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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

730575

JOHN LEONARD BRAUER, JR.

V.

JUANITA FOWLER BRAUER

APPENDIX

W. GRIFFITH PURCELL
Purcell, Cherry & Kerns
1012 Mutual Building
Richmond, Virginia
and
MEREDITH A. HOUSE
Cutchins, Wallinger, Christian & House
415 Mutual Building
Richmond, Virginia
Counsel for Appellant

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BILL OF COMPLAINT

TO THE HONORABLE JUDGES OF SAID COURT:

Your complainant, Juanita Fowler Brauer, respectfully shows unto the court the following cause:

1. That the complainant and the defendant, John Leonard Brauer, Jr., were legally married at Richmond, Virginia on June 20, 1947.

2. That the parties hereto have cohabited in the State of Virginia, and that the defendant is a resident of, and is actually domiciled in, the City of Richmond.

3. That there were born to the parties hereto as a result of this marriage, twin sons, namely Lawson Lee Brauer and William Gary Brauer, born in Richmond, Virginia on July 23, 1950.

4. That on two prior occasions, the parties have been separated for varying periods of time, but on each occasion, because of the importunities of the defendant and his promises to rectify the conditions which resulted in their separation, they have become reconciled.

5. That following their last reconciliation, the defendant conducted himself properly for a short while, but quickly lapsed into his former ways, staying out at night until the very late hours of the morning, coming in

with the odor of alcohol on his breath, and has almost constantly been involved with other women.

6. That though the parties have been and are now still living in the same residence, there has been no actual cohabitation for several years, and that for all practical purposes, the parties have been and are actually living separate and apart.

7. That the defendant has, from time to time, tried to prevail upon the complainant to institute a suit for divorce in order to give him his freedom, and has refused to make available to the complainant more than the bare necessities, to such an extent that the complainant and the children have lacked for necessary clothing except such as the complainant was able to make or obtain on charge accounts, which now have remained unpaid for the better part of a year.

8. That your complainant has instituted no action heretofore in the hope, until recent months that there might be a reconciliation between the parties, but that the defendant has tried to curtail the supplying of funds to the extent that complainant has had to live from month to month in fear that utilities might be cut off and actions may be brought against her for even the minimum

bills which have been incurred.

9. That the defendant is not only gainfully employed at $4920.00 per year, but is further entitled to the rents from property of which he is the life tenant, which rents your complainant believes total approximately $16,000.00 annually, resulting in a net rental income of approximately $10,000.00 in addition to the salary which the defendant receives for his services from his employment.

10. The complainant is advised and therefore avers that the defendant has been guilty of acts which in law constitute cruelty and wilful desertion and abandonment without just cause or provocation on the part of the complainant.

In consideration whereof, your complainant respectfully prays that the sole and exclusive care and custody of the infant children of the parties be awarded to her, that proper orders be entered requiring the defendant to pay for the support and maintenance of your complainant and the infant children of the parties as the occasion and circumstances may justify from time to time, pending this suit and permanently thereafter; That the defendant be required to pay the costs of this proceeding as well as fees for counsel for your complainant; And

that proper restraining and enjoining orders may be entered, from to time, as the court may deem appropriate to prevent the defendant from disposing of, alienating, or encumbering any of his assets, or restraining and enjoining the defendant from such other acts as the court may deem appropriate.

Juanita Fowler Brauer
Juanita Fowler Brauer

Dervishian, Lowenstein & Dervishian, p.q.
516 American Building
Richmond 19, Virginia

By Harold H. Dervishian
Of counsel

****

ANSWER

TO THE HONORABLE JUDGES OF SAID COURT:

The answer of JOHN LEONARD BRAUER, JR., defendant, to the bill of complaint heretofore filed herein against him by JUANITA FOWLER BRAUER, plaintiff.

This respondent, reserving to himself the benefit of all just exceptions to said bill of complaint, for answer thereto, or to so much thereof as he is advised that it is material he should answer, answers and says:

I. This respondent admits the allegations contained in the first, second and third paragraphs of said

bill of complaint relating to the date and place of their marriage, their domicile and residence, and names and ages of the children born of said marriage.

II. This respondent especially and specifically denies all of the allegations contained in the fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of said bill of complaint, and particularly the allegations of cruelty and wilful desertion and abandonment of plaintiff by defendant without just cause or provocation, as alleged in paragraph ten of said bill of complaint; and requires strict proof of all allegations contained in paragraphs four to ten, both inclusive, of said bill of complaint.

III. That said defendant is employed by the State of Virginia, Division of Motor Vehicles, and his monthly take home pay is $321.76, all of which has been and still is used for the support and maintenance of the plaintiff, himself and their two infant children. That he receives only a very small monthly income from his life interest in his mother's estate; the major portion of which income is being utilized by him for the repair and improvement of the parcels of real estate belonging to said estate in order to render them more habitable for occupancy by tenants and

profitable for said estate.

IV. That his earnings from his regular employment proved insufficient to properly maintain plaintiff and their children, and it thereupon became necessary for defendant to seek additional employment, and he accordingly obtained work as an extra part time operator driving a cab for the Yellow Cab Company of Virginia, earning $25.00 to $30.00 weekly, which work was performed by him after business hours and continued until late at night and early morning, and he continued so doing for a period of two and one-half years prior to his mother's death, and he had to give up such extra work on account of his weak back due to the removal of a disc several years ago, and he occasionally suffers disability for this source. That since his mother's death he has devoted the major portion of his time after work in managing, repairing and improving the parcels of real estate belonging to said estate, in order to render them better income producing properties.

That in order to meet his financial obligations he was compelled to borrow from his aunt, Mrs. Rosa C. Hall, the sum of $1000.00 in 1958, none of which has been repaid, and he will shortly have to commence making monthly payments to her in repayment of said loan. That

it also became necessary, for the aforesaid reason, to borrow money from the Division of Motor Vehicles Employees' Association in 1958, and now owes them an approximate balance of $997.00, on which loan he is now making monthly repayments of $54.00.

That he likewise had to borrow $250.00 in July, 1959, from the First and Merchants National Bank of Richmond, Virginia, to pay debts due by him, on which he is now making monthly payments of $22.31.

V. That said plaintiff has independent means of her own, including a bank account at a local bank; that she is now receiving weekly payments from a woman roomer and boarder, also from sewing done by her for other persons, and by agreement of said parties she is receiving the net rentals from two apartments rented by her for $160.00 monthly.

VI. That said plaintiff did voluntarily and wilfully desert and abandon the defendant on two occasions, without just cause or excuse.

That on the first occasion she went to Miami, Florida, with their two sons, telling defendant she was going to spend a brief vacation with her sister, and would return home shortly, but remained there for six months,

and finally returned home voluntarily.

On the second occasion she also went there with their children and remained there for approximately the same period of time, but did not return, and it was necessary for defendant to go there to induce her to return home with their children, which was done.

VII. That the said parties continued to live together and occupied the same bed until the month of October, 1958, when she became dissatisfied following an argument, and removed to another bedroom in their apartment, and she has continued to live separate and apart from the defendant continuously ever since.

VIII. That said plaintiff has not provided any breakfast for said defendant since the closing of school as the children did not have to arise early, and not having to prepare breakfast for them she remained in bed, and he either had to prepare his own breakfast or eat elsewhere; and she has only prepared one evening meal for him during the past month. That she recently neglected to render proper attention to their son when he injured his foot.

IX. That during the past two years or more said plaintiff has associated with another man in their own home during the absence of defendant at work.

X. That defendant is desirous and willing to properly support and maintain their two infant children within his means and ability so to do, and has continuously since their marriage supported and maintained the plaintiff and their children.

The defendant contends that plaintiff is not entitled to separate maintenance for herself from this defendant under all of the aforesaid facts and circumstances.

And now having fully answered the plaintiff's bill, this respondent prays to be hence dismissed.

John Leonard Brauer, Jr.
JOHN LEONARD BRAUER, JR.,DEFENDANT

J. Leicester Watts,
J. LEICESTER WATTS,
Counsel for Defendant,
Suite 1125 Mutual Building,
Richmond, Virginia

****

ORDER FOR TEMPORARY SUPPORT AND
COUNSEL FEES, AND INJUNCTION

This day came the parties, in person and by counsel, and thereupon the complainant, by counsel, moved the court that she be granted temporary support and maintenance for herself and the infant children of the parties as well as suit money and counsel fees.

Upon consideration of the evidence, the court

doth adjudge, order and decree that pending the further order of this court, the care, custody and control of the infant children of the parties, Lawson Lee Brauer and William Gary Brauer, be, and the same hereby is, awarded to the complainant, Juanita Fowler Brauer, with the right of visitation to and with the defendant at such times as may be mutually satisfactory to the parties, or at such times as may be fixed by further order of this court.

It is further adjudged, ordered and decreed that the defendant, John Leonard Brauer, Jr., do forthwith pay unto Dervishian, Lowenstein & Dervishian, counsel of record for the complainant, the sum of $100.00 on account of counsel fees, the sum of $25.00 on account of court costs and suit money, and that the defendant pay unto the complainant the sum of $300.00 per month for the support and maintenance of the complainant and the infant children of the parties, the first payment to be made on the 5th day of September, 1959, in the amount of $150.00 and thereafter on the 5th and 20th of each and every month the like sum of $150.00 until further order of court.

It is further adjudged, ordered and decreed that the injunction order entered herein on August 18, 1959, be, and the same hereby is, continued in effect until the

further order of the court.

We ask for this:

Dervishian, Lowenstein & Dervishian, p.q.

By Harold H. Dervishian

Seen:

J. Leicester Watts p.d.

****

December 15, 1959

Hon. Harold H. Dervishian
Attorney at Law
American Building
Richmond 19, Virginia

J. Leicester Watts, Esq.
Attorney at Law
Mutual Building
Richmond 19, Virginia

In re: Juanita Fowler Brauer
v.
John Leonard Brauer

Gentlemen:

After careful consideration the Court has concluded that the defendant should be required to vacate the property where the parties have heretofore been living, and to that end a mandatory injunction will be decreed against him, which is to be effective until the further order of this Court.

The Court is also of the opinion that the decree entered requiring the defendant to pay $300.00 per month pendente lite for the support and maintenance of the complainant and the infant children of the parties should be reduced to $100.00 per month until the further order of the Court effective the date the decree carrying out these conclusions is entered.

Counsel will please prepare an appropriate sketch of a decree in accordance herewith.

Very truly yours,

J. H. Rives, Jr.

Judge

JHR,Jr:k

****

ORDER

This day came the parties, by counsel, and the Court now being advised of its decision on the motion of the complainant for a mandatory injunction requiring the defendant to move from the premises heretofore occupied by the parties and their children, and upon the motion of the defendant that the sum required of him for the support and maintenance of his wife and the infant children of the parties be reduced, upon both of which motions the Court heard the testimony ore tenus on November 23, 1959 as well as the arguments of counsel filed subsequent thereto in accordance with the directions of the Court;

Upon consideration whereof, and it appearing to the Court proper so to do, it is adjudged, ordered and decreed that the defendant, John Leonard Brauer, be, and he hereby is, enjoined and restrained from living in and upon the premises known as 1900 Grove Avenue, Richmond, Virginia,

or any part thereof, effective twenty-four hours after the time when an attested copy of this order has been served upon him and thereafter until the further order of this Court; and that the defendant shall not remove from the said premises any items of furniture or furnishings, but may remove his clothing and personal effects; to which rulings of the Court, the defendant, by counsel, duly objected.

