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New Jersey State Library

PETITION.

(Filed Sept. 22nd, 1919.)

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of Rebecca A. Hires, of the City of Salem, County of Salem and State of New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, George Hires, Jr., the defendant in this suit, on the 4th of June, 1910, by the Rev. William P. Davis, a minister of the Gospel, at Salem, in the State of New Jersey.

2. Defendant, since his marriage to your petitioner, and on the several days of the months of November and December, of 1915, and on days during all of the months of the years 1916 and 1917, and on the days of the various months in the year 1919, and more specifically and particularly during the months of June, July, August and September, of 1919, committed adultery with Florence Plummer, at Salem, in the County of Salem and State of New Jersey.

3. The petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose and they have ever since continued to be bona fide residents of this State, residing at Salem, in the County of Salem, in the State of New Jersey.

4. Petitioner has no means of support of her own except through her own exertions.

5. Two children were born of the marriage, to wit: George Hires, 3rd, eight years old, and John A. Hires, four years old. The said children are in the custody of your petitioner and are now supported by her.

6. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the causes aforesaid, according to the statute in such case made and provided, and that the defendant may be compelled by the decree of this Honorable Court to support her and the said infant children of the marriage, and that she may be awarded the custody of the said children and that she may have such further relief as may be just.

And your petitioner will ever pray, &c.

E. C. Waddington,
Solicitor for and of Counsel with the Petitioner.

State of New Jersey, }
County of Salem, } *ss*:

Rebecca A. Hires, being duly sworn according to law, on her oath deposes and says that she is the petitioner named in the foregoing petition and that her said petition is not made by any collusion between her and the defendant, but in true and good faith, for the causes set forth in the petition.

Rebecca A. Hires.

Sworn and subscribed to before me this 19th day of September, 1919.

F. S. Carpenter,
Deputy S'gt. Salem Co.

CITATION AND RETURN.

(Filed Nov. 7, 1919.)

New Jersey, to wit: The State of New Jersey to George Hires, Jr.

GREETING: You are hereby cited to answer the petition of Rebecca A. Hires, a copy of which petition is herewith served upon you, by filing your answer in writing in the office of the Clerk of the Court of Chancery at Trenton, within twenty days after the 11th day of Nov., 1919; and in default of your so doing such order or decree will be made against you as the Court shall think equitable and just.

(Seal)

Witness, his Honor Edwin Robert Walker, Chancellor of our said State, at Trenton, the 31st day of October, 1919.

JESSE R. SALMON,
Clerk.

E. C. WADDINGTON,
Solicitor.

[ENDORSED]

Ret'ble Nov. 11, 1919.
E. C. Waddington, Sol'r.

Duly and personally served the above citation together with a certified copy of the petition November 3rd, 1919, on the above named defendant George Hires, Jr.

William T. Mifflin, Shff.
By Geo. W. Brown,
Under Sheriff.

Sheriff's fees $1.50

ORDER OF RE-REFERENCE.

(Filed Jan. 22, 1920.)

IN CHANCERY OF NEW JERSEY.

Between
REBECCA A. HIRES,
Petitioner,
and
GEORGE HIRES, JR.,
Defendant.

Order of Re-Reference.

Upon opening this matter to the Court by E. C. Waddington, of counsel with the petitioner, and it appearing that the Special Master designated in the order of reference made in this cause on the 16th day of December, A. D. 1919, desired to be relieved of the duties imposed by the said order and consent to the appointment of another Special Master.

And it further appearing that the Special Master appointed in the order of re-reference, dated the 12th day of January, 1920, desires to be relieved of the duties imposed by the said order and has consented to the appointment of another Special Master.

It is thereupon, on this 22nd day of January, 1920, ordered that Thomas E. French, Esq., one of the Special Masters of this court be substituted in the place and stead of the said Lewis Starr, Esquire, as the designated Special Master, to ascertain and

report as to the truth of the allegations of the petition and his opinion thereon, and do further report what, if any, is a reasonable sum to be allowed to the petitioner for her suitable support and maintenance and what, if any, is a suitable sum to be allowed her for the suitable support and maintenance of the infant children of her marriage to the defendant and whether the custody of the said children should be committed to the complainant and, if so, upon what terms, if any, and what security the defendant should be required to give for the performance of any decree or order that may be made herein, and that the petitioner proceed to take depositions and other evidence before the said Special Master to substantiate and prove the allegations in the said petition and to bring on a hearing of the cause *ex parte*, and that the said Master do return, together with his report and as part thereof, such depositions and other evidence as may be taken before him in pursuance of this order and that the cause do proceed in all respects as if the said Thomans E. French had been designated in the orders of reference herebefore recited.

E. R. WALKER,
C.

Respectfully advised,
S. D. OLIPHANT,
A. M.

True Copy,
JESSE R. SALMON,
Clerk.

NOTICE.

IN CHANCERY OF NEW JERSEY.

Between REBECCA A. HIRES, *Petitioner,* and GEORGE HIRES, JR., *Respondent.*	On Bill, &c. Notice.

To George Hires, Jr.:

Take notice, that a decree *pro confesso* and order of reference has been entered in the above entitled cause and an order of reference has been made to the subscriber as Special Master to ascertain and report as to the truth of the allegations of the said bill, and what sum, if any, should be allowed to the complainant for her support and maintenance and for the support and maintenance of the infant children of her marriage to you and whether the custody of the said children should be committed to the complainant and upon what terms, if any, and what security you, as defendant, should be required to give for the performance of any decree or order that may be made in this cause.

Such depositions and other evidence will be taken before me on Thursday, the 5th day of February, 1920, at 9.30 o'clock in the forenoon, in my office, 106 Market Street, Camden, N. J., and also that such other evidence as may be necessary in the said cause may be taken at the said time and place.

Respectfully yours,

THOMAS E. FRENCH,
Special Master.

(Duly served on defendant.)

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
REBECCA A. HIRES,
Petitioner,
and
GEORGE HIRES, JR.,
Defendant.

On Petition for Divorce.
Depositions.

February 5, 1920.

APPEARANCES:
For the petitioner: E. C. WADDINGTON, ESQ.;
For the defendant: W. A. W. GRIER, ESQ., A. S. WOODRUFF, ESQ.

Before FRENCH, *Special Master.*

Depositions taken in the above stated matter this 5th day of February, A. D. 1920, at 9.30 o'clock A. M., before Thomas E. French, Esq., Special Master, at his office, 106 Market Street, Camden, New Jersey,

in the presence of E. C. Waddington, Esq., representing the petitioner and W. A. W. Grier and A. S. Woodruff, Esqs., representing the defendant.

It is suggested by the Master and agreed to by counsel that the testimony of the witnesses shall be taken by the stenographer upon question and answer.

Dr. J. W. McConnell, sworn.

By Mr. Waddington:

Q. Dr. McConnell, where do you live?
A. I live at 701 North 40th Street, Philadelphia, sir.
Q. And you are a practicing physician?
A. I am.
Q. From what college did you graduate?
A. University of Pennsylvania.
Q. And in what year?
A. 1890.
Q. And have you been practicing since that time?
A. Continuously.

