road in Alexandria, Virginia. He was a neighbor of Plaintiff and Defendant. He stated he went to Virginia City, Montana in October, 1965. He did not see the Defendant while there. He stated there was not much to be seen at Virginia City; and, that the facilities he had seen were inadequate.

He stated that the Hall children spent time at his house, swimming and watching his horses. Stated that they seemed to be very happy and well oriented to their new family. He said he was amazed at how well the whole family blended together—a well integrated family.

Cross-Examination

Mr. Anderson stated that prior to 1965, the children were normal; that he knows nothing adverse about Defendant; and that Plaintiff and his present wife met at his house.

The Plaintiff, CLAYTON J. HALL, called as a witness in his own behalf, being duly sworn, testified to the following facts:

Direct Examination

That he lives on Franconia Road, Alexandria, Virginia. He is a Captain in the United States Air Force; that he has been in the service for twenty (20) years; having joined at the age of seventeen. He received his commission in March, 1958; he is in the primary zone for major; he has had a varied career in the service.

Narrative
5/8/1968
page 23 } He stated that he met the Defendant in the service in 1954; they went together two months before they were married.

He stated that his ex-wife (the Defendant) was frequently

ill during their marriage, and that she spent considerable time in bed. She suffered fainting spells and was very weak. She was a poor housekeepter and he had to do many of the household chores. While Hall was in the O.C.S., his wife suffered a nervous breakdown and was admitted to the State Hospital in Warm Springs, Montana. He testified to the following facts concerning his wife's breakdown: While at O.C.S. his wife went back to Montana; in October, 1957, he called home, was told his wife was in the hospital; a week or two later the Defendant called and said she was all right, that it was a rest type thing and that the children were okay. Plaintiff came home at Christmas and Defendant told him she had had a nervous breakdown because of children being born too close together; he stated she "seemed okay then."

In March, 1958, the Defendant apologized over what had happened. Plaintiff said he told her never mind, nothing to it.

In May, 1959, Plaintiff went to Japan; in July, 1959, his wife and children joined him. They stayed until 1963. Defendant had headaches ever since Tara was born; they kept getting worse after they got to Japan. During their stay, a maid was hired so that Defendant could stay in bed when she did not feel well. The doctor stated Defendant lacked self-confidence and had fear of not succeeding, insecure. The Defendant told Plaintiff after their third child that the doctor told her if she had another child, she would lose her mind. She had a fear of pregnancy but Defendant wouldn't use contraceptive regularly—she was Catholic. Captain Hall and his wife discussed the possibilities of her having an operation so that she could not have any more children. In 1962, due to Defendant's religious reasons, Captain Hall had the operation (vasectomy—irreparable). After Plaintiff had the operation, his wife still continued to have headaches and fainting spells. She was examined by a psychiatrist in Japan and he stated the Defendant lacked sufficient confidence in herself.

Narrative 5/8/1968 page 24

The Halls returned to the United States and in July or August, 1963, moved to Virginia. From this time until summer 1965, Defendant continued to have headaches. She did not want to do the housework, went to all sorts of (several) doctors but there was nothing physically wrong with her. She refused to be examined by a psychiatrist when they returned to the United States.

The Plaintiff stated that the Defendant would never finish any project she would begin; he said she was not the best housekeeper—he stated that he did the ironing that piled up; the house was dirty.

Defendant had little control over the girls and would screech at them to get them to obey. Defendant did not participate in activities with her children. The children, he stated, loved their mother, but complained that she was sick so much they had to do chores; Tara sometimes had to assume the role of mother.

The Plaintiff stated that his second wife, Barbara Hall, keeps a very neat house. She also is able to control the children without screaming at them. The children are closer to their step-mother, cool to the Defendant; they call their step-mother "mom"; are affectionate with her. Their step-mother teaches the girls how to cook, sew and keep their hair.

The Plaintiff testified that he is very happy with the whole family and is pleased with its unity. He feels he can provide a better home, education, better rounded children. He states the Defendant didn't encourage the children in any great way. He doesn't feel the Defendant is fit; he feels she is incapable of coping with three children at their ages and it is nearly three years since she has been with them.

Narrative 5/8/1968 page 25

Plaintiff stated that he is willing to let Defendant visit the children, on notice, at his home.

Cross-Examination

Plaintiff denied that Defendant tried to get him to go to a doctor.

He admits that he struck Defendant but only once when in Japan and she was hysterical and breaking dishes over sink.