It is further adjudged, ordered and decreed that effective as of December 20, 1959, the defendant shall pay to the complainant toward the support and maintenance of the complainant and the infant children of the parties at the rate of $100.00 per month, payable in semi-monthly installments of $50.00 each on the 5th and 20th days of each month, until the further order of the Court; to which ruling of the Court insofar as it reduces the amount required to be paid by the defendant, the complainant, by counsel, duly objected.

It is further adjudged, ordered and decreed that, as between the parties hereto, the following items are to be paid by the respective party as named:

(1) The monthly installment payments of principal and interest on the lien obligation secured upon 1900

Grove Avenue, Richmond, Virginia, in the amount of $95.02 per month, by the parties jointly;

(2) The utility bills for the rental units contained in the aforesaid building, by complainant;

(3) The outstanding medical and dental bills incurred by the complainant and the children of the parties prior to the date of the institution of this proceeding, by the defendant;

(4) The delinquent real estate taxes upon the property 1900 Grove Avenue, by the parties jointly;

(5) The grovery bill in the amount of $22.94 incurred prior to the support order of September 4, 1959, by the defendant;

(6) And that all other bills and obligations and installment payments therefor, incurred by either of the parties prior to the entry of the support order of September 4, 1959, shall be hereafter determined by the Court upon proper application.

To all of which rulings adverse to them respectively, the complainant and the defendant, by their respective counsel, duly objected.

Enter:

J.H.R.

Dec. 20, 1959

Seen:

Harold H. Dervishian p.q.

J. Leicester Watts p.d.

****

ORDER FOR SUBPOENA DUCES TECUM

This day came Juanita Fowler Brauer, the complainant herein, by counsel, and it appearing by affidavit now filed that certain accounts and vouchers purporting to constitute a record of the rents collected and the disbursements made by way of expenses in connection with the income of the real estate of which Lillie Keck Brauer died seized, and of which the defendant is the life tenant, and accordingly, is the recipient of the net income therefrom;

And it appearing that the said Joe T. Mizell, Jr. Esquire and Miss Mary Steinlein are not parties to this suit, and that the said writings are material and proper to be produced before this Court, it is ordered that the Clerk of this Court do issue a subpoena duces tecum to compel the said Joe T. Mizell,Jr., Esquire and/or Miss Mary Steinlien, to produce the said writings before this Court on July 12, 1960, at 9:30 o'clock a.m., and then and there to testify and the truth to say in behalf of the said

complainant.

Enter this:

J.H.R.

July 8, 1960

We ask for this:
Dervishian, Hutzler & Lowenstein, p.d.

By Harold H. Dervishian

****

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT

TO THE HONORABLE J. H. RIVES, JR., JUDGE OF SAID COURT:

The complainant, Juanita Fowler Brauer, respectfully shows unto the court that:

A. By bill of complaint filed herein on the 18th day of August, 1959, the complainant prayed for support and maintenance for herself and the infant children of the parties and for other relief therein specifically set forth.

B. Since the filing of the pleadings therein and the proceedings had thereon, the complainant has concluded to seek a divorce from the defendant herein.

C. Accordingly, the complaint files this bill amending and supplemental the bill of complaint originally filed herein by adding the following paragraphs numbered to be read in their proper numerical sequence with the

numbered paragraphs of the original bill, and by amending the prayer of the original bill to the end that the prayer as supplemented and amended shall read as hereinafter set forth:

"1(a). A certified copy of the marriage license and certificate of marriage is filed herewith."

"2(a). The parties, at the time of, and for more than one year next preceding, the commencement of this suit, were, and are now, actual, bona fide, residents of, and domiciled in, the City of Richmond and the State of Virginia, and last cohabited in the City of Richmond."

"2(b). Both of the parties are of the Caucasian Race."

"11. That the separation of the parties, as a result of the aforesaid acts of the defendant, took place more than one year preceding the commencement of this suit."

"In consideration whereof, the complainant respectfully prays that she be decreed a divorce from the bond of matrimony from the

defendant on the grounds of cruelty and wilful desertion and abandonment for a period of more than one year, or that she be decreed a divorce from bed and board from the defendant on the grounds of cruelty and wilful desertion and abandonment, in which event that she be allowed to merge the same into a decree of divorce from the bond of matrimony upon the expiration of the period provided by law; that the defendant be required to pay to the complainant alimony pendente lite and permanently thereafter, together with suit money and counsel fees with which to prosecute this suit; that your complainant be granted the sole and exclusive care, custody and control of the infant children of the parties and that the defendant be required to pay for the support and maintenance of their children; that proper restraining and enjoining orders may be entered, from time to time, as the court may deem appropriate to prevent the defendant from disposing of,

alienating, or encumbering any of his assets, and restraining and enjoining the defendant from such other acts as the court may deem appropriate."

Juanita Fowler Brauer
Juanita Fowler Brauer

Harold H. Dervishian p.q.
Dervishian, Hutzler & Lowenstein
516 American Building
Richmond 19, Virginia

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

JUANITA FOWLER BRAUER

v.

ORDER FOR
SUBPOENA DUCES TECUM

JOHN LEONARD BRAUER, JR.

This day came Juanita Fowler Brauer, the complainant herein, by counsel, and it appearing by affidavit now filed that there are in the possession of Rucker and Richardson, Agents, certain statements and accounts constituting a record of the rents collected and disbursements made between January 1, 1960 and February 1, 1961, in connection with the income of the real estate of which Lillie Keck Brauer died seized; that the said Rucker and Richardson, Agents are not parties to this suit, and that the said writings are material and proper to be produced before this court,

It is ordered that the Clerk of this court do issue a subpoena duces tecum to compel the said Rucker and Richardson, or any person designated by them, Agents, to produce the said writings before this court on February 13, 1961, at 2:30 o'clock, P.M., and then and there to testify and the truth to say in behalf of the said complainant.

I ask for this:

Harold H. Henderson p.q.

Entered
JOHR
Feb. 10, 1961

DB 61 p. 162

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

JUANITA FOWLER BRAUER

v.

AFFIDAVIT FOR SUBPOENA DUCES TECUM

JOHN LEONARD BRAUER, JR.

STATE OF VIRGINIA
CITY OF RICHMOND, to-wit:

This day, before me, the undersigned Notary Public in and for the City and State aforesaid, personally appeared Harold H. Dervishian, who, after being duly sworn, made oath that:

1. He is the agent and attorney for the complainant, Juanita Fowler Brauer;

2. There are, the complainant verily believes, in the possession of Rucker and Richardson, who are not parties to this cause, certain statements and accounts constituting a record of the rents collected and the disbursements made therefrom for the period January 1, 1960 to and including February 1, 1961, in connection with the income of the real estate of which Lillie Keck Brauer died seized.

3. Said writings and records contain material evidence for the complainant, and the complainant desires that a summons be issued requiring the production of said writings herein.

Harold H. Dervishian

Subscribed and sworn to before me this 10th day of February, 1961.

My commission expires the 7th day of June, 1963.

Lorraine G. Rason
Notary Public

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

JUANITA FOWLER BRAUER

v. **NOTICE**

JOHN LEONARD BRAUER, JR.

To: John Leonard Brauer, Jr.
Division of Motor Vehicles
2220 West Broad Street; or
2007 Grove Avenue
Richmond, Virginia

Sep 2/10 pm

Please take notice that on February 13, 1961, at 2:30 o'clock, P.M., or as soon thereafter as counsel may be heard, I will move the Law and Equity Court of the City of Richmond to enter a decree awarding me a decree of divorce from the bond of matrimony and to increase the amount of support and maintenance for myself and our infant children as well as allowances in payment of costs heretofore incurred, and for additional attorney's fees, and for the entry of such orders as the court may deem appropriate in connection with your failure to pay the sums required by prior orders herein.

JUANITA FOWLER BRAUER

By Harold H. Lowenstein
Of Counsel

Dervishian, Hutzler & Lowenstein, p.q.
516 American Building
Richmond 19, Virginia

Executed in the City of Richmond, Virginia, this ....day of FEB 10 1961 .. by delivering a true copy of the within ..... in writing to ..... in person.

JAMES H. YOUNG
Sheriff, City of Richmond, Va.

By .....
Deputy Sheriff

FINAL DECREE

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be again heard upon the original bill of complaint, on the defendant's answer thereto, upon the amended and supplemental bill of complaint, upon the testimony now and heretofore heard ore tenus herein as to the allegations in the pleadings and in support of the motions and other proceedings herein pursuant to due notice thereof, and upon the application of the defendant for a further hearing upon the amount of alimony, support and maintenance, costs and attorneys' fees, and was argued by counsel.

Upon consideration whereof, the Court finds as established by the evidence in this cause, independently of the admissions of either party in the pleadings or otherwise, the following facts: that the parties, who are both of the Caucasian race, were married in the City of Richmond, Virginia, on June 20, 1947; that both parties are now, and have been for more than one year preceding the commencement of this suit, actual, bona fide, residents of, and domiciled in, the State of Virginia; that the defendant was, at the time of the commencement of this suit, and is now, an actual, bona fide, resident of the

City of Richmond; that twin sons, namely Lawson Lee Brauer and William Gary Brauer, were born on July 23, 1950, to the parties as a result of said marriage; that the defendant has been guilty of acts which in law constitute wilful desertion and abandonment for a period of one year, to-wit: since September 4, 1950; that the said separation of the parties has continued without interruption; and that no reconciliation has taken place nor is probable,

It is, therefore, adjudged, ordered and decreed that the complainant, Juanita Fowler Brauer, be, divorced from the bond of matrimony from the defendant, John Leonard Brauer, Jr., and that the marriage heretofore solemnized between the parties be dissolved according to law.

It is further adjudged, ordered and decreed that the sole and exclusive care, custody and control of the infant children of the parties be, and the same hereby is, awarded to the complainant, Juanita Fowler Brauer, but that the defendant shall have the right to see the children and to have them visit with him at reasonable times and under reasonable circumstances or on such terms as the court may determine by further order herein upon proper application therefor in the event such visitation cannot

be carried out on terms mutually satisfactory to the parties.