The Master: Is there any objection to his testifying as an expert?

Mr. Woodruff: No.

Q. You know the petitioner, Reba A. Hires?
A. I believe that I do; I believe she is the woman that I saw.
Q. You know the defendant, George Hires, Jr.?
A. I just spoke to him, sir.

Q. Were you called in consultation by Dr. Repp to examine the petitioner?

A. I was.

Q. When was that?

A. On the 10th of August, 1913.

Q. And what was the condition of the petitioner at that time?

A. The condition of the petitioner at that time was that of a very ill woman who was paralyzed in her right side, with some defect of speech by reason of her paralysis.

Q. Did you diagnose the case?

A. I did.

Q. Did you determine the cause of it?

A. I believed the cause to be possibly a growth in the brain or pressing on the brain.

Q. And did you determine whether or not that was the correct solution?

A. The woman was not operated on, sir, therefore our diagnosis has to be based in a measure on theory, at least, the clinical features, the clinical signs and the history of the case.

Q. And from the examination that you made and the resultant occurrence of sickness and recovery, will you say whether or not the condition is one which is likely to be more or less permanent?

A. My thought at the time was that she would probably improve, perhaps could get well, and I cautioned Dr. Repp and so the patient, if my recollection serves me right, that unless she continued, she would have a recurrence of the condition.

Q. And if she had a recurrence of the condition and a possible dragging of the foot and the loss of the use of the hand, would you say whether or not she had fully recovered?

A. I would believe that she had not fully recovered.

Q. And do you from the examination of the case believe that she will ever fully recover?

A. I only saw the woman twice, once on the 10th of August, 1913, in formal consultation with Dr. Repp, and the second time I haven't the date of for the reason that it was a casual observation made simply to confirm Dr. Repp's treatment and also to see what improvement had taken place in the patient. Subsequent to those two visits I have never seen her.

Q. Now, basing your opinion upon the fact that she has had a recurrence of this sickness and also that she from hard work or worry continues to drag the foot and lose the use of the arm, would you say whether or not she was likely to have a recurrence in the future of that trouble ?

A. If such conditions obtain as those that you speak about right now, I should believe that she is liable to a recurrence or perhaps a permanent injury as a result of the condition.

Mr. Waddington: You may cross-examine him.

Mr. Grier: Before I cross-examine would you mind designating the purpose of this testimony?

Mr. Waddington: As I understand the law, the income of the husband, the needs of the wife, the physical condition of the wife and the social condition of the parties is what—on which the amount of alimony should be based.

Mr. Grier: You are offering this witness for the purpose of the amount of the alimony and support?

Mr. Waddington: That is right.

Cross-examination.

By Mr. Grier:

Q. Doctor, you have only examined her twice, you say?

A. Twice, yes.

Q. And one of those was a mere casual examination?

A. Yes.

Q. And when you make the statement that there is apt to be a recurrence, you are basing that simply on your theory?

A. On my experience with cases of similar kind, sir.

Q. Didn't you state that she was not operated upon so it was largely theoretical whether there was any pressure on the brain?

A. Theoretical and from the clinical features, I believe I interpolated, sir.

Q. You know nothing about her present condition?

A. I haven't seen her.

Q. But you thought from the examination you made of her in connection with Dr. Repp that she would recover from that illness?

A. From the particular incident, yes.

Q. That was your opinion at that time?

A. Yes.

The Master: One minute, doctor; I may not know about it, but what would be the difference between this growth on the brain and the diffusion of blood there and pressure?

A. With an effusion of blood, sir, into the brain, what we usually term apoplexy, I take it you mean—

Q. Yes.

A. You would have a complete destruction of the brain tissue, with rarely or never any marked improvement in the case, never a full and complete recovery. With the condition which we call tumor of the brain or pressure on the outside of the brain rather than destruction from within, you can have improvement and absolute cure at times, sometimes by medical means, sometimes by surgical.

Q. Now, when you saw her the last time, in your opinion, was there an improvement or not?

A. She was definitely better, yes, sir.

ADA MORGAN, sworn.

By Mr. Waddington:

Q. Mrs. Morgan, where do you live?

A. 79 Carpenter Street.

Q. In Salem?

A. Yes.

Q. Do you know the petitioner, Reba Hires?

A. Yes.

Q. And you know the defendant, George Hires, Jr.?

A. Not personally acquainted with him.

Q. Do you know him when you see him?

A. Yes.

Q. Who was your neighbor during the years 1915, 1916 and 1917, or about that time?

A. That will be about three years ago?

Q. Yes.

A. Richard Plummer.

Q. Did Richard Plummer have a daughter, Florence Plummer?

A. Yes.

Q. Did she live next door to you?

A. Yes.

Q. Did the defendant, George Hires, Jr., frequently come to the house next door?

A. Yes.

Q. And about how frequently did he come there as near as you can tell us, how many times a day or how many times a week?

A. Well, it was quite often, I couldn't just recall. I didn't pay enough attention to recall the amount of times he came in a week or a day, but I used to see him go in and out.

Q. And did you ever see him go there in the evenning and stay long or not?

A. I have seen him there in the evenings.

Q. And do you know whether or not he stayed all night?

A. I couldn't swear to that.

Q. Have you seen him go away from there in the morning?

A. Yes.

Q. Have you seen any signs of affection between him and Florence Plummer?

A. No, I never did.

Q. And for how long a time did these visits to this home by the defendant, George Hires, Jr., keep up?

A. You mean how often?

Q. Well, I mean how many years or approximately did he go there?

A. Well, we moved there—it will be three years last October, since we moved next door to them and

they don't live next door now, they moved away, I think it was a year ago last October or November, I am not positive; I think it was in October, so the last year I haven't—say the last fifteen months——

Q. Well, during the time you lived as neighbors that was approximately a year and a half?

A. Yes.

Q. Were his visits there continous during that time?

A. Yes, they seemed to be.

No cross-examination.

REBA GAYNER, sworn.

By Mr. Waddington:

Q. Miss Gayner, where do you live?

A. 44 West Broadway, Salem.

Q. And are you acquainted with the petitioner, Reba Hires?

A. Yes.

Q. And you are acquainted with the defendant, George Hires, Jr.?

A. Yes.

Q. Did you have near your home in Salem, neighbors by the name of Plummer?

A. Yes.

Q. And how near to their home did you live?

A. I lived next door but one.

Q. And have you seen the defendant, George Hires, Jr., come to the home of Florence Plummer?

A. I have.

Q. And when did the Plummers move within two doors of you approximately?

A. I don't know that, I know they have been there all summer, I don't know exactly.

Q. Well, they have been there all this last summer?

A. Yes, all this last summer.

Q. Now, during this last summer have you seen George Hires, Jr., go there?

A. Yes.

Q. During the day?

A. Yes.

Q. Have you noticed whether or not he has taken Florence Plummer out in his automobile?

A. Yes, I have seen them in the car.

Q. Frequently or not?

A. I have seen them in the car quite a lot.

Q. And have you noticed whether or not what time of day he comes there, and when he comes and when he goes or not?

A. Why, I think he is liable to go most any time.

Q. And have you seen his machine out in front of the house when you retired at night?

A. Yes.

Q. And have you seen it in front of the house when you got up in the morning?

A. Yes.

Q. How frequently did he make those visits to the house, how many times a week or how many times a day as near as you can tell?