(End of Testimony)

There being no further evidence presented by either party on the matter of the custody of the aforesaid minor children, the Court thereupon proceeded to hear argument of counsel.

Counsel for Defendant (Petitioner herein) and counsel for Plaintiff presented argument in support of their respective positions;

WHEREUPON, the Court ruled as follows:

That the Court feels there is no evidence of unfitness of the mother and that both parties are fit and proper people

to have the care and custody of said minor children; and, that the Court is not persuaded that Virginia City is a detrimental environment; there may be more material amenities in Hawaii.

That, accordingly, the Petition of Lois Carey Hall be granted and the custody of the said Tara Hall, Rose Mary Hall and Lollete Hall be awarded to the said Petitioner, Lois Carey Hall (now Yenny), subject to the right of the Plaintiff to have said children visit with him three weeks each year during the month of August, beginning August, 1968.

Narrative 5/8/1968 page 26

The foregoing agreed statement, consisting of 26 pages of typewritten matter is presented by the parties in the absence of an official transcript of the testimony (produced at the trial of the above cause) and is submitted pursuant to Rule 5:1 §3(e) of the Rules of the Supreme Court of Appeals of Virginia.

Betty A. Thompson
Counsel for

John E. Kilcarr
Counsel for
Lois Carey Hall (now Yenny), Defendant
Clayton J. Hall, Plaintiff

The foregoing Statement, consisting of 26 pages, tendered this 6th day of August, 1968.

G. V. B., Jr.
Judge
Circuit Court of Fairfax County
Virginia

I, ALBERT V. BRYAN, JR., Judge of the Circuit Court of Fairfax County, Virginia, hereby certify that the foregoing statement, consisting of 26 pages of typewritten matter may be taken as conformable to the truth and is a correct statement of the testimony received upon the trial of the above entitled cause.

Given under my hand this 16th day of August, 1968.

A. V. B., Jr.
Albert V. Bryan, Jr., Judge
Circuit Court of Fairfax County
Virginia

* * * * *

6/20/1968
page 1 }

* * * * *

Fairfax, Virginia
Thursday, June 20, 1968

The trial commenced at 9:00 o'clock a.m.

Before:
Honorable Albert V. Bryan, Jr., Judge.

Appearances:
Betty A. Thompson, 2045 N. 15th Street, Arlington, Virginia, counsel for the complainant.

Jack E. Kilcarr, Esq., 1437 N. Court House Road, Arlington, Virginia, counsel for the defendant.

* * * * *

6/20/1968
page 3 }

PROCEEDINGS

The Court: What are you here on today?

Miss Thompson: Since the time Your Honor rendered a decision in this cause, I have entered my appearance as counsel for plaintiff, Clayton J. Hall.

The plaintiff desires to petition for an appeal from the decision of this Court awarding custody of the three minor children to the defendant.

The matter comes on today for entry of a final decree and on motion of plaintiff that this Court suspend execution of the terms of its decree for a period of sixty days and thereafter until a petition for appeal is actually and acted on by the Supreme Court of Appeals of Virginia, provided the petition is actually filed within the time provided by law. Plaintiff has filed a written motion in support of his request.

The Court: Mr. Kilcarr?

Mr. Kilcarr: Your Honor, I feel a stay of execution at that

time isn't going to produce anything. I feel that the decision at the time should be that the children be with their mother. I feel, Your Honor, that the stay of execution would be more detrimental to do it now rather than at a later time if the Supreme Court should overrule this Court's de-
6/20/1968 cision, remembering during the case, Your Honor,
page 4 } that Captain Hall is under orders to go to Hawaii.

Now, if the children went to Virginia City, Montana, and stayed with their mother under your direction, Your Honor, what is going to be lost? Eventually, they are going to be moved either to Virginia City or to Hawaii, so they are not going to lose anything. If there is a stay of execution, I can foresee that this might last until, say, after September, so that we are going to have to have a new school term so the children are going to start in a new school, whether it be in Hawaii or whether it be in Virginia City.

Also remembering, Your Honor, that the mother has had custody but has not had visitation over two years, close to three years so if the Court does not suspend but sends the children out there under your order, but it is discretionary with you, Your Honor, then it is sort of like a visitation. At this time, I would ask the Court not to suspend and to proceed with the order that the children be sent to their mother. If the Supreme Court does overrule Your Honor, we can either send the children back for their visitation or Captain Hall can pick the children up on his way to Hawaii.