And the defendant having made application to the court for a further hearing as to the amount of permanent alimony, support and maintenance for the complainant and the children of the parties, the costs and attorneys' fees to be paid by the defendant to counsel for the complainant as well as for his own counsel the court doth reserve such matters for determination at a further hearing now fixed for April 10, 1961, at 10:00 A.M.,

And it appearing to the court from the memoranda filed by and on behalf of the respective parties that in addition to the defendant's salary, rental income has, and will, become available to the defendant, and that the complaintant's circumstances are such that the temporary alimony, support and maintenance for her and the children should be increased pending determination of permanent alimony, support and maintenance, it is adjudged, ordered and decreed that the defendant, John Leonard Brauer, Jr., pay to the complainant, Juanita Fowler Brauer, the sum of $300.00 per month commencing April 1, 1961, as alimony and for the support and maintenance of the children of the parties, payable in semi-monthly installments of $150.00

each on the 5th and 20th days of each month commencing April 5, 1961, until the further order of the court; to which ruling and order of the court increasing alimony, support and maintenance, the defendant, by counsel, duly objected and excepted.

The court further reserves for determination the matters of payment of obligations of the defendant which heretofore have been paid by the complainant in payment of, or to prevent, judgments, garnishments and forfeitures, and the amounts which the defendant should be ordered to pay to counsel for the complainant and to his own counsel in conformity with his application to the court therefor.

It is further adjudged, ordered and decreed that the defendant, John Leonard Brauer, Jr., be, and he hereby is, enjoined and restrained from conveying, alienating or encumbering any interest which he may have in any personal property and real estate, until the further order of the court.

And this cause is retained on the pending docket of the court for such further proceedings herein as may be appropriate.

Law and Equity Court
OF THE
City of Richmond

JUDGES
ROBERT LEWIS YOUNG
ALEX H. SANDS, JR.
A. CHRISTIAN COMPTON

RICHMOND, VIRGINIA
23219

CLERK
LUTHER LIBBY, JR.

November 22, 1967

Juanita F. Brauer v. John Leonard Brauer, Jr., (B-3972)

Harold H. Dervishian, Esq.
Attorney at Law
200 West Grace Street
Richmond, Virginia 23219

Meredith A. House, Esq.
Attorney at Law
Mutual Building
Richmond, Virginia 23219

Gentlemen:

This cause is before the Court upon the defendant's motion for a reduction in the amount he is ordered to pay as alimony to the plaintiff and as support for the two children of the parties. The notice of this motion is dated more than five years ago on November 8, 1962.

Since every hearing to date appears to have been ore tenus with no transcript of testimony being filed with the Court, the status of this cause must be determined from the orders entered and exhibits filed.

This suit was commenced on August 18, 1959. In her bill alleging acts of cruelty and desertion, the plaintiff sought separate maintenance for herself and the children (twin boys now age seventeen), custody of the children, an injunction, and amounts for counsel fees and court costs. She alleged that in addition to the salary from his employment of approximately $5,000.00 a year that the defendant was entitled to an additional sum of approximately $10,000.00 annually because of the rents

from property of which he was a life tenant.

On September 4, 1959 at a preliminary hearing, this Court awarded the custody of the children to the plaintiff and ordered the payment by the defendant of $300.00 per month for alimony and support.

On December 21, 1959, Judge Rives sustained the defendant's motion for a reduction in the amount of alimony and support and ordered the defendant to pay at the rate of $100.00 per month.

The Court file shows that subsequent hearings were held on the matter of support and alimony in 1960 on February 11, July 7, July 12 and September 26. On September 16, the plaintiff gave notice that, among other things, she would move for "modifications or enlargements in the provisions for support, alimony..." By orders of July 29, 1960 and September 26, 1960, the provisions of the order of December 21, 1959 relating to the payment of $100.00 per month as alimony and support were continued in effect "pending the determination by the Court of the complainant's motions now before it."

On December 22, 1960 the plaintiff was allowed to file an amended bill seeking either a divorce from the bond of matrimony or a divorce from bed and board with leave to merge upon the grounds of cruelty and wilful desertion. She again prayed for alimony for herself and support for the children.

On February 13, 1961 pursuant to notice, the plaintiff moved for a divorce from the bond of matrimony and an increase in the amount of support and maintenance for herself and the children. The file reflects that all during 1960 and through the first three months of 1961 the Court was presented with and considered detailed testimony; voluminous financial records and statements of account; other exhibits; and memoranda of counsel upon the subject of the amount of alimony and support with particular emphasis upon the amount that the defendant received, or was entitled to receive, as a life tenant under a trust established by the will of his deceased mother probated in the Chancery Court of the City of Richmond on July 31, 1958.

On March 31, 1961 the plaintiff was awarded a divorce from the bond of matrimony upon the ground of wilful desertion dating from September 4, 1959. In this decree the plaintiff was awarded "exclusive care, custody and control of the infant children of the parties." This decree reserved decision upon the question of the amount of "permanent alimony, support and maintenance

for the complainant and the children of the parties" but provided that:

> "...it appearing to the Court from the memoranda filed by and on behalf of the respective parties that in addition to the defendant's salary, rental income has and will become available to the defendant, and that the complainant's circumstances are such that the temporary alimony, support and maintenance for her and the children should be increased pending determination of permanent alimony, support and maintenance....it is adjudged, ordered and decreed that the defendant .....pay to the complainant ... the sum of $300.00 per month commencing April 1, 1961, as alimony and for the support and maintenance of the children of the parties ...." (emphasis added).

It is to modify the provisions of this order that the present proceeding relates.

Subsequently on April 28, 1961, an order was entered as a result of a hearing held ten days before that date which recited that the Court reserved the motions for permanent alimony and support for further consideration, it appearing that "an attempt may shortly be made to procure" an accounting of the income to which "the defendant is entitled as a life tenant of the estate of his mother."

More than eighteen months later the defendant gave the notice which is the basis for this proceeding. Thereafter on November 23, 1962 the defendant stated in his petition moving for the reduction that his net income was about $325.00 per month and that the net income realized from the estate by him since July 14, 1958 was $348.00. He further asserted that he had been attempting in good faith to comply with the order of March 31, 1961 but had been unable to do so because of his bad financial situation. Moreover, he asserted, the plaintiff refused to work, although able to do so, and that she receives income independently of the amount paid for her support by the defendant. The plaintiff stated in her answer to the petition, among other things, that the estate was indebted to the defendant in the sum of "at least $33,000.00 for items of income" and asserted that she was not able to "work gainfully."

A hearing was held three months later on February 18, 1963 upon the motion for a reduction following which hearing a memorandum of law was filed by the defendant. Thereafter

notices were served on June 19, 1963 and September 17, 1963 by the defendant seeking to have orders entered decreeing a reduction.

More than four years later on June 21, 1967 the parties appeared upon the motion in question and evidence was heard in open court on September 18, 1967 following which hearing the defendant filed another memorandum of law.

The defendant argues that the Court at this time has "jurisdiction" to change or alter the amount of support money and alimony previously ordered and that the Court may now order a reduction without regard as to whether or not there has been a change of condition of the parties, citing Code, Sections 20-108 and 20-109. He also urges that a change in circumstances has occurred which requires a reduction in the amount ordered to be paid. In addition, the defendant claims that the reduction should take effect retroactive to the date of the notice filed in this proceeding in November of 1962.

At the last hearing of this matter in September of 1967, the plaintiff argued that the last order setting the amount to be paid at $300.00 per month was an "appealable order" and that its provisions can't be changed without a change of condition being shown.

Certainly the Court has "jurisdiction" over the matters relating to alimony and support under the statutes cited by the defendant, however the amount ordered to be paid may not be changed by the Court without a showing that there has been a material change in the circumstances of the parties since the entry of the order of March 31, 1961. Taylor v. Taylor, 203 Va. 1, 5; 6 M.J., Divorce and Alimony; Cohen, Divorce and Alimony in Virginia and West Virginia (1949), p. 171; Nelson on Divorce (Second Ed), Section 17.01, p. 394; 18 A.L.R. 2d 10 (Modification of Alimony Decree); 89 A.L.R. 2d 7 (Child Support Decree - Modification). This is true even though, as here, the award is a temporary one and not a decree for permanent alimony and support. 24 Am. Jur. 2d, Divorce and Separation, Section 557, p. 682, ftn. 12.

The rule could not be otherwise because if there has been no material change in the circumstances of the parties, the situation would necessarily be essentially the same as it was at the time of the last order setting the amount to be paid

and, as to the amount ordered based on the then facts, the matter is res judicata. A proceeding for modification may not be used to review the equities of the decree of March 31, 1961. 27B C.J.S., Divorce, Section 322 (2), p. 695, ftns. 64 and 64.5. That order was appealable and the defendant did not seek appellate review of it, therefore its provisions must control the ruling on the present motion. 6 M.J., Divorce and Alimony, Section 67, p. 342, ftn. 20.

With these general rules in mind, the evidence upon which the order of March 31, 1961 was based must be compared with the evidence offered in support of the motion on September 18, 1967, remembering that the burden of proof is upon the defendant to show that there has been a material change of circumstances. Nelson on Divorce, Sections 17.08 and 17.09.

It is obvious that Judge Rives not only took into consideration the net salary the defendant was making at the Division of Motor Vehicles in 1961 of about $321.00 per month but he also took into account the income the defendant was receiving, or was entitled to receive, as shown by the evidence. This is made clear by the statement in that order that "in addition to the defendant's salary, rental income has, and will, become available to the defendant..." This source of income was, of course, properly considered in fixing the amount to be paid because not only should the amount of the defendant's actual earnings be considered by the Court in the exercise of its discretion when determining the award, but also the husband's ability to earn must be considered. Canavos v. Canavos, 205 Va. 744, 749 (1965).

In her memorandum dated February 10, 1961, the plaintiff urged that the defendant would receive as income from the estate a sum of about $7500.00 annually. The exhibits filed during the series of hearings which preceded the entry of the March 31, 1961 order show that the plaintiff's expenses were about $605.00 per month (plaintiff's exhibit No. 2 of February 13, 1961) and that the defendant's expenses amounted to about $361.00 monthly (defendant's exhibit D of November 23, 1959). As stated, detailed and voluminous records concerning the rental properties which make up most of the corpus of the trust involved were filed as exhibits and a close examination of the allocation of the income from this trust was made as is indicated by the plaintiff's memorandum of February 10, 1961. While the plaintiff has agreed that the issues in the cause

pending here brought by Mrs. Brauer seeking to have the defendant's life interest in the corpus of the trust sold to satisfy the defendant's indebtedness for arrearages in support and alimony should be considered separately and apart from this divorce suit, nevertheless the income received, and to be received, by the defendant from the trust is important in the divorce case because it bears on the defendant's ability to pay.

In the September, 1967 hearing, the defendant testified that he now receives a net monthly wage from his job with the State Corporation Commission of $427.62 and offered evidence to show weekly expenses of $98.48. The following amounts have been received during the years indicated by the defendant from the estate: 1962 - 0; 1963 - 0; 1964 - $1,849.10; 1965 - $2,431.17; 1966 - $1,408.05; and 1967 - 0. During the 71 months from January, 1962 to date, this averages approximately $80.00 per month. During 1964, the defendant averaged $154.00 per month for that year; during 1965, he averaged $203.00 per month of estate income; and during 1966, he averaged $119.00 per month additional income above his wages. Any way the estate income is figured, there is a considerable change in the defendant's ability to pay alimony and support from the figure of $7,500.00 per year shown in 1961 by the plaintiff to be due the defendant from rental income. But the defendant has not gone far enough in his proof and has failed to carry the burden imposed upon him to show a change of circumstances.