A. Well, I don't know, he is there quite a lot.

Q. Well, would you say he was there daily or not?

A. I don't think he misses many days.

Q. Now, have you ever seen him and Florence Plummer going down toward Sinnickson's Landing?

A. Yes.

Q. Frequently or not?

A. In the summer quite a lot.

No cross-examination.

THOMAS F. WADDINGTON, sworn.

By Mr. Waddington:

Q. Mr. Waddington, where do you live?
A. Salem, New Jersey.
Q. And what position do you hold there?
A. Constable.
Q. And do you know where Sinnickson's Landing is?
A. I do.
Q. Where is it located?
A. At the mouth of the Salem River, or near the mouth, on the Elsinboro side.
Q. How far below the City of Salem?
A. Well, from the city line, I don't know, it is not very far, I should suppose maybe a mile, a direct course from Salem, probably.
Q. Do you know the petitioner, Reba Hires?
A. I do.
Q. Do you know the defendant, George Hires, Jr.?
A. I do.
Q. How long have they lived in the City of Salem?
A. Well, I couldn't just tell you that.
Q. Well, do you know whether or not they were both born in the City of Salem?
A. I don't know that they were.
Q. Well, you have seen them around a good many years?
A. Yes, I know that they lived there for sometime,

but I don't know just whether they were born there or not; I don't remember that.

Q. You know they are both residents and have been for the last year?

A. Yes.

Q. How long have you known that the petitioner has resided in the City of Salem?

A. Oh, several years, but I don't know just how many years; I knew her father and knew where they lived.

Q. And by several years you mean at least four or five?

A. Oh, yes.

Q. And the defendant, George Hires, Jr., has lived there an equal length of time outside of the time he was in the army, is that right?

A. Yes.

Q. Now, did you rent a cottage at Sinnickson's Landing?

A. I did.

Q. And did you have a cottage there in 1916 and 1917?

A. I did not.

Q. Or as early as 1915, did you rent a cottage down there or go down there during the summer?

A. I rented one in 1918 and 1919.

Q. And next door to whom was that cottage—who had the cottage next door to you?

A. The nearest one to me was Mr. Hires'.

Q. The defendant?

A. Yes, sir.

Q. And have you ever seen the defendant, George Hires, Jr. and Florence Plummer at that cottage?

A. I have.

Q. Have you ever seen them showing any signs of affection to each other?

A. Yes.

Q. Such as hugging each other or putting their arms——

The Master: Let the witness state what he has seen.

Q. All right, just tell what you have seen.

A. Why, I have saw them down there, saw them going fishing together and gunning together, and saw them up to the place when they have been playing the victrola, and saw them talking together and the likes of that.

Q. Have you seen any signs of affection other than just being together, that is, just tell whether or not you have seen anything in the lines of affection between the two parties?

A. Well, you could tell by their actions what we would call affection; they seemed to pay a good bit of attention to one another and playing together and acting like two would that thought a good bit of one another; that is what I would call affection, dancing and the likes of that, whatever it would take for to make up a man and woman having a good time.

Q. Have you ever seen them get their meals together there?

A. Yes, sir.

Q. Now, would you say specifically what you observed on the part of the defendant and Florence Plummer, in the month of September, 1919?

A. I have that wrote down, if I could use that I could tell you the dates.

Q. You may refresh your memory by looking at it.

A. The first date I have is on September 8th.

Q. What year?

A. 1919.

Q. You were living next door to this cottage then?

A. I were.

Q. And what did you observe on that date?

A. I put down each date just what took place when Mr. Hires came down there which I could see or tell.

Q. All right.

A. Mr. Hires came down there and had Florence with him; he came down and they went up at 9.00 P. M. that evening.

Q. Do you know what they did while they were down there that day or not?

A. Why, out gunning.

Q. Now, what took place on——

A. September 9th, they came down again about four o'clock and went out gunning, went out shooting reed birds, and went away about seven o'clock; they got their supper about seven o'clock and after supper they played the victrola and went up at ten.

Q. What is the next date that you have?

A. The next is the 10th.

Q. What happened on that date?

A. He came down there alone, hadn't her with him at all, he came there just alone on the 10th. The 11th he came down there at one o'clock and stayed until seven and went up and came down again about ten and Florence was with him and stayed until twelve and went up.

Q. Midnight?

A. Midnight. September 14th, he came down at ten and stayed until twelve, that was in the middle of the day. September 16th, he came down at six, he and Benjamin Sheppard and Mrs. Sheppard and Florence. They went up, he took them up and then they came down, he and Florence came down again and was there until twelve o'clock the next day, the 17th.

Q. Stayed all night at the cottage?
A. The balance of the night.

By the Master:

Q. Well, where was Mr. Hires at that time? Did he go up with Mr. Sheppard and Mrs. Sheppard?
A. He took them up and then came back again.
Q. Oh, he came back with Florence then?
A. Yes.
Q. Who was living in the cottage?
A. No one outside of he and——
Q. The cottage was not occupied unless he came there?
A. No.

By Mr. Waddington:

Q. It was occupied by Mr. Hires and only by him, that is, no one else owned the cottage or used it but Mr. Hires?
A. And someone that he would fetch down there, but he had the cottage; he was having the cottage there.

By the Master:

Q. Was Mrs. Hires there?
A. No, I never saw her there.
Q. Were you ever in the cottage?
A. Was I?
Q. Yes.
A. Not while they were there.
Q. Well, when they weren't there?
A. No.
Q. You don't know how it was furnished?

A. No, I do not know.

Q. What sort of cottage is it?

A. I had the cottage built, it used to be mine a few years back. It has got one room about 10x14 and it has got two bedrooms about 10x10.

Q. That is all there is to it?

A. A kitchen and a little place on the side and a back porch and front one.

Q. One story?

A. One story.

Q. And there is one room besides the two bedrooms, is there?

A. There is one room beside the two bedrooms.

By Mr. Waddington:

Q. Were the defendant and Florence Plummer usually alone when they came down there or usually other people with them or——

A. Once or twice he was there her father was there with them, and then on another occasion was when Roland Henderson—I think his name was Roland—and the Sheppards were down there. Outside of that he and her came down there together, as far as I saw, and went away together.

No cross-examination.

Rebecca A. Hires, sworn.