In this particular case, and we have to look at all the facts in the case, it is not going to be helpful to the
6/20/1968 children. As the Court well knows, it is in the
page 5 } best interests of the children to recognize and to live and to understand the homes of each parent. These children have not had that opportunity. We have the opportunity to pursue that and I would ask the Court not to suspend but to send them out there, and we are still under the order of the Court, and as I said, we can bring back the children any time the Court so directs, or I would ask after three years, to allow the children to go out for at least the summer months.

The Court: Where are they now?

Mr. Kilcarr: They are with Captain Hall.

Miss Thompson: If the Court please, that is really our position. The real issue is the welfare and interests of the children, although the subject matter of the appeal is the custody, although the Court knows this is the primary consideration of the Court in deciding custody; that it is the

wishes of the children whereas they haven't seen their mother for three years to stay with their father. All the more reason should the Supreme Court grant an appeal in this case and, if for any reason, reverses Your Honor's decision, then we feel it would be more jeopardizing and more prejudicial to the welfare of the children to change their present family environment, and all we are asking is that

6/20/1968 page 6 } the present family environment and circumstances be continued as essential to their welfare, and that he be allowd to prosecute his appeal without putting the welfare in jeopardy.

I believe there was a physician who testified that a change in the family environment could be a threat to the children's physical, emotional, and social development, and what we are really saying is, you have found in your hearing, I understand, that the father is a fit and proper person, so what harm is there to allow the children to remain with the father, pending this period of appeal, weighing that against the untimely transfer of the children to the mother with the chance that if the case was reversed, then they would have to be moved back to the father. In other words, isn't really the whole purpose of a stay of execution to maintain the status quo pending review and, therefore, preserve the subject matter?

Now, if the real subject matter here is the welfare of the children, can the Court, if it should desire to reverse Your Honor's decision, effectively grant relief, haven't we already possibly jeopardized the welfare? Why take a chance? The children haven't been with their mother for three years.

If Your Honor will recall, I believe their testimony was to

6/20/1968 page 7 } the effect they desire to remain with their father. Also, since being informed by their father father of Your Honor's decision and he has no desire not to comply with the Court order and that is why we are here.

The children have gotten very upset and I believe Captain Hall could show testimony and one of them has even said, "If you make me go, I am going to run away." With this sort of feeling and attitude in the children, and the ages they are, we feel it would be better to continue their present environment which Your Honor has not found in the hearing to be detrimental. In other words, it is the change right now that could be the thing that would deprive the children of a satisfied and continuous family setup, just merely during this period of appeal and, too, it may take until after the school term is open.

The Court: Are you unwilling for Mrs. Hall to have visitation rights?

Miss Thompson: Oh, no, sir. He is more than willing to do that and if I understand Captain Hall's personal schedule, he is scheduled to leave here after the 26th of this month on orders to Hawaii. He wants to go by way of Seattle because the children's grandmother lives there and they haven't seen her for a long time and this would be an opportunity to visit prior to going over. What arrangements
6/20/1968 could be made since Seattle is nearer Montana
page 8 } than Fairfax, Virginia, he is more than willing to arrange visitation with the mother and also, if our appeal is granted or if granted is reversed, he is prepared, at any time, whenever so advised that the case is over, to send the children, even if he is in Hawaii, at his expense to the mother in Montana, and he'd be willing to give visitation. It is just that we don't want to move the children—

The Court: Visitation in Hawaii is not a very practical—

Miss Thompson: Right, but before he goes to Hawaii, if I understand him correctly. How long are you going to be somewhere in the continental United States?

The Complainant: Through the 26th of July.

Mr. Kilcarr: You see, that puts me in an awkward position because how would I enforce this Court's order? I can do it now. I can ask to have it down now. If Captain Hall leaves with the children, he is leaving the jurisdiction. My next step, if the Court says, "Well, I think we should suspend it," would be to request the Court that Captain Hall post bond and he does not let the children leave the jurisdiction so that we can enforce the Court order, and how do we do that? He is going to be in Hawaii. He is going to be in Seattle, Washington.