Where, as here, the husband contends that due to a change in his financial situation he is unable to carry on the payments fixed by the March, 1961 order, "it is his duty to make a full, fair and clear disclosure of all the pertinent facts bearing on his ability to pay. Moreover, he should show that his lack of ability to pay is not due to his voluntary act or because of his own neglect." (emphasis added). Crosby v. Crosby, 182 Va. 461, 466 (1944). No evidence was offered by the defendant to show the condition of the rental properties at this time nor was there any explanation offered why property with an assessed value of in excess of $120,000.00 in 1963 (plaintiff's exhibit 2, February 18, 1963) is not presently yielding more income which would inure to the defendant's benefit as life tenant. Furthermore, no current estate accounting was offered. There are many unanswered questions concerning the present status of the estate. When she was the moving party on this question in 1961, the plaintiff carried the burden of convincing the

Chancellor that "in addition to the defendant's salary, rental income has, and will, become available to the defendant ...." It is now the duty of the defendant to make the "full, fair and clear disclosure of all the pertinent facts" as required by the Crosby case and this he has not done.

In view of what has been said the defendant's motion is not granted at this time with leave to him to present additional evidence relating solely to his lack of income from the estate. When such evidence is offered, the Court will consider it together with the other facts previously offered at the September hearing concerning the present circumstances of the parties.

This evidence may be presented on either December 11 or 18 at 2:15 in the afternoon or any time during the day of December 21. It is requested that Mr. House notify our Clerk of the date selected after he has been in touch with Mr. Dervishian.

Very truly yours,

A. Christian Compton

A. Christian Compton

ACC:k

VIRGINIA:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

JUANITA FOWLER BRAUER, Plaintiff

v. CASE NO. B-3972

JOHN LEONARD BRAUER, JR., Defendant

DECREE OF REFERENCE

This cause came on this day to be heard on the papers formerly read and upon the evidence previously heard by the Court, upon the motion of the plaintiff that the defendant be required to show cause why he should not be held in contempt for failure to obey the orders of the Court previously entered herein, and for judgment against the defendant in the amount of $24,056.29, upon the motion of the defendant for a reduction in the amount of money he be required to pay the plaintiff, upon the testimony of the parties heard ore tenus, and exhibits filed and was argued by counsel.

UPON CONSIDERATION WHEREOF the cause is referred to Conway Moncure, one of the Commissioners in Chancery of this Court, who will inquire into and report to the Court not later than Oct. 31, 1972, as follows:

1. What is the total amount the defendant, John Leonard Brauer, Jr., is under order of this Court to pay to the plaintiff, Juanita Fowler Brauer, beginning from the inception of this suit to the date of this decree.

2. What is the total amount the said John Leonard Brauer, Jr. has paid to the said Juanita Fowler Brauer pursuant to said Court orders.

3. Itemize and determine what is the present fair market value of all assets of the Estate of Lillie Keck Brauer, who died July 14, 1958, and whose will was probated on July 31, 1958, in the Clerk's Office of the Chancery Court of the City of Richmond, and what assets of said estate are being administered by Joe T. Mizell, Jr., Executor of said Estate.

4. What sums, together with the dates paid, have been paid by the said Joe T. Mizell, Jr., Executor, to the said John Leonard Brauer, Jr. from the date of qualification of said Executor to the date of this decree.

5. What real or personal property of the Estate of Lillie Keck Brauer has not been sold by Joe T. Mizell, Jr., Executor, and why has said Executor not sold such property.

6. What amount of income would be available annually for payment to John Leonard Brauer, Jr. if the said Executor sold and disposed of all property of the said Estate of Lillie Keck Brauer and invested the funds as permitted by law for investments by fiduciaries.

7. What is the present income of John Leonard Brauer, Jr. and what is the source or sources of said income.

8. What is the present income of Juanita Fowler Brauer and what is her present earning ability.

Entr
9/25/72
Richard L. Williams

We ask for this:

Ernest H. Dervishian, p.q.

We have seen and object to this:

W. Griffith Purcell, p.d., and

Meredith A. House, p.d.

ORDER

This day came the plaintiff, in person and by counsel, and came the defendant, in person and by counsel, and the plaintiff moved to reduce to judgment the arrearage which the defendant owed by virtue of the Court order entered hereinbefore requiring the defendant to pay certain sums of money for the support of the plaintiff and the two children born of the marriage, and the defendant moved the Court for a reduction in the amount of support payable as provided by the previous Court order, and was argued by counsel.

On Consideration Whereof, the Court, having heard the motions in open court, doth ORDER that the determination of the amount of the arrearage of support owed by the defendant to the plaintiff be, and the same shall be, referred to one of the Commissioners of this Court.

The Court doth further ORDER that the defendant be, and he hereby is, ORDERED to pay to the plaintiff the sum of One Hundred Twenty Dollars ($120.00) per month for support of the plaintiff, he being relieved of the obligation of support of the two children born of the marriage, they being now 22 years of age, provided, however, that if subsequent evidence justifies the Court in

entering an order for an amount different from the amount set forth herein for the support of the plaintiff, said order will be entered nunc pro tunc as of the date of this decree.

Enter: 9/25/72

Judge

Law and Equity Court
OF THE
City of Richmond

JUDGES
ALEX H. SANDS, JR.
A. CHRISTIAN COMPTON
RICHARD L. WILLIAMS

RICHMOND, VIRGINIA
23219

CLERK
LUTHER LIBBY, JR.

December 5, 1972

Mrs. Juanita Brauer
2204 Monument Avenue
Richmond, Virginia 23220

Re: Juanita F. Brauer v.
John Leonard Brauer, Jr.
Case No. B-3972

Dear Mrs. Brauer:

This will acknowledge receipt of your recent letter concerning this case. The court is advised by the Commissioner in Chancery, who has been appointed to inquire into certain matters of fact now in issue, that he expects to complete his investigation and report to the court in the near future. When the Commissioner's report is received, the court can proceed to consider and determine the issues herein. You are represented by able counsel and I suggest that you consult him with regard to the questions raised in your letter. For his information, I am sending a copy of your letter to me to Mr. Dervishian and placing it and the enclosures in the court file.

Very truly yours,

A. Christian Compton

A. Christian Compton

ACC/jat

cc: Ernest H. Dervishian, Esquire
W. Griffith Purcell, Esquire
Conway Moncure, Esquire

COPY

ALEX H. SANDS, JR.
A. CHRISTIAN COMPTON
RICHARD L. WILLIAMS

LUTHER LIBBY, JR., CLERK

Virginia:

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND,

the 8th day of March 1973

Juanita Fowler Brauer, Plaintiff

against In Chancery

John Leonard Brauer, Jr., Defendant

The Commissioner in Chancery to which this cause was referred by order of September 25, 1972 having brought to the attention of the court that he has been unable to execute the decree of reference within the time set forth therein, or within a reasonable time thereafter, with the consent of the said Commissioner, the court hereby authorizes the Commissioner to proceed no further, and it is ORDERED that the matters in issue recited in the order heretofore mentioned be heard and determined by the court in an ore tenus hearing to be held in Room 408, Courts Building, 1001 East Broad Street, Richmond, Virginia, on March 30, 1973 commencing at 10:00 a.m. at which time the respective parties herein shall appear fully prepared to present evidence relating to the aforesaid issues.

Copies of this order shall be mailed to counsel of record for the parties, to the Commissioner in Chancery and to the plaintiff at 2204 Monument Avenue, Richmond, Virginia inasmuch as she has communicated directly with the court by letter under date of March 5, 1973.

Law and Equity Court
OF THE
City of Richmond

JUDGES
ALEX H. SANDS, JR.
A. CHRISTIAN COMPTON
RICHARD L. WILLIAMS

RICHMOND, VIRGINIA
23219

CLERK
LUTHER LIBBY, JR.

March 30, 1973

Ernest H. Dervishian, Esquire
200 West Grace Street
Richmond, Virginia 23219

Meredith A. House, Esquire
Mutual Building
Richmond, Virginia 23219

Re: Brauer v. Brauer
File No. B-3972

Gentlemen:

This letter will serve to make a matter of record the ruling of the court stated orally today at the conclusion of the hearing.

First, the amount of the arrearage is established to be $23,353. Since April 1, 1961 through this date, $43,200 has become due. (The court today considers that the plaintiff's needs and the defendant's ability to meet her needs during the period from September 25, 1972 to date requires a finding that the defendant's payments should have remained at $300.00 per month and not have been reduced to $120.00 per month.) Of the amounts listed on Exhibit B of defendant's Exhibit 2, the defendant has been given credit for the first through fifth items thereon totalling $19,847 in payments made. The defendant has not been given credit for the remaining four items. Newton v. Newton, 202 Va. 515, 518-519 (1961).

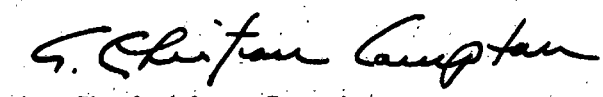
Upon the respective motions to increase and decrease the amount of support for the wife in the future, the court set the amount stated in the enclosed order after considering the needs of the plaintiff and the ability of the defendant to meet those

needs. As indicated, the court's view upon the law of the case has not changed since my letter of November 22, 1967. The only significant development in this suit, according to the court file, since the letter aforesaid has been the bringing on of these motions for a hearing.

Upon the defendant's motion for a reduction, he has failed to carry the burden of proof to show any change in circumstances to warrant such reduction, as noted in the previous letter aforesaid. On the other hand, the plaintiff has carried the burden to show a change in her circumstances resulting in an increased need. Moreover, by showing that the defendant, in addition to his salary from his employer, has a life estate made up of real property assessed at over $200,000 by the City of Richmond, the plaintiff has established a prima facie case in her contention that the defendant's financial ability is adequate to meet her needs. This having been done, the defendant failed to go forward with any sufficient evidence to demonstrate his inability to meet her needs. See 24 Am. Jur. 2d Divorce and Separation, §631; Anno., 1 A.L.R. 3d 123, 157-158, §15.

The court will consider the plaintiff's motion for the assessment of an additional attorney's fee of $7,500 upon the filing of an exhibit detailing the services rendered and time spend thereon for which payment is claimed.

Very truly yours,



A. Christian Compton

ACC/jat
Enclosure

ORDER

This cause came on this day to be heard upon the plaintiff's motion to reduce to judgment the arrearage owed by the defendant; upon the plaintiff's motion for an increase in the amount to be paid for alimony; upon the defendant's motion for a reduction in the amount of support payable as provided by the order herein of March 31, 1961; upon the evidence heard in open court; and was argued by counsel.