By Mr. Waddington:

Q. You are the petitioner in this matter?

A. I am.

Q. And you live in the City of Salem?

A. I do.

Q. And how long have you lived in the City of Salem?

A. Always, except three or four years that we lived in Philadelphia.

Q. When did you return from Philadelphia, approximately, the year?

A. About 1913, I should think.

Q. 1913?

A. Yes.

Q. And you have lived in Salem continuously since 1913?

A. I have.

Q. Were you married to the defendant, George Hires, Jr.?

A. I was.

Q. Have you the marriage certificate?

A. I have.

Q. Is this the certificate (showing witness book)?

A. That is.

By the Master:

Q. You were married at Salem?

A. Yes.

Q. By whom?

A. Dr. Davis, William P. Davis.

Q. And he was a minister of the Gospel?

A. A Methodist minister.

Q. And where were you married, at church?

A. At home.

Q. At your own home?

A. Yes.

(The certificate is offered and marked Exhibit 1 of the petitioner and is in the following words: "This

certifies that George Hires, Jr., of Salem, New Jersey, and Rebecca Hickman Ayres, of Salem, New Jersey, were by me united in holy matrimony according to the ordinance of God, at Salem, New Jersey, on the 4th day of June, in the year of our Lord, nineteen hundred and ten, (1910). Wm. P. Davis, minister of the Gospel.")

Q. That was the date of your marriage on the 4th of June, 1910?

A. Yes.

By Mr. Waddington:

Q. Subsequent to your marriage where did you start to live?

A. On Alden Street—you mean after our marriage?

Q. Yes.

A. On Alden Street, North Alden.

Q. In the City of Philadelphia?

A. West Philadelphia.

Q. And you resided there until when?

A. A year, and I think until the next September, when we moved on South 60th, 1000 South 60th Street.

Q. Still in Philadelphia?

A. West Philadelphia.

Q. And then where did you next move?

A. When we came to Salem.

Q. That was in the year 1913?

A. I should think so.

Q. When did you and the defendant, George Hires, Jr. separate?

A. December 10, 1915.

Q. Where have you lived since that time?

A. 39 Walnut Street, Salem, New Jersey.

Q. With whom?

A. My father.

Q. Subsequent to your separation did you have any conversation with your husband, George Hires, Jr.?

A. You mean after?

Q. Yes, after the separation?

A. Several times.

Q. And on one of those occasions did he tell you anything concerning what had taken place between him and Florence Plummer?

A. Yes.

Q. Do you recall about when that was?

A. He told me that he had taken her down to the cottage before I had gone home, asked me if I remembered a night some one called him on the 'phone; that was the night he met her. He was intending to stay home with me and I did remember.

Q. And did he confess to you that he had had adulterous relations with Florence Plummer?

A. Yes, he said he had to have some woman.

Q. And you had been sick for a considerable time?

A. I had been sick a little over a month before I went home.

Q. And now will you tell us when was the first time that you were ill, seriously ill, and was attended by Dr. Repp and Dr. McConnell?

A. In the August of the year that we came home. We came home late in September or October, and it was in August; if it was 1913, that we came home it was in 1913, that I was sick.

Q. And you were paralyzed partly at that time?

A. My right side.

Q. And did you get better from that sickness?

A. Yes.

Q. Did you have a recurrence of that trouble again?

A. Yes.

Q. And when did the recurrence come?

A. In November of 1915. Well, I left December 10th, and I was sick all of November, preceding that December 10th.

Q. That is in 1915?

A. Yes.

Q. You were sick all of November?

A. Yes.

Q. And your sickness then again was paralysis?

A. Yes.

Q. And have you had any recurrence of that trouble more or less since that time?

A. I have it slightly whenever I am overtired or whenever I am extremely nervous.

Q. What are the symptoms of that trouble?

A. Why, my foot, I don't lift my foot right, I will stumble into anything, I don't seem to have the power of picking up my foot without consciously picking it up, and my arm is just weak, that is all, I haven't any other sensation at all, no pain, just that way, and also pressure on the top of the head.

Q. Since December 10, 1915, you have resided continuously at 39 Walnut Street?

A. Yes.

Q. That is the home of your father?

A. Yes.

Q. And who makes up the household there?

A. My father and mother and aunt and my two boys.

Q. These two boys are the children of George Hires, Jr.?

A. Yes.

Q. How old are they?

A. George will be nine the 21st of March, and John will be five the 25th of March.

Q. And subsequent to that time your father has assisted and helped you in maintaining the boys and yourself?

A. Yes.

Q. And have you received any support from any other source?

A. Mr. Hires.

Q. How much per year have you received from him?

A. Fifteen hundred dollars.

Q. Fifteen hundred dollars a year?

A. Yes.

Q. Will you tell us how much you have contributed toward the board of yourself and two boys to your father during the time that you have been there?

A. Four hundred dollars a year.

Q. That included the board and the living at the house?

A. Yes.

Q. And what has the balance of the money been used for?

A. My pocketbook is out in the other room with a slip in; I didn't bring it in.

Q. You have a memorandum of what you spent during the last year?

A. I have from my checks and receipts.

Q. Can you tell us without your pocketbook or do you want your memorandum.

A. You go get it, it is out there. Now, I have this itemized do you want it that way?

The Master: Suppose you show it to counsel and see if they will admit it and just mark it as an exhibit.

Mr. Grier: If I may be permitted to question her with reference to three or four items here.

The Witness: There is more on the back.

The Master: Just have her swear that it correctly states the items, then you go on with the testimony and on cross-examination you may take it up.

By the Master:

Q. This represents the expenditures you have made?

A. As nearly as I can come to it: I have checks and receipts for most everything.

The Master: The paper is offered and marked Exhibit 2.

By Mr. Waddington:

Q. Now, will you say whether or not your father has contributed anything in addition to these items that you have mentioned here?

A. He has bought George shoes off and on; he has bought lots of things, lots of drugs and things like that; whenever I would send him to the drug store to get anything he would never take anything for it. He has oftentimes gone to the doctor's for us at nights and paid the bill, and that would be all there would be to it, and he has bought lots of things for the children, and he has bought John little wash suits and things; when he has been shopping with me, if I wanted anything that I didn't feel I could afford and he could get them, he bought them.

Q. The dates of these items which are mentioned here are—these are items between January 1, 1919, and December 31, 1919?

A. Yes.

Q. And approximately can you say how much your father has contributed in these outside articles or not?

A. Well, I can say what he has given me in money.

Q. How much is that?

A. He has given me around $100.00; he has given it to me at odd times, and that I can account for, and he has given me lots of two and three and five dollars that I have borrowed from him that he has never allowed me to pay back, but I can't tell you just the exact amounts of them.

Q. Now, will you tell us whether or not you could maintain a home supported by yourself for yourself and children or not if necessary, if you could not live with your father—are you physically able to maintain a home for yourself and two children?

A. I would have to have help.

Q. And how much help do you think you would have to have?

A. Well, I would have to have either a housekeeper or a very good cook who would be willing to help in other parts of the house, because cooks don't go out of the kitchen, and I couldn't sweep the house and keep it up all the time, and the furnace would have to be attended to. A cook don't undertake to attend to the furnace and carry ashes.