6/20/1968 The Court: We can fix a bond. It wouldn't in-
page 9 } sure compliance but it would make it costly, not to comply, financially. I don't have any reason to believe that he wouldn't comply. I think the complainant is entitled to a stay but I'd like some arrangements of some kind other than a day or two visitation with their mother before they leave this country, because even if the decree is reversed, I can't conceive of the Court of Appeals, and I don't believe that Captain Hall has ever taken the position that their mother was not entitled to visit with them. Visitation, because of the distances involved, has, in my opinion, been precluded but I think he took the position that she

was entitled to visit them any time she wanted to come to Virginia which is fine in theroy, but as a practical matter, I don't think it would work; at least, I didn't feel it did at the time of the hearing.

I will grant a stay but I would like to know what provisions for visitation there will be. Where is their mother now? Is she in Montana?

Mr. Kilcarr: She is in Montana, Your Honor.

The Court: And the direction of the Court was that she be given the children in school.

Mr. Kilcarr: I think the 15th, Your Honor.

6/20/1968 page 10

The Court: I'd like them to be with their mother until a few days or so before he goes to Seattle, so that would give them some opportunity to visit with their grandparents but I think they are entitled to a stay; otherwise the appeal doesn't mean much.

Mr. Kilcarr: My motion was, Your Honor, on a stay of execution such as this and such as the cases that have been quoted, they are all on a monetary position.

The Court: Right.

Mr. Kilcarr: So if there's a judgment for $15,000, the Court can very easily have them post bond for $30,000 to ensure but now we are talking about the welfare of the children. The Court has ruled that the welfare of the children would be best obtained by being with the mother.

We posted a bond on that and that would be my wishes but if the Court wishes, of course, the execution is stayed. I agree with the Court. I think that something should be there to ensure that if the Supreme Court of Virginia opposes Judge Bryan's decision, that the children will be sent from Hawaii to the mother in Virginia City under the Court order.

6/20/1968 page 11

Miss Thompson: I think, Your Honor, as a practical matter, Mr. Kilcarr's suggestion about being out of state in this case, both parents are going to be in different states than Virginia and so if it should turn out that the Court of Appeals and you let the children go with the mother now, it would be just as difficult, say, to get them back from the mother as it would be from the father, but this Court knows Mr. Hall is in the Armed Services. This is his permanent assignment. With the threat of a bond of a sufficient amount, he certainly isn't going to put his career in jeopardy. Now, I am sure with sufficient bond, he will return them.

Now, regarding visitation prior to his going to Hawaii, I am sure we can work that out, can't we, Captain Hall?

The Complainant: Yes.

Miss Thompson: You are going from here toward Seattle but without looking at a map, I don't know where Montana would be. Would you stop first there to leave them and then arrange to pick them up from the grandmother's? We can work that out.

The Complainant: I would like to arrange, if possible, to drop them out on the way and leave them there two weeks. My mother is getting up in years. My mother has helped raise the children and, in fact, during the separation and all, my mother was here and lived with me and was very close to the children.

The Court: When are you leaving?

The Complainant: The 26th of June, sir, next
5/8/1968 Wednesday.
page 12 } Miss Thompson: So that would be perfect. He can leave them on his way out then.

The Court: All right. I think the 26th of June.

The Complainant: It would take about four days, sir, to get there cross-country driving.

The Court: So you would get there the end of the month?

The Complainant: Yes, sir.

The Court: Are you leaving the country on the 26th of July?

The Complainant: Yes, sir. I leave California on the 26th of July.

The Court: I think that would be all right. The two weeks seems a little short.

Miss Thompson: How far is Montana to Seattle?

The Complainant: Her home to Seattle is about 970 miles, something like that.

The Court: That is another couple of days, isn't it?

The Complaianant: Yes, sir.

The Court: Are you going to drive?

The Complainant: Yes, sir.
6/20/1968 The Court: I guess the two weeks then, if they
page 13 } are going to spend any time with their grandmother, will have to do.

How about the bond?

Mr. Kilcarr: When will you drop off the children?

Miss Thompson: ..... By the time he got there, it would be July 1, didn't you say?

The Complainant: About the 1st of July.

Mr. Kilcarr: July 1.

The Complainant: Leaving the 26th and driving, this would be four days to drive cross-country without pushing it.

If I could, Your Honor, I'd like to say that I am in the Service and the Service expects us to comply with all Court orders and if we don't, we are in serious trouble.

The Court: I understand that.

Mr. Kilcarr: July 1 through July 15th would be approximately the two weeks we are talking about?

The Court: Yes, that is a Monday to a Monday.

Miss Thompson: Yes, two weeks.

The Court: Now, what have you to say about the bond?