Upon consideration whereof, and for the reasons stated in open court and in a letter to counsel of this date, the court finds that the defendant is in arrears as of this date in the amount of Twenty-three Thousand Three Hundred Fifty-three Dollars, and judgment is accordingly entered in favor of the plaintiff against the defendant in said amount. It is further ORDERED that the plaintiff's motion for an increase in the payment of alimony be granted and that the defendant do pay to the plaintiff for her support until the further order of this court the sum of Five Hundred Dollars per month, effective on April 1, 1973. It is further ORDERED that the defendant's motion to reduce the amount of support to be paid to the plaintiff be denied. To all of which action of the court the defendant,

by counsel, objected.

Copies of this order shall be mailed to counsel of record for the parties.

Enter: 3/30/73

NOTICE OF APPEAL
and
ASSIGNMENTS OF ERROR

Comes now the defendant, John Leonard Brauer, Jr., by counsel and hereby gives his Notice of Appeal from the judgment of the Law and Equity Court of the City of Richmond entered on March 30, 1973, in the above styled case and sets forth thereto the following Assignments of Error.

1. The Court erred in failing to take into account various credits claimed by defendant in arriving at the amount of arrearages due in the amount of $23,353.00, upon which judgment was entered for the plaintiff.

2. The Court erred in granting the plaintiff's motion for an increase in alimony from $120.00 to $300.00 per month and thence from $300.00 per month to $500.00 a month.

3. The Court erred in denying the defendant's motion to reduce the amount of alimony, as provided in its Order of March 31, 1961.

4. The Court erred in admitting certain evidence offered by the plaintiff over objection by the defendant, and after admitting said evidence considering same in arriving at its decision.

5. The Court erred in its Decree of Reference, entered September 25, 1972, and in accepting and considering certain evidence, and issues thereunder, upon which the Court partly based its Order of March 30, 1973, which matters were property cognizable only in a separate suit which was brought by the plaintiff, Juanita Fowler Brauer vs. the defendant, John Leonard Brauer, Jr. and Joe T. Mizell, Jr., Executor under the Will of Lillie Keck Brauer, deceased.

6. The Court Order of March 30, 1973, is contrary to the law and the evidence and without evidence to support said Order.

A statement of facts, testimony and other incidents of this case will be hereafter filed pursuant to Rules 5:6 and 5:9 of the Supreme Court of Virginia.

JOHN LEONARD BRAUER, JR.,
Defendant

By_____
W. Griffith Purcell

Law and Equity Court
OF THE
City of Richmond

JUDGES
ALEX H. SANDS, JR.
A. CHRISTIAN COMPTON
RICHARD L. WILLIAMS

RICHMOND, VIRGINIA
23219

CLERK
LUTHER LIBBY, JR.

May 22, 1973

Ernest H. Dervishian, Esquire
200 West Grace Street
Richmond, Virginia 23219

W. Griffith Purcell, Esquire
1012 Mutual Building
Richmond, Virginia 23219

Meredith A. House, Esquire
Mutual Building
Richmond, Virginia 23219

Re: Brauer v. Brauer

Gentlemen:

Enclosed you will find a copy of the order entered today in connection with the written statement of facts presented to the undersigned on yesterday and reviewed by me on this date.

You may, of course, examine the statement to review the changes made therein as the result of the several objections made and presented orally to the court on yesterday on behalf of the plaintiff. The objections made by the plaintiff but overruled by the court are as follows: that on page 11, line 8, the words "[T]hat, recently, she had been treated . . ." should be changed to read "[T]hat last month she had been operated on for her eyes . . . ." The objection is overruled for the reason that I have no independent recollection of that testimony by the plaintiff nor do my notes contain a reference thereto.

The plaintiff suggests that on page 12, line 5, the phrase "or if she was under the care of any doctor" should be deleted. That objection is overruled for the same reason stated in connection with the prior objection.

Plaintiff takes the position that on page 14 at the fourth line from the bottom of the page the phrase "that she paid the payment on the house and he paid the utilities," should be deleted and that the phrase "that the expenses were the expenses of he and his wife " should be inserted. That objection is overruled for the same reason stated above.

The plaintiff suggests that on page 16 the last line thereof be deleted to the end of that sentence which is on page 17 and that inserted therein should be the sentence that "Mr. Brauer answered that he had not." The suggested change does not materially alter the sense of the sentence contained in the statement and the objection is overruled.

The plaintiff made several objections to information not included in the statement of which one has been sustained (page 10) and the other three objections overruled. The plaintiff asserts that the defendant testified that he received a large income tax refund annually, the last one being in the amount of $759.00. That objection is overruled for the reason that the court has no independent recollection of any such testimony nor do my notes reflect such information, my notes admittedly being incomplete.

The plaintiff objects to the failure to include on page 9 in the third line from the bottom the fact that the plaintiff "testified" rather than "submitted" several exhibits and further the plaintiff suggests that the statement should show that the plaintiff testified regarding the accuracy of the information contained in plaintiff's exhibits 3, 4, 5 and 6. These objections are overruled for the reason that the exhibits admitted in evidence at the hearing aforesaid are a part of the record on appeal and they speak for themselves.

One additional matter relating to the content of the statement submitted. Upon reviewing the statement after counsel left following the oral argument on yesterday, it is noted that on page 2 of the statement reference is made to another suit pending in this court involving these two parties (case No. B-6385). There is a reference on that page to an order in that case relating to the filing of briefs. An examination of that file discloses that by a handwritten memorandum (not an order) in the file dated May 17, 1963, Judge J. Hicks Rives, deceased Judge of this court, wrote "opening briefs by each side on or before June 1, and each to file reply briefs on or before June 10." The most recent and latest entry in that file is a memorandum in support of the defendants' demurrer (one of the defendants therein being the defendant in

this suit), it having been apparently forwarded to the Clerk with counsel's letter of May 31, 1963. The point is that no order appears in the file directing written memoranda to be submitted and no further action by the defendants in that suit has been taken to have the issues raised by the demurrers adjudicated.

There is this further observation which the court is constrained to make. The issues in this suit at this stage involve, in part, whether there has been a material change in the circumstances of the parties sufficient to justify the relief sought by the respective parties. This was pointed out to counsel in the court's letter in the file of November 22, 1967. This, of necessity, required the court to consider other orders in the file and other evidence submitted at prior hearings herein, such information not having been included as a part of the tendered statement of facts. In attempting to determine the court's duty under the present rules of court and in particular, under Rule 5:9(c), the court states that the signature of the Judge to the statement tendered should not be construed as a certification that the statement is complete or that the statement contains all facts relevant to the determination of the issues involved.

Under the old Rule 5:1, §3(f), the signature of the Judge to such a statement was deemed to be his certification that the "statement is authentic." I find no such provision in the present rules of court. In Rule 5:11, it is provided that the Judge's signature to a transcript without more constitutes his certification that the required procedural steps have been complied with but, in my opinion, Rule 5:11 does not apply to a statement of facts which is not a transcript of a hearing. See Harris v. Woodby, Inc. 203 Va. 946 (1962) decided under the former rules of court.

If the defendant herein takes the position that it is the duty of the trial judge to complete an incomplete statement of facts, I shall be glad to consider with counsel any additional statement deemed necessary if you feel that the contents of this entire file as set forth in Rule 5:8 will not adequately serve to properly bring the issues before the Supreme Court.

To sum up, the court desires to make it clear that by signing the tendered statement relating to one hearing arising

out of this rather voluminous file, it does not certify that the statement is a complete one.

Very truly yours,

A. Christian Compton

A. Christian Compton

ACC/jat
Enclosure

V I R G I N I A :

IN THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

JUANITA FOWLER BRAUER — Plaintiff

v. — Case No. B-3972

JOHN LEONARD BRAUER, JR. — Defendant

WRITTEN STATEMENT OF FACTS, TESTIMONY AND OTHER INCIDENTS OF THE CASE

The case came on for hearing on March 30, 1973, with the appearance of the plaintiff, Juanita Fowler Brauer, in person, and by Ernest Dervishian, her counsel, and the defendant, John Leonard Brauer, Jr., in person, and by appearance of W. Griffith Purcell and Meredith A. House, his counsel, before the Honorable A. Christian Compton, Judge of the Law and Equity Court of the City of Richmond.

At the onset of the hearing, it was stated for the defendant, by counsel, that the defendant objected to a hearing on the matters contained in the Decree of Reference entered by the Court on September 25, 1972, for all of the reasons that had been stated at that hearing in objecting to a Decree of Reference. Defendant re-stated his objection as being that under

References Nos. 3, 5 and 6 of the Decree of Reference the Court was attempting to subject defendant's presumed interest in his mother's estate to the payment of alimony and that the legal and factual issues involved in the References Nos. 3, 5 and 6 were issues that were properly cognizable only in a separate suit (Case No. B-6385-S), then pending before the Law and Equity Court brought by the complaintant, Juanita Fowler Brauer, against the said John Leonard Brauer, Jr., and Joe T. Mizell, Jr., Executor under the will of Lillie Keck Brauer, deceased (the mother of the said defendant). That suit was filed November 23, 1962, in the Law and Equity Court of the City of Richmond, and was and is pending in that Court and involves the interpretation of the will of Lillie Keck Brauer, deceased, and is to determine what rights, if any, the defendant, John Leonard Brauer, Jr., has to receive income from the estate of his mother, and to sell and subject said real property to the payment of the plaintiff's claim for alimony, demurrers were filed by both defendants, John Leonard Brauer, Jr. and Joe T. Mizell, Jr., but both demurrers have not been ruled on and are still pending, by virtue of the fact that the complainant, Juanita Fowler Brauer, has failed to file her brief pursuant to the Court's order. The Court overruled the defendant's objections in the present suit and stated that the Court would proceed

to hear the matter pursuant to its order of March 8, 1973, in which the Court "ordered that the matters in issue recited in the order heretofore mentioned (Decree of Reference of September 25, 1972) be heard and determined by the Court ..." Counsel for the plaintiff moved the Court that in addition to the issues set out in the Decree of Reference that the Court also hear her evidence pertaining to an increase of alimony. Counsel for the defendant agreed that, while not waiving any of their objections to hearing the matters contained in the Decree of Reference, that if the Court was going to take up those issues over counsel's objections that counsel did not object to the Court considering the further issue of increases or decreases of alimony, and the case proceeded with the testimony of witnesses.

The complainant, Mrs. Brauer, having subpoenaed Joe T. Mizell, Jr., Executor of the Estate of Lillie Keck Brauer, requested permission to call Mr. Mizell out of order, and he was sworn and over objection by the defendant, on the grounds previously stated, testified as follows: Mr. Mizell testified that he was the Executor of the estate of Lillie Keck Brauer, the mother of the defendant, John Leonard Brauer, Jr. and had been Executor of the estate since the date of his qualification in the Chancery Court of the City of Richmond on July 31, 1958; that he knew and had represented the decedent for about 15 years prior to her death; and that he was the scrivener of the decedent's will. The will (Exhibit P-7) was introduced into evidence by stipulation as well as a statement of the Real Estate

Assessor's Office of the City of Richmond (Exhibit P-1), listing certain properties. It was stipulated that the properties listed were the properties involved in the estate of Lillie Keck Brauer, of which the defendant's interest, if any, was subject to the provisions in said will, and that the values shown represented the assessed values of the property, they amounting to $207,600.00.