Q. What does help usually charge in Salem by the week?

A. I am not prepared to say; they have raised their——

The Master: The question is whether you can get them, not what they charge.

The Witness: They all go to the glass house, you can't hardly get them, they have gone away up,

though. I can tell you this, that a girl going to school and coming only after school, at night and on Saturdays, but not on Sundays, charges $4.00 a week; I can swear to that.

Q. Now, has your father had to have any additional help at times at the home?

A. He has.

Q. And what was the cause of that?

A. John's illness.

Q. That is your boy?

A. Yes.

Q. And was an additional maid brought into the house then?

A. Yes, and also a nurse for nearly a month, and it was lots of expense to daddy; he had to have lots of extra meals and everything like that.

Q. Now, in maintaining yourself and two children in the condition which you were maintained while you lived with your husband, what would you say that it would cost you a year for your food?

A. Is that providing I had help and food, too?

Q. Yes, to maintain a home, supported by yourself with such help as you would need?

A. Well, according to prices right now, this minute, it would take from $1250 to $1500, I should think.

Q. And what would you think would be the cost per year for clothing such as you had at the time you were living with your husband and maintained by him, per year for you and the two boys?

A. Why, I can't hardly answer that because John was a baby and did not require anything when we were all living there, and now he requires just as much as George, and it costs just as much as it does to buy for George, and George's clothes costs lots

more than they did four years ago, and mine cost double.

Q. Well, have you any idea what the cost would be now to properly clothe you and the two boys?

A. Well, I should say from $1250 to $1500, including everything.

Q. At the time of your marriage to the defendant what was your social position in the City of Salem—did you travel with the better class of people in the City of Salem or what was the situation?

A. Why, yes, I did.

Q. How about your husband, did he?

A. He did part of the time, when he was with us.

Q. And your husband was the son of George Hires, Sr.?

A. Yes.

Q. And he was at one time congressman from this district of New Jersey?

A. Yes.

Q. Do you have an idea what his estate was worth at the time of his death?

A. Only from hearsay.

Q. Now, can you tell me what education your husband had at the time he grew up—did he go away to school or not?

A. He went to Hill School one year and he went to Kiskimindetas School one or two years; it was a boys' school out beyond Pittsburgh.

Q. That is a boarding school?

A. Yes.

Q. Have you any means of support of your own?

A. No.

Q. You own no real estate?

A. No.

Q. And you have no definite income?

A. No.

Q. Except what may come from your husband?

A. Yes.

Q. Are you physically able to go out and work for a living?

A. No.

Q. And do the two children need your attention?

A. They do.

Q. And is any provision made in any way for the education of these boys other than the common school education?

A. No.

Q. Now, what approximately has been your medical physician's bills and things of that kind during the last year?

A. May I check this up, because I don't think I can count them up in my head?

Q. No, you need not bother checking those up, they will speak for themselves. I thought you probably knew approximately what they would amount to.

A. They differ, they vary; last year my bills were much more.

Q. How much were your bills last year?

Mr. Grier: They are all in that statement there, aren't they?

The Witness: This is this year.

Q. I mean 1918?

A. They were more because John was sick at that time. Dr. Davis only gave me half that bill and it was big enough then, he gave the other half of the bill to daddy, because daddy asked him for it, to not let me know what it was, to divide it up with him, which he did.

Q. Have you any idea how big the 1918 doctors' bills amount to?

A. I should think over $100.00 considerably.

Q. What do you calculate that it would be—you belong to church, do you?

A. I do.

Q. And you make contributions to the church from time to time?

A. Yes.

Q. And do the children belong to church?

A. George does and he has been a contributing member for four years.

Q. And do you need magazines and books for the children to read?

A. Yes.

Q. And approximately how much do you think it would cost you a year for your contributions to the church and your magazines and books and things of that kind?

A. Does that include the Star-Course and Chautauqua and all those things that come all the time?

Q. Yes, including those things.

A. Well, I could easily spend a couple of hundred dollars. It would depend on what I had to spend, what I would spend.

Q. It would depend on the amount that you had?

A. Yes.

Q. Now, what social amusements and pleasures has your husband had during the last year or two years or since you have been separated in the line of automobiles and launches and things of that kind?

A. Well, he had one launch before he went into the service, I don't know how good it was but he had one, and since he has been home little George told me he had a nice new one.

Mr. Grier: I object to anything anybody has been telling this woman.

The Witness: I don't know from any other reason.

Mr. Grier: That is all then, only testify what you know.

Q. Do you know whether he owns a launch?
A. He does.
Q. Do you know whether or not he owns an automobile?
A. He is in one all the time that is supposed to be his.
Q. Do you know how many different automobiles he has had this year?
A. I know he has driven three.

By the Master:

Q. By "this year" do you mean 1920 or——
A. 1919.

By Mr. Waddington:

Q. What does your husband do?
A. Nothing that I know of.
Q. He has no business?
A. Not that I know of.
Q. And so far as you know does nothing to earn any money?
A. Not that I know of.

Cross-examination.

By Mr. Grier:

Q. Don't you know, Mrs. Hires, that your husband has the agency for the Apperson automobile?

A. I do not.

Q. Have you ever noticed carefully the machine that he is riding around in, the license tag, noticed anything on the license tags?

A. No.

Q. You are familiar with the fact that a dealers license has a "D" on it, aren't you?

A. Yes.

Q. Isn't it a fact that his car has a "D" on the license tag?

A. I haven't noticed it.

Q. You don't know anything about whether he is the agent for those cars or not then?

A. No.

Q. No, then prior to your marriage to the defendant, you lived there at home with your father and mother, didn't you?

A. I did.

Q. And just before the separation occurred in 1915, you were living on Griffith Street in the City of Salem?

A. Yes.

Q. And the house where you were residing was a rented house, wasn't it, one end of a double house?

A. Yes.

Q. Do you know what George's income was at that time?

A. Around $5,000, I think.

Q. You are not sure about that, are you?

A. I haven't any way to be sure except the checks he would bring home.

Q. You lived there in a style very similar to the style that you have been living in since that time, didn't you?

A. In a way, no.

Q. There wasn't much difference between your home and the home you have now?

A. We had no conveniences on Griffith Street, stoves all through, no heater, coal had to be carried and everything like that, and a perfectly miserable bathroom and no heating at all in the back bedrooms. Now, our house is warm all over to the third floor.

Q. How long did you live in that home there on Griffith Street?

A. We moved in around October of the year that we came to Salem, 1913, did I say?

Q. And you lived there all the time until the separation?

A. Yes.

Q. As I understand then the home that you have since lived in is far superior to the home that you occupied on Griffith Street?

A. Its renting value is quite a good deal higher.

Q. Is that your feeling, that the home that you are living in now is better than the one he furnished to you?

A. Yes. Now, may I say that the one we lived in in Philadelphia was perfectly lovely and this was a great come-down, because it was the only house that we could rent in Salem, the one on Griffith Street.