Miss Thompson: Captain Hall has to comply with the Court decree and he's got the pressure of his
6/20/1968 position, too, and I realize this alone isn't any
page 14 } guarantee, but in a man of his financial and economic position, I'd say even a $1,000 is a lot of money to Captain Hall, so I think that if an amount has any significance on compliance, I know that that would be considered, in his financial position, a lot of money. It isn't really a lot of money but if he had to produce it, it would be.

The Court: Mr. Kilcarr, what have you to say about that?

Mr. Kilcarr: If he has to post it, I'm sure he will have to post collateral or have surety—if he is going to have surety, then it is not going to cost him a $1,000. It's going to cost him the amount on the surety bond, so I think we could have $5,000.

The Court: Personally, I don't know how hard this particular kind of an appeal bond would be to write, where you know it isn't a money thing but it is the children.

Mr. Kilcarr: He has his home for collateral.

Miss Thompson: Isn't that up for sale?

Mr. Kilcarr: At least he has interest in it. A surety man will take that as surety, so I don't think we will be asking too much for $5,000.

The Court: How long have you been in the service?

The Complainant: Sir, I will be in twenty
6/20/1968 years.
page 15 } The Court: Have you any intention of resigning?

The Complainant: No, in fact, I won't be able to resign because I am on the assignment to Hawaii so I would have to complete that assignment before I could. I am a regular

officer which also gives more service commitments and requirements.

Miss Thompson: Is this your permanent duty assignment here?

The Complainant: Yes, sir. My permanent duty is with the headquarters here. However, this is a temporary assignment to Hawaii, to one of the units in Hawaii. However, I will be returned here to Virginia upon my completion of the assignment in Hawaii.

The Court: I have a feeling that in order to get this type of bond, he is going to have to post collateral. I would rather make the bond higher without surety. I believe you have the same compulsion with a potential judgment because, if we forfeit a $5,000 bond, that isn't going to get the children back which is what you really want. I mean the money is not—

Mr. Kilcarr: We are looking at the compulsion on him though, are we not, Your Honor?

6/20/1968 page 16 } Go ahead, Your Honor.

The Court: No, go ahead.

Mr. Kilcarr: What I am going to say, if he is compelled under a $5,000 bond with surety, I'd feel more relaxed—I mean my client, and since this has been going on for two years, three years. As you can see, there are a lot of miles between both parties. I think it is incumbent on me on behalf of my client to request that there is a $5,000 bond with surety, that she would feel more relaxed in performing under the Court's decree.

Miss Thompson: Aren't you maybe asking a vain thing because maybe as Your Honor states, maybe surety would be reluctant to take this without cash collateral or something equivalent to it, and it would be something he would want to comply with but it might be physically impossible and a $1,000 or even $5,000 without surety to Captain Hall, that would certainly be a lot of pressure on him to have to come up with that kind of money. If we had it without surety and the bond was high, I am sure that he would, in his position—

Mr. Kilcarr: He is going to leave the states though. We are talking about having no surety. With surety, I can go in, if he violates the decree, and at least ask that the payment be made, however, his surety is, Your Honor, and I think I should at least have that.

6/20/1968 page 17 } Miss Thompson: You can go after him, Jack, in any state.

Mr. Kilcarr: I don't want to be going to Hawaii after him. If the money is posted here, I can go for the money

right here and I think it is only fair if there is a suspension of the decree.

Miss Thompson: But you don't feel his position and being a serviceman and in twenty years' time, he is going to jeopardize—

Mr. Kilcarr: I do not and I will show you also that being a serviceman during this time, the wife has been trying to get the Department of the Army or Air Force or whatever it is, to assist her in seeing the children and nothing was done.

Miss Thompson: That is a different thing, in violating the Court order and I think the Judge would agree that would be a different thing.

Mr. Kilcarr: That is the same thing. This man would do nothing for her with the children. Unless he has surety, $5,000 posted and if he wants the suspension as requested, and the Court has granted it to him, then I think he should be put under a money bond, whether he posts the $5,000. He posts the house as collateral or he pays a surety on it, but I don't want to be running to Hawaii or wherever he may be.

6/20/1968
page 18 }

Miss Thompson: It wouldn't be bad if he could get a surety but we don't know that.

Mr. Kilcarr: That comes with a suspension, I think.

Miss Thompson: If the Court grants with a suspending bond, it doesn't necessarily have to be with surety.

Mr. Kilcarr: Of course, it doesn't and that is why I am asking the Court make it with surety.