Mr. Mizell testified that the will in question had been signed by the testatrix, Lillie Keck Brauer (mother of the defendant, John Leonard Brauer, Jr.) in 1950, and she died in 1958. He stated that it was her desire to provide an estate that would take care of the necessities of her only son, John Leonard Brauer, Jr., the defendant, and that her estate should not be made available to the said John Leonard Brauer, Jr.'s wife, the plaintiff, since there were domestic problems existing between Mr. Brauer and his wife, of which Mrs. Lillie Keck Brauer was aware, and there was personal animosity between Mrs. Lillie Keck Brauer and Mrs. John Leonard Brauer, Jr.

Mr. Mizell testified that he deemed himself to be Executor and Trustee of the estate and that it was his duty to administer the estate in accordance with the decedent's will and that through the years he had paid the net income from the estate

to Mr. Brauer. Exhibit P-2 was introduced and stipulated to reflect all of the money that had been received by John Leonard Brauer, Jr., from the estate of Lillie Keck Brauer, from the date of the death of Lillie Keck Brauer in 1958 to the date of the hearing.

Mr. Dervishian, the plaintiff's attorney, who had subpoenaed and called Mr. Mizell as a witness for the plaintiff, asked Mr. Mizell why the estate had not produced more income. Mr. Mizell stated that several pieces of the property were vacant land and several others were involved in transitional sections of the city and the nature of the real estate had changed from real estate occupied by white tenants to real estate occupied by negro tenants. He stated that the real estate with improvements on it was in a very poor state of repair and that taxes and upkeep were expensive. He further stated in response to questions by Mr. Dervishian that he was quite sure that Mr. Brauer wanted all of the income he could get from the estate and that he had paid him all of the income that he could pay him from the estate. Mr. Dervishian asked Mr. Mizell if he construed the word "direct," which is contained in the second paragraph of the Third Article of the will of Lillie Keck Brauer, required him to sell the real estate. Mr. Mizell

stated that he did not so construe the will, nor did he believe that to be the intention of the testatrix to sell any of the property. Mr. Mizell testified that of all the properties contained on the stipulation (Exhibit P-1) that the first property listed thereon was not owned by the defendant as a life tenant, but that it had been owned by the defendant's father and upon his death part passed to the estate and part passed to the defendant and that the defendant apparently had an undivided fee simple interest in part of that real estate, although he had not examined the title nor had the title examined to ascertain this. He also testified that two parcels of property, being a piece of property on Broad Street and a piece of property on Radford Avenue were subject to a lease which he thought was a 50 year lease and was producing net income at the rate of $150.00 per month. Mr. Dervishian also asked Mr. Mizell if he was aware of the fact that assessors usually undervalue property. Mr. Mizell answered that he was not and that the Davis Avenue property was obviously not worth the assessed value.

Mr. Mizell testified that Mr. Brauer had lived in one of the Grove Avenue apartments, but had moved out in the last year or two (but still kept personal property there).

Mr. Dervishian asked Mr. Mizell if under paragraph four of the will of Lillie Keck Brauer, if he did not feel that the paragraph required him to invade the corpus of the estate for the maintenance and support of Mr. Brauer, since there had been no net income to Mr. Brauer for more than three years.

Mr. Mizell testifed in response to Mr. Dervishian's question that his interpretation of the will was that he was not obligated to provide for Mr. Brauer, unless Mr. Brauer was in necessitous circumstances. That in the "words of Judge Lamb, I am to provide creature comforts" and that in this interpretation he was quite sure he was carrying out the intention of the testatrix.

Mr. Dervishian asked Mr. Mizell why after the lapse of 15 years he had not long since sold the real property and closed out the estate and Mr. Mizell answered that he was just attempting to carry out his duties and the wishes of the testatrix, which almost amounted to a trust for the son's (defendant's) benefit, and that it was impossible to close out the estate at this time, and stated that Mr. Brauer had never pushed him to sell the property. Mr. Mizellwas asked by the Court why no payments had been paid to Mr. Brauer in the past four years, and Mr. Mizell answered that the rental property was not producing sufficient income to pay expenses and allow any payments

to Mr. Brauer since 1969. Mr. Dervishian asked Mr. Mizell why the leased property at 4625 West Broad Street, which was assessed at $39,000.00, was producing income of only $150.00 per month. Mr. Mizell stated that when the lease was put on the property it was a vacant lot and assessed for much less and that the lessee paid for the building and improvements.

The Court asked Mr. Mizell his interpretation of the will, insofar as Mr. Brauer's rights were concerned. Mr. Mizell replied that his authority under the will was to provide for Mr. Brauer's necessities. Mr. Dervishian then asked Mr. Mizell if he could under the will provide funds from the corpus of the estate for Mrs. Brauer's necessities. Mr. Mizell answered no, that he had no such authority under said will. Mr. Dervishian then asked Mr. Mizell to suppose judgment is rendered against Mr. Brauer in this case "say for $32,000.00, could you pay it out of the estate property?" Mr. Mizell answered that his authority was to maintain the estate property and pay for necessaries of Mr. Brauer for "creature comforts" - for instance, if Mr. Brauer had nothing to live on or to buy food or necessities. He stated that in his opinion it was in effect a spendthrift trust for the defendant and he could not pay such a judgment.

At the conclusion of Mr. Mizell's testimony and when the plaintiff, Mrs. Brauer, took the witness stand, the Court

stated that the hearing was limited to issues in the divorce suit and the Court would only consider the divorce case and there would be no attempt to rule on any issue arising from the Executor's authority in the estate. ~~The Court further stated that it was not satisfied that any payments could be made to the plaintiff out of estate or that the Court had the power to subject the estate of Lillie Keck Brauer to the obligations of the defendant.~~ The Court stated that it was only to determine the arrearages due by the defendant to the plaintiff, the needs of the plaintiff financially, and the ability of Mr. Brauer, the defendant, to pay ~~and the Court would disregard the issues in the property case.~~

Mrs. Brauer testified that she lived at 2204 Monument Avenue with one of her two sons, the two sons having been twin boys and having attained the age of twenty-one (21) years on the 23rd day of July, 1971, and since the date of the last hearing in August, one of the boys had died. She stated that her income was $120.00 paid by Mr. Brauer, $41.00 per month from the Welfare Department and the contributions to her from her brother, her sister and a niece. She submitted several exhibits (Exhibits P-3, P-4) concerning the amount of support that Mr. Brauer was required to pay, the amount of support that

Mr. Brauer had paid, and a statement of proper living expenses for her. The plaintiff listed her debts as shown on plaintiff's Exhibit 5. ~~Mrs. Brauer said her only debt was one doctor's bill.~~ Upon cross-examination she was asked whether she spent $12.00 a month for dry cleaning and laundry, as shown on her exhibit and she stated that she did not, but that was what she thought would be required. She was asked whether she spent $10.00 a month for home furnishings, linens, etc. and she stated that she did not, but that was what she thought she should have for that purpose. She stated that she did not pay $21.88 for Blue Cross-Blue Shield coverage, which she did not have, but thought that was what should be required. She stated that she did pay $15.00 a month for insurance coverage on her property and on her life. She further stated that she thought that $12.00 a month for recreation and entertainment should be allowed, as well as $12.00 for vacation and travel, and $10.00 a month for haircuts, shampoos and sets. She stated that the total amount she thought she should be allowed was $541.24. Reference was made to the exhibits which she filed in evidence on August 1, 1972, which showed at that time expenses of $334.20.

Mrs. Brauer testified that she had been involved in an automobile accident and in 1964 received the sum of $7,000.00 in a settlement of her personal injury case and that all of her

hospital bills had been paid by Blue Cross, furnished by Mr. Brauer. She stated that she had Blue Cross coverage until June, 1971, which Blue Cross coverage had been paid for by Mr. Brauer. She further stated that she has not been able to work since 1964. She testified that she was a good seamstress, that she made her own clothes and clothes for her son and friends, (but not within the past five years) but received no compensation other than friends taking her out to dinner. That, recently, she had been treated at John Hopkins for her eyes and has had an eye problem that made sewing difficult. On cross-examination, it was pointed out to her that at every hearing in this case since 1958, she had been asked if she had been told by any doctor or had a doctor's certificate that she was disabled from work and that on every occasion up to now she had stated that she had not been so told or had no such certificate. She was asked if she had any such certificate on this occasion and she answered that she did not. She was asked if any doctor had ever told her that she was unable to work or had advised her not to work and she replied that Dr. Eisenberg, who examined her in Washington, D.C. for her personal injury case in 1964, had stated that she could not use high heels or dance and in 10 years she could become an invalid. She further stated that Dr. Eisenberg,

who was the physician for the other side, had never treated her, but had examined her on only one occasion prior to the trial. She was asked if any doctor in Richmond had stated that she was unable to work or advised her not to work, or if she was under the care of any doctor and she replied in the negative. She testified that Mr. Brauer had said that the estate could rot before Mrs. Brauer would ever get a dime from it. She was asked whether she had relatives visiting her in Richmond, and she stated yes, but the relatives had to bring their own groceries with them.

Mr. Brauer took the stand, testified that he was employed as a Clerk at the State Corporation Commission of Virginia, with a present gross income of $10,992.00 per year and a present net income of $577.36 per month and that this was all the income he had except that money which he had received since his mother's death shown on Exhibit P-2.

He testified that his mother had died in 1958 and had left property in the manner indicated by her will (Exhibit P-7). He testified that for about one year in 1958 to 1959, he had managed the properties of his mother's estate and the estate realized a small income, but that a former counsel for the

plaintiff accused him of embezzling money from the estate and of mismanagement of the property, and he then requested the Executor to make other arrangements to handle the properties, which was done. The properties had been turned over to Rucker and Richardson for management and employees of that company had testified in this suit at a prior hearing, as had Mr. Mizell, the Executor. He further stated that in 1961 he and his former wife, the plaintiff, sold their home from which an equity of $4,000.00 was realized, of which the plaintiff received all of the proceeds.

He further testified that his two boys visited and stayed with him frequently on the week-ends through the years, and he provided them with food and clothing and gave them each an allowance (Exhibit D-3). He testified that he had, until recently, paid premiums for Blue Cross insurance coverage for the benefit of his former wife and two boys, and that such insurance was secured for the wife by him because of the reduced rates applicable to group rates.