Q. But you continued to reside there until the time of the separation?

A. We were building a house.

Q. Now, isn't it a fact, Mrs. Hires, that when you and the defendant separated in 1915, articles of separation were entered into between you and your father as trustee and the defendant?

A. Yes; what do you mean?

Q. Well, to put it a little plainer you went into

Mr. Forman Sinnickson's office and signed a separation agreement, didn't you?

A. With George, yes.

Q. Have you got your copy with you?

A. No, sir.

Q. Will you glance at that paper and say whether that is your signature and whether that is the agreement that was entered into at that time?

A. Yes.

Q. Since that agreement was executed you have been receiving the amount provided for regularly, haven't you?

A. I have.

Mr. Grier: I would like to have that marked in evidence.

The Master: I will mark it for identification Exhibit 1 of defendant.

Q. Mrs. Hires, when you left Salem, or left Philadelphia, to move to Salem, it was at your request, wasn't it?

A. Why, I was ill and knew hardly anything about it. We were looking for a house elsewhere, had been all summer, to get a yard for George to play and have room beside being right in the trolley when he played, and it was all practically decided without anything due to me, because I was hardly in a condition to be sane on any subject, not sane exactly, but responsible enough to say what the family should do.

Q. Now, coming down to practically the present time, your husband enlisted in the army in 1917, didn't he?

A. Yes.

Q. And do you know whether or not he was stationed down at Anniston for sometime before he went to France?

A. Yes.

Q. Did you write to him occasionally?

A. Not occasionally, I think I wrote him two letters.

Q. And do you recall what the contents of those letters were, what the subject matter was?

A. I don't even remember that I wrote but once; I possibly did.

Q. Do you remember what the contents of that one letter were?

A. I asked him if he wouldn't try to be good for his little boys' sake for one thing, I remember that, and I felt I was foolish after I had sent it.

Q. Did you make any demand or request for any additional support for yourself and children?

A. While he was over-seas, I did.

Q. I am referring now to while he was at Anniston.

A. Not that I remember.

Q. Do you recall stating in that letter or some other letter mailed to him while he was stationed at Anniston, that you did not care for him to make any allotment out of his pay, that you had ample money to provide for yourself and children?

A. At the time I felt—yes, I said that, because at the time I felt that if there was anything I could sacrifice and do while he was at war, I was perfectly willing to do it, but prices began to soar right on the eve of that.

Q. So it was a fact that at the time you wrote that letter you felt that you were being very well taken care of, weren't you?

A. I felt that I was taking a lot from my father at the time.

Q. Well now, after you signed this separation agreement and began to receive the $1500 a year, you bought an automobile, didn't you?

A. I did not.

Q. Was that automobile in your name or in your father's name?

A. It was bought entirely by him from a man in Quinton, a second-handed machine, and the license tags he took out in my name and he paid for taking them out and everything, and I have never bought but five gallons of gas for that since I ran it, in two years, and this last license time he took it out again in my name; I paid when I got my driver's license a couple of dollars.

Q. Well, isn't it a fact, that from the time of this separation agreement right on up to the present time, you have been making deposits in bank, saving some money?

A. Drawing them out as I needed them.

Q. Haven't you been running a savings account?

A. I do now.

Q. So that it has not taken all the $1500 to support you and the children, has it?

A. It has for the last year and part of 1918. That is money that—lots of it—not lots of it, for there isn't lots, but my father advised me to put something overe there in case I had a doctor bill in a hurry, or something that I could come to call my own and not have to borrow and do with what I could.

Q. Do you know at this time how much you have got in that account?

A. I have around three hundred dollars and lots of bills, practically nothing in my checking account which is supposed to last me until March 10th.

Q. You get your allowance quarterly, don't you?
A. Yes.
Q. And you get that from the trustees of your husband?
A. Yes.
Q. Now, you have testified here that you supposed that your father has paid around a hundred dollars for doctor bills for you.
A. I did not.
Q. What was your testimony?
T. That he gave me money around a hundred dollars.
Q. He gave you altogether around a hundred dollars?
A. Yes.
Q. Now, what period did that cover?
A. This last year.
Q. 1919, you mean?
A. Yes.
Q. Did anybody else give you any money during 1919?
A. Except George.
Q. Did the defendant's mother, Mrs. George Hires, Sr., give you anything?
A. Not in 1919.
Q. Did she give you anything in 1918?
A. She gave me $200.00 in 1918, and part of it was to cover lots of things that I paid for Mr. Hires right after we separated that she knew nothing about and she stumbled on, and she paid that, because I was kind of low at the time and it wasn't all of $200.00 but she told me to take the rest, that she felt that I should have it.
Q. Now, between the time that you wrote to George at Anniston, in which you stated that you did not want him to make any allotment, that you

could get along on what you had, and the time of his discharge from the army, did you write to him again?

A. I wrote to him while John was ill, possibly in August, I suppose he had just about gone across, asking him if he wouldn't give me more money, that I didn't have enough.

Q. You knew that your husband had been shipped to France in the meantime, did you?

A. I addressed it to France.

Q. And do you remember what the demand was that you made at that time?

A. I don't remember that I made any demand; I talked to Mr. Sinnickson about it.

Q. Well, request?

A. I talked to Mr. Sinnickson first and talked to his mother and they suggested, both suggested, that I——

Q. Not any suggestions from Mr. Sinnickson or his mother; just what you did; what did you request of him to do about money at that time?

A. To give me some more money.

Q. Did you mention any amount?

A. I don't remember, I probably did.

Q. As a matter of fact, didn't you ask him for $500.00 a year more?

A. I possibly did.

Q. And you would consider that $500 a year more would be ample for the support of yourself and two children?

A. Would let me out until he got home.

Q. Did you think you were going to get more out of him after he got home?

A. With everything soaring the way it was and the prices just almost double, I would think, to when I separated, it was natural to suppose with his income doubling itself; that would ——

Q. When did you first find out about his income increasing?

A. His mother ——

Q. When was that?

A. I don't know.

Q. Now, try to think.

A. He began to get more income, I imagine, the second year I was home, because I remember distinctly one time, possibly in the spring—I had a dressmaker at the time—he called me up and asked if he could come down, he had something he wanted to tell me, and I said yes, and he came down and told me he had been getting more dividends from Hires-Turner, he was able to pay off a note, and he was so pleased to think he was getting more money, he was going to pay this note off, and he wanted to tell me so I would share it.

Q. Well, it was about the time that the dividends from the Hires-Turner Company increased that you began to feel as though your living expenses were greater, wasn't it?

A. I don't remember that it was, because in fact I knew very little about the substantial increase of Hires-Turner until his mother began to buy a big lot of Liberty Bonds for him; then she didn't tell me, but some others; she told me what she had invested for him, but some other stockholders of Hires-Turner casually mentioned what they were getting from Hires-Turner dividends.

Q. And just as soon as you found that out then you began to decide you ought to have more money for your support, isn't that a fact?