Miss Thompson: I think the Judge is suggesting that if it is high enough without surety, there would be enough pressure on him to comply.

The Court: If you had a high bond without surety, with a designation in it, and appoint the clerk as his agent for service of process, you could come into this Court without having to chase him to Hawaii, and get a judgment, and if he posts bond, you can come in and get a judgment and you can collect on it quickly.

Mr. Kilcarr: May I suggest this then, Your Honor. Captain Hall has filed a petition for the partition of his home. Mrs. Yenny is still a tenant. May I ask that the sale, the money, be put in escrow until the conclusion of the appeal and that the clerk be held?

The Court: Has the partition suit just been filed?

Mr. Kilcarr: It has been filed and has been made. We have joined in the partition. We re-

6/20/1968

quest that the sale be made. I have talked with Mr. Turshen and counsel on it. He has suggested to me that Captain Hall wishes to buy out Mr. Yenny. I don't know but he has filed upon petition. I would like to get an appraisal made today so that there is money there.

The Court: Have you any idea what the equity would be?

Mr. Kilcarr: I do not.

The Court: A rough estimate?

Mr. Turshen: One, two, three thousand dollars.

The Court: Total equity?

Mr. Kilcarr: The house was bought in 1962 and there's only $3,000 in equity?

The Complainant: It was bought with no money down.

Miss Thomspon: What is the house worth right now?

The Complainant: Twenty-one seven or twenty-two.

Mr. Kilcarr: What did you buy it at?

The Complainant: Nineteen five.

Miss Thompson: All you paid is your current mortgage with no down payment?

The Complainant: Yes, ma'am.

6/20/1968 page 20 } Mr. Kilcarr: I have not looked at any figures. It is a how many bedroom—

The Complainant: Three bedroom.

Mr. Turshen: Jack, for whatever funds come out of this, I have an assignment for you, for whatever funds come out of it.

Mr. Kilcarr: I am putting it into escrow.

Mr. Turshen: Those are your fees.

Mr. Kilcarr: They may be my fees. I have to look out for my client first, not myself.

Miss Thompson: That would be your guarantee for your client if you have already assigned it to yourself.

Mr. Kilcarr: Maybe so, but I am looking out for my client. If there's any more than $3,000 owed on that, if it goes into excrow, there should be something under the suspension bond to hold that money, even my money, to hold that money.

Miss Thompson: Holding your money is one thing but I don't think that is any argument to the Court that this would be assurance that Captain Hall would comply with this decree or with the bond if it is already your own money.

Mr. Kilcarr: I don't know how much we are talking about. I don't know how much there is in the house. I don't know how much equity there is in the house.

6/20/1968 The Court: I will fix a $10,000 bond and not

page 21 } require surety but before there is any distribution to Captain Hall in that partition suit, I'd want to know what the status of the appeal is and if you are near the end of it, why we can hold that up, but in the meantime, in order for a suspension, we will have a $10,000 bond on his personal recognizance or personal undertaking and I will want a designation of the Clerk of the Court, that is as agent for service of process for any suit on the bond.

Mr. Kilcarr: Fine, and suspension will be just normally suspended for sixty days and provided that proper steps are taken to perfect the appeal within sixty days and it will be thereafter continued by the judgment of the Circuit Court of Appeals.

Miss Thompson: In other words, if I understand, Your Honor, we have to file a notice of appeal and assignments of error anyway within sixty days or we are out, and then we have an additional sixty to get out petition and thereafter if it granted.

The Court: By the judgment of the Court of Appeals.

Miss Thompson: We presented a decree, Your Honor. The decree itself may have to be redrawn. We do say in here, ordered that the terms of this decree be the same or suspended for a period of sixty days and thereafter 6/20/1968 until a petition shall be sent in and acted upon page 22 } by the Supreme Court of Appeals if such petition is actually filed, but we did say bond with surety. I think we better rewrite this.

The Court: I can make the change on it. Do you have the original?

Miss Thompson: I think the original is in the Court's file, Your Honor, and if I could ask one thing, I wasn't present when Your Honor made the ruling and we followed Mr. Kilcarr's wording on his decree about the visitation, assuming this case is affirmed on appeal. If Your Honor ruled that the three children went with Mrs. Yenny and they visit with Clayton J. Hall for the last three weeks of August, 1968, in the State of Hawaii, did Your Honor really mean that in each year hereafter, he was to have three weeks' visitation? The way Jack worded it, that would appear that it was a one-time thing.