Mr. Brauer testified that he had been unable to meet the previous order of the court to pay the sum of $300.00 per month as alimony for his wife and support for his boys, but that he had paid the sum of $120.00 per month, which was the

maximum that he was able to pay. He stated that due to his liability to meet the previous order of the Court, that he had gone into debt and still owed the State Credit Union $3,000.00. He stated that at the present time his expenses amounted to $635.70 per month (Exhibit D-~~2~~3 - ~~third~~ second sheet). On cross-examination by Mr. Dervishian, he was asked whether he was currently spending $1,200.00 for tuition as shown on his exhibit of "Estimated Statement of Living Expenses," and Mr. Brauer testified that he was not, that that figure was the amount that he paid last year for tuition and that since then one boy was deceased. Mr. Brauer testified that the other ~~fitures~~ figures were based upon the amounts that he was spending as shown on his exhibit. Mr. Brauer testified as to each of the figures shown on his exhibit and testified that the payments that were indicated thereon were made for the purposes indicated ~~and~~ for the times mentioned, that his wife was working and that she owned the home they lived in and that she paid the payment on the house and he paid the utilities.

Mr. Brauer testified that all of the income that he had received from Mr. Mizell, Executor of his mother's estate,

since the time of his mother's death was as shown on Exhibit No. P-2, and amounted to $10,608.58, since July 14, 1958, until the date of the hearing. This was stipulated as correct by the plaintiff. Mr. Brauer was asked on cross-examination whether he had made demands upon Mr. Mizell for more income was being distributed to him and that he (Mr. Mizell) was not answerable to him, but was answerable to the Court and that he (Mr. Mizell) had filed annual accountings in the Chancery Court of the City of Richmond, and that they had all been approved by the Commissioner of Accounts.

On further cross-examination, Mr. Brauer was asked by Mr. Dervishian, counsel for the plaintiff, why he did not go ~~to~~ to Mr. Mizell and demand more income from his mother's estate or demand that Mr. Mizell sell the property. Mr. Brauer answered that he would have liked to have gotten more income from the estate, and that the reason he was in debt now was because of the $300.00 support order, which was based on money that he never realized from his mother's estate; that he realized what the intentions of his mother were in her will, but that he was not a lawyer and did not understand the legal aspects involved. He testified that when he had asked for

money and Mr. Mizell had told him that it was up to him (Mr. Mizell) what was paid to him (Mr. Brauer) and that in any event he (Mr. Brauer) understood that all of the available income from the estate was being paid to him.

Mr. Dervishian asked Mr. Brauer why he had not gone after Mr. Mizell and demanded more money from his mother's estate and Mr. Brauer replied"I had asked Mr. Mizell for money from the estate and he told me he had paid me all he could."

Mr. Dervishian asked Mr. Brauer if he had consulted any lawyer concerning his rights as a life tenant under his mother's will and he answered no, that Mr. Mizell was the Executor of the estate, and that Mr. Mizell told Mr. Brauer that he (Mizell) was not accountable to him (Brauer), but to the Court and that he (Mizell) had filed his accounts with the Court.

Mr. Dervishian then asked why he (Brauer) had not sought legal advice after personally hearing him (Dervishian) state to the Court in September 1972, that Mr. Brauer was entitled to receive $10,000.00 to $15,000.00 per year, every year, or the reasonable income from the estate which had a value in excess of $200,000.00 according to the assessment by the City of Richmond. Mr. Brauer answered in the negative and that he did not understand

such legal matters.

At the conclusion of all the evidence the Court stated that the Law and Equity Court had jurisdiction to construe the will of the said Lillie Keck Brauer, but the question of what Mr. Brauer was entitled to under the will was moot because the Court was not going to decide such questions in this suit, but was going to decide the needs of Mrs. Brauer and the ability of Mr. Brauer to pay, and announced its decision in accordance with the Court's letter opinion, dated March 30, 1973.

Judge G. Christian Compton

Date May 22, 1973

W. Griffith Purcell
1012 Mutual Building
Richmond, Virginia

By W. Griffith Purcell p.d.
W. Griffith Purcell

Meredith A. House
1012 Mutual Building
Richmond, Virginia

By Meredith A. House p.d.
Meredith A. House

FILED
MAY 23 1973
TESTE: Linda Eddy CLERK

RLW

Mrs. Juanita F. Brauer August 1, 1972

Estimated Living Expenses
(Monthly)

Rent (includes utilities)		150.00
Telephone		10.00
Groceries		75.00
Outside meals		12.00
Dry Cleaning		6.00
Linens		3.00
Transportation		4.80
Newspapers and magazines		4.40
Drugs		5.00
Clothing		15.00
Recreation		8.00
Vacation		12.50
Gifts (Christmas and birthdays)		12.00
Prescriptions for eye		6.00
	Total:	$334.20

Debts (Medical)

Monument Avenue Eye Center		249.50
Hospital		85.00
Dr. Slatten (Dentist)		95.00
Dr. Velo		25.00
	Total:	$454.50

Income from estate of
Lillie Kelly Brauer, Collected
By
John Leonard Brauer Jr
137 Lee Ave High Land Springs VA.

RLW

2/10/61	Check from Joe T. Wigell Executor of Estate	$1,227.62
3/16/62	" " " " " "	1,873.38
1/11/65	" " " " " "	1849.10
9/17/65	" " " " " "	977.31
2/9/66	" " " " " "	2431.17
3/18/68	" " " " " "	1,750.00
12/22/69	" " " " " "	500.00
	Total amount Received by John Leonard Brauer Jr from Estate since the death of Lillie Kelly Brauer July 14, 1958 to July 11, 1972	10,608.58

1972
1958
14

14 year, average per year 757.75
" " Month 63.15

John Leonard Brewer Jr. R.L.V.
137 Lee ave Highland Springs Va.

	Weekly	Monthly	Annually
Food	35.00	140.00	$1680.-
Lunch $1.00 a day - (Working days)	5.00	20.00	240.-
Coffee - 2 cups daily @ 11¢ (working days)	1.10	4.40	52.80
Cleaning & Pressing		5.00	60.00
Clothes		10.00	120.00
Shoes		3.00	36.00
Doctors - Dental & Medical & Eye		7.00	84.00
? Taxes			
Operation of Automobile	5.00	20.00	~~240.00~~
Cigarettes	3.91	15.64	187.68
Newspapers	85	3.40	40.80
Employees Association & Contribution		2.00	24.00
State Employees Credit Union Payment Loan		~~59.00~~ 98.50	
Traveler Ins. Co. Monthly Payment Auto Ins.		16.35	
Heating, Oil		20.00	240.00
Telephone		9.00	108.00
Electricity		14.50	179.00
Water		6.25	75.00
Mrs. Juanita Brewer Payment on Alimony & Support		120.00	1440.00
Miscellaneous - Including Amount spent on 2 sons on weekends		47.78	
		$571.32	
		569.82	

RLW

75644
WT. NO.

No.4 COMMONWEALTH OF VIRGINIA
RICHMOND, VIRGINIA
CURRENT PAY PERIOD

20405769

DATE	S.S. NUMBER	HOURS PAID	EARNINGS REGULAR	EARNINGS O. TIME	GROSS EARNINGS	OTHER COMP.
5/22/72	223-09-8010		438.00			

OASDI	FEDERAL TAX EX.	FEDERAL TAX WITHHELD	STATE TAX EX.	STATE TAX WITHHELD.	RET.	GP. INS.	BONDS	MISC. DED.	NET PAY
22.78		68.20		15.29	21.34	3.30	.00	46.43	$260.66

MISCELLANEOUS DEDUCTIONS

YEAR TO DATE

GROSS EARN.	OTHER COMP.	O.A.S.D.I.	FED. TAX	STATE TAX	U.G.F.	HOSP.

KEEP THIS STUB FOR YOUR RECORDS

NON NEGOTIABLE

32632
WT. NO.

No.3 COMMONWEALTH OF VIRGINIA
RICHMOND, VIRGINIA
CURRENT PAY PERIOD

20637968

DATE	S.S. NUMBER	HOURS PAID	EARNINGS REGULAR	EARNINGS O/TIME	GROSS EARNINGS	OTHER COMP.
5/05/72	223-09-8010		438.00			

OASDI	FEDERAL TAX EX.	FEDERAL TAX WITHHELD	STATE TAX EX.	STATE TAX WITHHELD.	RET.	GP. INS.	BONDS	MISC. DED.	NET PAY
22.78		68.20		15.29	21.34	3.30	.00	46.43	$260.66

MISCELLANEOUS DEDUCTIONS

YEAR TO DATE

GROSS EARN.	OTHER COMP.	O.A.S.D.I.	FED. TAX	STATE TAX	U.G.F.	HOSP.

KEEP THIS STUB FOR YOUR RECORDS

NON NEGOTIABLE

City of Richmond
Office of the Assessor of Real Estate

900 East Broad Street, Richmond, Virginia 23219
703 • 649-5007

March 14, 1973

Mr. Ernest H. Dervishian
401 Farm Bureau Building
200 West Grace Street
Richmond, Virginia 23220

Dear Mr. Dervishian:

This is to advise that our 1973 real estate land books show the following information:

Owner's name	Location/Description	Assessed Value Land	Assessed Value Improvement
Brauer, J. L. & Lillie A.	L5-6 B21 50X112 S. Broad, Chantilly & Blacker W19-35/6	$41,000	$ - -
Brauer, John L. Jr. Life	40X125.75 W. 21st, Q & R E514/5	1,200	- -
Brauer, John L. Jr. Life	L26-28 B13 75X125 N. Radford, Westmoreland & Blacker W19-37/13	19,000	- -
Brauer, John L. Jr. Life	4625 W. Broad St. W19-37/2	36,400	20,000
Brauer, John L. Jr. Life	2007 Grove Ave. W902/11	3,000	17,000
Brauer, John L. Jr. Life	603 S. Davis Ave. W1069/21	6,500	28,500
Brauer, John L. Jr. Life	503 N. Addison St. W1006/45	3,000	32,000

Sincerely yours,

Percy L. Smith Jr

Percy L. Smith, Jr.
Office Manager

P-1
acc
3/30/73

pls

00071

Income from estate of
Lillie Kelk Brauer, collected
By
John Leonard Brauer Jr
137 Lee Ave Highland Springs VA.