A. No.

Q. You had never made any demand on him for any increase up to that time, had you?

A. I had never had any exceptional debts piled on to me as I had that summer; John was sick and I just had one thing after another to pay for.

Q. What summer was that?

A. 1918.

Q. And it was about that time that you heard about these dividends increasing from the Hires-Turner Company?

A. Oh, I had heard that; I did not know what they had increased, but I knew they had increased the year before he even went away.

Q. So it was John's illness that increased your upkeep materially during the year 1918, was it?

A. No, every pair of shoes I bought for George cost three or four dollars, at least two or three dollars, more than they had cost, and every line in every way costs more, and you know yourself when it began to cost more; it has been gradual; it has not jumped up all of a sudden, it has been a gradual increase in everything.

Q. Has it jumped any since 1918, during the summer of 1918?

A. I have to pay $6.50 for John's shoes now; I paid $3.00 at that time.

Q. Well, John was only three years old in 1918, too, wasn't he?

A. Yes.

Q. But it was after this jump in your cost that you wrote to your husband, the defendant in these proceedings, and asked for $500.00 a year more, and that you considered that would be ample for the support of yourself and children?

A. I didn't say that it would be ample; I asked for that much more.

Q. When you wrote that letter to your husband asking for an additional $500.00, did you consider

that in the nature of a gift that you wanted him to make to you?

A. No.

Q. Well, didn't you consider that you were bound by this agreement that you had entered into at the time of the separation?

A. I had legal advice that if I needed more money the only thing to do was to ask him if he would give me more, that nobody else could on account of this agreement, and if he saw fit to do it, all right, but it was up to him entirely, and to write to him, which I did.

Q. And that was your understanding, that unless he wanted to give you more that you were bound by the agreement that you had signed?

A. To support myself, but the children were not included in that.

Q. And you still consider that that is the proper situation, that you are bound by the $1500.00 contained in this separation agreement, don't you?

A. For myself.

Q. Yes, for yourself.

A. Yes, that is what it says.

Q. Now then, referring to Exhibit 2 which is a statement that you have prepared of your expenditures during 1919, I see one item here of Dr. Davis, $44.50, was that for services rendered to yourself or to your children?

A. Both of us; he never made a special bill.

Q. Do you know what portion of that bill was for yourself and what portion for the two children?

A. I do not.

Q. In your judgment would it be half and half?

A. No, it wouldn't, because John and George had both been sick with erysipelas in the spring, and the

biggest part of the bill was for them, I had been up to him rarely.

Q. Now, how about Dr. Hirst?

A. Dr. Hirst was an operation on John, adenoids.

Q. Who was the wedding present for, some friend of yours?

A. A friend of George's and mine that had sent us wedding presents.

Q. Who is Dr. Grayson?

A. An ear specialist.

Q. Who did he treat?

A. Treated my ear.

Q. And who is Dr. Burke?

A. A doctor over on 20th Street.

Q. Whom did he attend?

A. Partly George and a couple of visits for myself.

Q. Whose furniture is there in that house down there where you are living now; does the furniture belong to your parents or to you?

A. Some mine.

Q. What articles of furniture have you there?

A. I have my own bedroom things.

Q. Anything else?

A. Little George's, part of his bedroom things. I have my own piano, which was mine before I was married and my music cabinet; I have a bookcase which was a wedding gift; I have three or four chairs.

Q. Well, this item here then that you paid to Mr. Lummis for the repair of two clocks ——

A. They were wedding gifts, those clocks.

Q. Were they your clocks or your parents?

A. They are, Mr. Lucius Hires gave us one of them.

Q. Was the other clock yours?

A. The other clock was a clock William Waddington gave us, a wedding gift.

Q. Mrs. Hires, you have no intention of leaving your father's residence and maintaining a separate home for yourself and children, have you?

A. It depends; if I could get a suitable house in Salem or elsewhere.

Q. You have no present intention of doing that at this time?

A. I have no opportunity now; you can't get a house.

Q. And your present intention is to continue to live there with your father and mother?

A. For the time being, but not permanently.

Q. Well, I don't suppose they will live as long as you probably will?

A. You can't tell.

Q. You are the only child, aren't you, of Mr. and Mrs. Ayres?

A. Yes.

Q. And is that home owned by your father?

A. Yes.

Q. You have testified a while ago that during John's illness, or by reason of it, it was necessary to employ an extra maid; is there a maid employed there in your home regularly?

A. We have a woman come in and do the sweeping and cleaning regularly; the laundry is done out.

Q. Once a week, I presume?

A. Yes, we have not had in the last month or two, because she couldn't come.

Q. Did you go away to school before you were married?

A. Only to study music, not to a regular ——

Q. You never went to any boarding school?

A. No.

Q. And you had no means of support prior to your marriage excepting your father?

A. No.

Q. What was his business prior to your marriage?

A. Canning.

Q. He was in business for himself, was he, or employed?

A. He was employed.

Q. On a weekly salary, wasn't he?

A. Monthly.

Q. You don't know anything about what that salary was per month, do you?

A. No, because it was changed.

Q. Isn't it a fact that prior to your marriage for several years his salary did not exceed twenty dollars a week?

A. Well, you know he is connected in two businesses, that was one.

Q. I am not talking about at the present time; I am talking about before your marriage.

A. Well, he has been for sometime.

Q. What was the other business?

A. He owns a factory at Alloway.

Q. Was that factory in Alloway operating prior to your marriage?

A. No.

Q. It was not?

A. No.

Q. So that his only income was what he was earning in this other factory—that is correct, isn't it?

A. Yes, he owned this factory, you know, and he went into bankruptcy, I don't remember the year at all when that happened, but he had made good at the factory and he went into bankruptcy, I think,—well, I can't tell, because I wouldn't get it right.

Q. Well, what I want to find out is, Mrs. Hires, it is a fact, isn't it, that for some years prior to your marriage the sole income coming into your home, on which your father and mother and yourself were supported, was the salary he received of twenty dollars, not over twenty dollars a week?

A. You know I had a big music class.

Q. You earned some money then by teaching music, did you?

A. Yes, I had a big class.

Q. And outside of those two items, that was what the home was maintained upon, isn't it?

A. As far as I know.

Q. And is it the same home that you are now living in?

A. Yes.

Q. It has been considerably improved since then, hasn't it?

A. In what way?

Q. Well, hasn't it been re-decorated?

A. No, it has been painted.

Q. New furniture put in the house, new heating apparatus?

A. No, no new heating apparatus.

Q. The same heating apparatus?

A. The same.

Q. So that you are living now in practically the same condition as you were prior to your marriage, living in the same home under practically the same circumstances?

A. Yes. Well, he has made such improvements as putting a netting up at the verandas, if you call that an improvement.

Q. This automobile that the license is taken out in your name, you drive that automobile, don't you?

A. I drive it when he don't have it for business.

Q. Whenever you want to drive it—that is, if your father is not using it, you use it?

A. I drive it when he is not using it.

Q. You can still play the piano then, can't you?

A. Yes.

Q. This trouble that you speak of in your wrist or arm does not affect your playing the piano?

A. It does; if I am tired I can't begin to play; I have no velocity whatever if I am very tired; I don't play for—I am not a professional any more; I play for my own amusement and when I feel like it.