The Court: No, I am sure I meant three weeks every year. I don't recall specifically what I said but I am sure that is what I meant.

Mr. Kilcarr: I didn't mean anything by that.

Miss Thompson: That is the way you worded it.

Mr. Kilcarr: That is the way you interpreted it.

The Court: I don't have the original of that de-
6/20/1968 cree.
page 23 } Mr. Kilcarr: Your Honor, we also have a discussion on the decree. Miss Thompson prepared the decree and I am sure that she prepared it under what Mr. Turshen had informed her, but in her decree, Your Honor, they noted exceptions and objections, etc., and none of them were taken at the time we had the hearing. That thing was taken by Mr. Turshen as counsel for Mr. Hall at the time of the hearing.

The Court: At the time of the ruling?

Mr. Kilcarr: At the time of the ruling. No exceptions were made. No exceptions were made. I have an objection to her decree to the Court saying that there were exceptions and objections noted by Mr. Turshen at that time.

Miss Thompson: Mr. Turshen, I think, will respond on that. He tells me he did. This was the decree, Your Honor. The original should be in the file but that is the one we filed. There was a notice attached to it putting it down.

The Court: I don't know that an exception is necessary to the other ruling. In the case on rulings on evidence, it may be, but I think you are entitled to appeal from the decree whether at the particular time of the ruling, you noted an exception.

Mr. Kilcarr: She has here to all of which actions and rulings of the Court. Now, the Court made many
6/20/1968 rulings and no objections were taken.
page 24 } Mr. Turshen: If it please the Court, forgive my tardiness.

The Court: That is all right.

Mr. Turshen: My recollection is that I did except to the ruling.

Miss Thompson: In other words, Your Honor, isn't it almost only not necessary but always done at the time the decree is actually prepared and entered, following the ruling, if you intend to appeal as Your Honor has stated, you wouldn't necessarily have to except at each stage. Whether Mr. Kilcarr, on appeal, wants to point out, say, we raised some point, the Court was in error about certain evidence, and then if he says the record shows no exception was taken, that is a different thing. We say to all the actions and the ruling of the Court as herein above set out.

Mr. Kilcarr: What do you set out? A Judge ordered a decree to the hearing of counsel.

Miss Thompson: No, namely that the decree was set aside and that the bonded decree was to have full force and effect as to the custody.

6/20/1968 page 25 } Mr. Kilcarr: Your Honor, we do not have a transcript in the case and I think that their wording will reflect that there were standard objections and standard exceptions taken during the course of the hearing and there were none. I don't know when he objected and when he did not object.

The Court: I don't read this as excepting to anything but the rulings contained in this decree to all of which actually the Court has herein above set out.

Miss Thompson: That is what we are talking about.

The Court: The plaintiff objects and excepts. Now, I think the decree is all right except that this is a petition to rehear the matter.

Mr. Kilcarr: This is just a decree entered.

The Court: No, but the decree recites it was a petition to rehear and I heard evidence.

Miss Thompson: That was your wording, Jack.

Mr. Kilcarr: I filed originally a petition to rehear the divorce matter.

The Court: I see.

Miss Thompson: I tried to follow Mr. Kilcarr's language as far as I could.

Mr. Kilcarr: It originally came on a petition.

The Court: The original doesn't seem to be in here.

6/20/1968 page 26 } Miss Thompson: I sent it in on May 29th, together with a decree and notice. I don't know what could have happened. Of course, if the Court has no objection, of course, normally we don't use a carbon copy—

The Court: I have got your notice but I don't have any attached and it recites that it is attached. The motion is here.

I will enter this decree.

Mr. Kilcarr: Note my objections to it.

Miss Thompson: I did at the bottom, I think.

Mr. Kilcarr: Okay.

Your Honor, we agreed to have this order entered *nunc pro tunc,* Miss Thompson and I. I am just getting to asking the Court now to do it.

The Court: Why?

Mr. Kilcarr: The motion was going to be set down much earlier. Miss Thompson had made arrangements to go out of town and I wanted to hear it as soon as possible. Of course, my client was asking me, so we had agreed that when we did bring this before the Court that we could ask the Court to have it entered *nunc pro tunc,* so the time would start running at a prior time.

Miss Thompson: Jack seems anxious, Your Honor, for this. Now, I don't see the advantage of it.