2/10/61	Check from Joe T. Wigell Executor of Estate	$1,227.62
3/16/62	" " " " " "	1,873.38
1/11/65	" " " " " "	1849.10
9/17/65	" " " " " "	977.31
2/9/66	" " " " " "	2431.17
3/18/68	" " " " " "	1,750.00
12/22/69	" " " " " "	500.00
	Total amount Received by John Leonard Brauer Jr from Estate since the death of Lillie Kelk Brauer July 14, 1958 to July 11, 1972	10,608.58

1972	14 year, average per year	757.75
1958	" " Month	63.15
14		

P.2
ace
3/30/13

Mr. Brauer has paid Mrs. Brauer the following:

1. 4/1/61 to 4/12/68 (7 years)		$ 8,400.00
2. 4/12/68 to 3/15/73 (4 yrs. 11 mos.)		7,080.00
	Total	$15,480.00

Amount he was ordered to pay:

11 yrs. 11 mos. at $300.00 per month		$42,900.00
	Less Credit	15,480.00
	Due	$27,420.00

P-3
ACC
3/20/73

ESTIMATED STATEMENT OF LIVING EXPENSES OF Juanita F. Brauer

Date March 15, 1973

	Weekly	Monthly
Food (Groceries, Milk, Etc.)		95.00
Outside Meals		20.00
Rent - including utilities		150.00
Utilities:		
Gas and/or Water		
Electricity		
Telephone		10.00
Fuel		
Laundry - Dry Cleaning		12.00
Domestic Help		
Home Furnishings (Linens, Etc.)		10.00
Auto Expense		
Transportation		20.00
Children's Tuition, Books, Etc.		
Dental Care:		
Wife		6.00
Children		
Medical:		
Wife		15.00
Children		
Drug Items		12.00
Insurance Policies:		
Wife Blue Cross-Blue Shield		21.88
Others		15.00
Clothing: (Itemize Annual Items Below)		18.00
Recreation - Entertainment		12.00
Vacation - Travel		12.00
Magazines, Papers, Books, Etc.		7.50
Taxes:		
Federal		57.08
State		7.78
Local		
Contributions		
Gifts (Christmas, Birthdays, Etc.)		5.00
Other Items: (Itemize)		
Hair cuts, shampoo & set		10.00
Misc.		25.00
	Total	$541.24

P-4
aac
3/30/73

Mrs. Brauer - Debts: March 15, 1973

1. The John Hopkins Clinical Services Unit (Dr. Knox $65.00; Dr. Valentine $20.00)		$ 85.00
2. Dr. Herbert Wiesinger		427.00
3. Richmond Eye Hospital		172.55
4. Dr. Richard W. Slatten (Dentist)		105.00
	Total	$789.55

Income:		Per Mo.
1. By Mr. Brauer		$120.00
2. By Richmond Welfare Department		41.00
	Total	$161.00

P.5
ACC
3/30/73

Mrs. Brauer says the following amounts paid by check to her for college fees, and if enough time, she would deposit and issue her check. If at deadline, she simply endorsed his check over.

	Paid	Amount Due
1. December 30, 1969	$474.00	
2. August 15, 1970	454.00	
3. June 12, 1971	450.00	$454.00
4. August 20, 1971	500.00	544.00
5. December 23, 1971	500.00	
6. August 4, 1972	600.00	590.00
7. December , 1972	600.00	590.00
	3578.00	

P-6
acc.
3/30/73

LAST WILL AND TESTAMENT
OF

LILLIE KECK BRAUER

I, Lillie Keck Brauer, being of sound and disposing mind and memory, do make, publish and declare the following to be my Last Will and Testament, hereby revoking any and all wills by me at any time heretofore made.

First: I direct that all my just debts and funeral expenses be paid.

Second: I give, devise and bequeath to Fairmount Methodist Church the sum of Five Hundred Dollars ($500.00).

Third: I give, devise and bequeath all the rest and residue of my property, of any and all kinds, character and description, and wheresoever to be found, to my son, John Leonard Brauer, Jr., for life and at his death the residue of said property, if any, to be equally divided between such of my brothers and sisters, as might be living.

I hereby authorize and direct my hereinafter named Executor, to sell and dispose of any and all of my property, real, personal or mixed, upon such terms as my said Executor may, in his sole discretion, deem proper.

Fourth: I hereby further authorize and empower

my said Executor to use such portions of the corpus of my estate as might be necessary in addition to the income provided for in paragraph third, above, for the maintenance and support of my said son, John Leonard Brauer, Jr.

I hereby nominate and request the court to appoint Joe T. Mizell, Jr., Executor, of this, my Last Will and Testament, and having perfect confidence in his judgment and integrity, I request that no security be required upon his offering to qualify.

IN WITNESS WHEREOF, I, the said Lillie Keck Brauer have hereunto set my hand and seal this 27th day of January, 1950.

Lillie Keck Brauer (SEAL)

Signed, acknowledged, published and declared by the said Lillie Keck Brauer, to be her Last Will and Testament, in the presence of us, who at her request and her presence, and in the presence of each other have hereunto set our hands as attesting witnesses thereof, the day, month and year last above written.

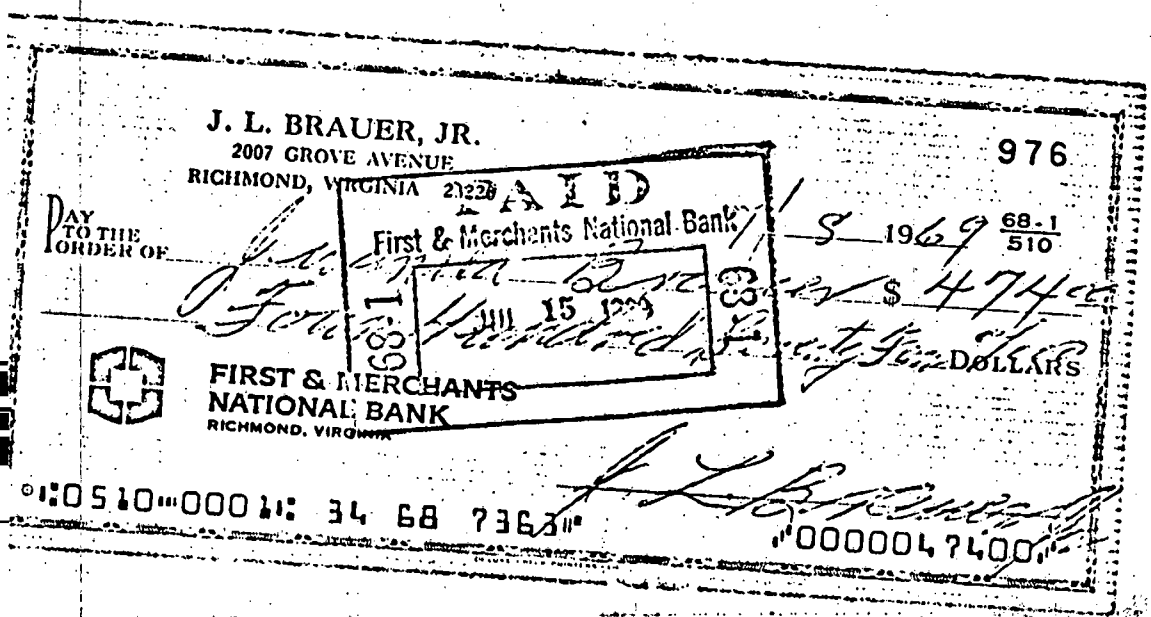
Edna W. Johnson

John L. Gayle

EXHIBIT C

Total Payments Due by Mr. Brauer from April 1, 1961, to July 1, 1972 at $300.00 per month	$ 40,500.00
Amount owed from July 1, 1972, to September 25, 1972, at $300.00 per month	900.00
Amount owed from September 25, 1972, to April 1, 1973, at $120.00 per month	720.00
	$ 42,120.00

Total Due	$ 42,120.00
Total Paid	35,370.00
Amount Due	$ 6,750.00


J. L. BRAUER, JR.
2007 GROVE AVENUE
RICHMOND, VIRGINIA 23220
976
PAID
First & Merchants National Bank
JUN 15 1969
PAY TO THE ORDER OF
1/5 1969 68-1/510
$ 474.00
DOLLARS
FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA
⑆0510⑈0001⑆ 34 68 7363⑈
⑈0000047400⑈

D-2
ACC
3/30/13

EXHIBIT B

Total Payments Made by Mr. Brauer from
April 1, 1961, to April 1, 1973

April 1, 1961, to April 1, 1968, 84 months at $100.00	$ 8,400.00
April 1, 1968, to July 1, 1972, 51 months at $120.00	6,120.00
July 1, 1972, to April 1, 1973, 9 months at $120.00	1,080.00
6 payments of approximately $500.00 each for years 1969, 1970, 1971	3,047.00 ~~2,878.00~~ D-1 D-3
2 payments of $600.00 each for year 1972	1,200.00
Specific payments from September 4, 1959, to September 18, 1967 (See Note No. 1)	8,747.00
Specific payments from September 18, 1967, to June 1, 1969 (See Note No. 2)	2,186.00
Blue Cross payments from June 1, 1969, to July 1, 1972	759.00
Equity in home at 1900 Grove Avenue	4,000.00
	$35,370.00 + $169.00

Note No. 1
From September 4, 1959, to September 18, 1967, Brauer paid the following:

Blue Cross	$ 2,025.00
Food for two boys each week-end	4,050.00
Clothing and shoes for two boys	2,100.00
Allowance for two boys	572.00
	$ 8,747.00

Note No. 2
From September 18, 1967, to June 1, 1969, for the same items as above, he paid $2,186.00.

EXHIBIT B

Total Payments Made by Mr. Brauer from
April 1, 1961, to April 1, 1973

April 1, 1961, to April 1, 1968, 84 months at $100.00	$ 8,400.00
April 1, 1968, to July 1, 1972, 51 months at $120.00	6,120.00
July 1, 1972, to April 1, 1973, 9 months at $120.00	1,080.00
6 payments of approximately $500.00 each for years 1969, 1970, 1971	3,047.00 D-1 x D-3
	2,878.00
2 payments of $600.00 each for year 1972	1,200.00
Specific payments from September 4, 1959, to September 18, 1967 (See Note No. 1)	8,747.00
Specific payments from September 18, 1967, to June 1, 1969 (See Note No. 2)	2,186.00
Blue Cross payments from June 1, 1969, to July 1, 1972	759.00
Equity in home at 1900 Grove Avenue	4,000.00
	$35,370.00 + 8169.00

Note No. 1
From September 4, 1959, to September 18, 1967, Brauer paid the following:

Blue Cross	$ 2,025.00
Food for two boys ea	
Clot fo	
Allo	

Note No. 2
From September
the same items

D-3
OCC
3/30/73

ESTIMATED STATEMENT OF LIVING EXPENSES OF JOHN L. BRAUER, JR.

March 29, 1973

	Monthly
Food (Groceries, Milk, Etc.)	$ 120.00
Outside Meals (Lunch)	20.00
Rent	None
Utilities:	
Gas and/or Water	6.75
Electricity	15.00
Telephone	8.93
Fuel	20.00
Laundry - Dry Cleaning	5.00
Domestic Help	None
Home Furnishings (Linens, Etc.)	None
Auto Expense	30.00
Dental Care for Husband	3.00
Medical Care for Husband	4.00
Drug Items	4.00
Insurance	None
Clothing: (Itemize Annual Items Below)	13.00
Alimony to Wife	
(To wife for self $120.00)	
(To wife for tuition $100.00)	220.00
Recreation - Entertainment	2.00
Vacation - Travel	None
Magazines, Papers, Books, Etc.	5.00
Taxes:	
Federal)	
State) Reflected in Net Wages	
Local)	
Contributions	None
Gifts (Christmas, Birthdays, Etc.)	3.00
Hair Cuts	1.75
Automobile Insurance	13.79
State Employees Credit Union (Loan)	93.00
Cigarettes	16.08
Coffee	4.40
Employee Associations and Collections	2.00
Miscellaneous	25.00
Total	$ 635.70

Mr. Brauer is employed as a Clerk for Commonwealth of Virginia - net pay is $577.36 per month.