6/20/1968 Mr. Kilcarr: We agreed about this before.

page 27 } Miss Thompson: He had argued this on the 31st of May which was a Friday, I believe. Just so you're clear, Jack, the sixty days that the Court gives me would count from, say, roughly the 1st of June. Is that your understanding, that I have to mail my notice of appeal and assignments of error?

Mr. Kilcarr: From the 31st of May.

Miss Thompson: And I have four months from that day to file my petition?

Mr. Kilcarr: You have sixty days to file your appeal and, as the Court says, you have sixty days to file the petition.

Miss Thompson: After that. You see the law gives you four months to file your petition for appeal so under that—

Mr. Kilcarr: I haven't handled an appeal in a long time.

Miss Thompson: It is 8-463 or something of the Code, but you have sixty days to give your notice of appeal and assignments of error. If you don't do that, you don't have an appeal, but if you do do that , you have an additional sixty days to file your notice with the Court.

Also, in this case, Your Honor, there is going to be the problem that since neither party engaged a Reporter, there is going to have to be a prepared statement of

6/20/1968 the evidence which Mr. Turshen—

page 28 } The Court: You can use my notes which are fairly complete since there wasn't any reporter, but you may find some instruction necessary on what my system of shorthand is.

I don't like to enter orders *nunc pro tunc* unless there was something done, an order lost or some real reason for it. I will enter this as of today.

Miss Thompson: Fine. You're only talking about fifteen days in your whole life.

Would it be possible, Your Honor, to take that to my office and photocopy it and bring it back?

The Court: You can just keep it but I'd like to have it back ultimately.

My notes include the things that I thought important. For instance, I don't have any notes there on what I talked to the children about. I have them listed as witnesses but my recollection is that they did express—Mr. Kilcarr may have some notes on that—but they did express a desire to stay with their father.

Miss Thompson: In preparing the statement then, if we added that to what the evidence showed, I think even Mr. Turshen would be helpful in this because he remembers the names of the witnesses and probably it would be
6/20/1968 clearer to him in some respect, but you are using
page 29 } the decree for plaintiff and defendant.

If we get into what the facts are, we are using the Judge's notes.

Mr. Kilcarr: And my notes might be a little—

The Court: If there is some discrepancy over what—

Mr. Kilcarr: We will present it to you then.

The Court: You will have to present a narrative statement. If we can't agree on it, why we will have to work it out.

Miss Thompson: The next step would be to get the bond issued for $10,000 with a provision that the Clerk of the Court is appointed as his agent for process for any suit on the bond.

Mr. Kilcarr: Also, that the proceeds from the house, going to Mr. Hall, be held in escrow until either the time that the Supreme Court rules or we bring it to the Court's attention. Isn't that what you said?

The Court: I want to know before you distribute it to Captain Hall.

Mr. Kilcarr: You don't want it in the order?

The Court: It isn't part of this case, really.

Miss Thompson: But before it is ever distribu-
6/20/1968 ted, you want to know the status of the appeal?
page 30 } The Court: That is right.

(Whereupon, at 10:00 o'clock a.m., the hearing in the above-entitled matter was concluded.)

Seen:
Betty A. Thompson
Counsel for Plaintiff

Tendered and signed the 16th day of August, 1968.

A. V. B., Jr.,
Judge.

Received and filed this 16th day of August, 1968, Jean M. Key, Deputy Clerk, Fairfax County Circuit Court.

CERTIFICATE OF REPORTER

I, Laurel J. Parsons, do hereby certify that the testimony of the witnesses in the foregoing transcript was taken by me in stenotype and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Laurel J. Parsons, Court Reporter

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded	1
Record	2
Bill of Complaint	2
Memorandum—dated December 20, 1965	3
Order of Publication	4
Proof of Publication	4
Decree of Reference	5
Commissioner's Report	6
Decree—April 15, 1966	8
Petition for Merger	9
Decree—July 5, 1966	11
Petition	10
Answer and Opposition to Petition	13
Opinion, letter—November 22, 1967	14
Order—December 18, 1967	15
Petition for Custody	16
Answer and Opposition to Petition	17
Order—May 7, 1968	19
Order—May 7, 1968	19
Decree—June 20, 1968	20
Suspending Bond from Decree in Equity	22
Notice of Tendering Written Statement	23
Notice of Appeal and Assignments of Error	24
Proceedings	25, 56
Depositions:	
Clayton J. Hall	26
Mrs. Carole Price Haubner	33
Written Statement of Oral Testimony	36