Q. You don't have any idea, do you, Mrs. Hires, that those two children of yours are ever going to want for anything, do you?

A. They will in the present state of my income.

Q. They have been properly nourished and clothed and taken care of, haven't they, on this $1500.00 that you have been receiving?

A. They haven't on the $1500.00.

Q. Well now, what else have you received with the exception of about a hundred dollars?

A. I paid just as much board, for I have inquired around I have paid just as much board for the three of us as I would pay for one person, and nobody else is going to take pity on me and take me in like that.

Q. Your father is not going to turn you out, though, is he?

A. Yes, but he isn't—Well, he can testify to that himself. He hasn't the means to go on and do as he has been doing.

Q. You say that the older boy George will be nine in March, is that correct?

A. Yes.

Q. In the ordinary course of events you would not

expect to send him away to school for five or six years yet, would you?

A. No.

Q. Probably considerably longer than that?

A. Yes.

Q. Isn't that correct?

A. Yes.

Q. So that there would be no additional expense for education for several years to come, will there?

A. Only for his music.

Q. Well, does he take music lessons?

A. I have started him; I am going to teach him another year, then I am going to turn him over to somebody who is better fitted.

Q. You were quite an expert musician, weren't you?

A. I don't know how expert you would call me.

Q. Well, you testified a few minutes ago that prior to your marriage you had a large class?

A. Yes, but I taught ten or fifteen years ago, and methods change, and you can't teach and get results unless you are all the time brushing up as you are in any other business or anything else.

Q. Now, in your direct examination you testified that outside of the food which was necessary for yourself and children, and any servants that you might have, that the sum of $1250.00 or $1500.00 a year ought to cover the other expenses, is that what you meant?

A. No, I said clothing expense, I didn't say all the others.

Q. Just the clothing expense?

A. Yes.

Q. You and the children have been properly clothed, haven't you, since your separation from

your husband—you had clothing to suit you, didn't you?

A. We have had clothing.

Q. You have never made any objection to the kind of clothing that you had, have you—you have been properly clothed and well dressed, as well as any of the rest of the girls around Salem, haven't you, Mrs. Hires?

A. In a way.

Q. You haven't been spending any $1250 or $1500 a year for yourself and those two children, have you, for clothing?

A. It costs more all the time for those children.

Q. Well, you have been buying clothes right on up to the present time, haven't you?

A. John has been wearing practically everything that was left over from George and given to him.

Q. I am not surprised at that; I expect every boy has done the same thing, I did.

A. Well, he has come to the point now where George simply pushes through his clothes and has nothing to hand over.

Q. And you are sure you have got that high enough, anyhow, haven't you, that estimate of $1250 to $1500 for clothing—you are sure that will cover it?

A. Yes.

Q. Now, of that $1250 or $1500 per year for clothing, that you estimate is necessary, what portion of that is necessary for your clothing?

A. It depends upon what kind of clothing I get.

Q. Well, I presume your testimony is directed toward buying the same kind of clothing that you and your children have been receiving in the last two or three years; that is what your calculation is based on, isn't it?

A. It is on George and myself, not on John.

Q. Well, you are going to buy John the same kind of clothing as George has been getting, aren't you?

A. Yes, and they are costing more than George's did at the time they were bought.

Q. Now, basing your estimate of the cost of clothing for yourself and children at $1500 a year, what percentage of that is necessary for your own clothes?

A. I can't tell you that off-hand.

Q. Well, it is a very material thing; we would like to know. You certainly must know about the proportion of the cost of the clothing for the three of you, how it is divided up?

A. I know my bills, if you can take it from that—my Wanamaker and Strawbridge's bills are always half belonging to the boys and more than half sometimes.

Q. Well, would you say then that half of the item of the cost of clothing would represent your wearing apparel and the other half the two boys?

A. Yes.

Q. As a matter of fact don't you think it would cost more to clothe yourself than it does those two children?

A. I don't think so.

Q. So that your estimate is half and half, half for yourself and half for the children?

A. Yes.

Q. Does that also apply to this item of $1500 for food?

A. Well, I don't eat as much as two people.

Q. Well, as I understand, your position is, that your own support is taken care of by this separation agreement of $1500, is that what you testified to that your understanding was?

A. That is what the papers say, but my own support is not, because my father has boarded me on practically one-third of what I would have gotten anywhere else if I had had to go out.

Q. It is a fact that what you are basing all these items on is a separate home for yourself and children and help?

A. Yes, because he can't afford to keep me on the basis that he has kept me for the last four years; he absolutely cannot afford it any longer; it is up to me to look out for myself.

Q. I believe that you are capable of doing that all right, but I want to make it clear in my own mind at least that in the estimate that you have made out here you are estimating on a separate home?

A. A separate home.

Q. And the cost is to be the cost of maintaining a separate home for yourself and children and whatever help that you think you have to have?

A. Yes.

Q. And at the same time you are of the feeling that your own support is governed by this separation agreement limiting you to the sum of $1500.00 a year, is that your understanding of the matter?

A. That is the money that I have received.

Q. And you feel that you are bound by that, don't you, for your own support?

Mr. Waddington: I object to that; it is a legal question as to whether or not she is bound by it.

Mr. Grier: She has made some reference to the fact that she has been technically advised ——

The Witness: From Mr. Sinnickson.

Mr. Grier: I won't press that.

The Master: I don't think it makes any difference.

Q. When the separation occurred, Mrs. Hires, and you were living on Griffith Street, whose suggestion was it that you go back to your parents?

A. My own.

Q. And did your husband object to that?

A. We talked it over and he was just as much willing to it as I am.

Q. Isn't it a fact that he wanted you to continue to live in that home so that he had a place where he could come and see the children?

A. What home?

Q. In the home that you were living in on Griffith Street?

A. I couldn't have lived there for $1500.00 in the condition I was in without lots of help.

Q. I am not asking you that; I am asking you if it was not against your husband's objection that you returned to your parents home?

A. I don't remember that it was.

Q. Do you recall him requesting you to live some other place except your parents' home so that he could call and see the children?

A. He offered me that house over on Chestnut Street that we were building, and I told him I could not afford to live there because the rent was only the first cost of living in a property like that, that I hadn't enough income to live there.

Q. So that when you went back to your parents' home to live you went there on your own choice, not on his?

A. Of course I went on my own choice; I didn't ask him where he was going to live.

Q. You have no intention of leaving there anywhere in the near future?

A. I couldn't tell you that; that is absolutely beyond my saying; I can't tell you.

By Mr. Waddington:

Q. What was the value of the house which you had in Philadelphia?

A. $6500 we paid for it.

Q. And you sold that house when you came to Salem?

A. Yes.

Q. And your moving to Griffith Street was only a temporary matter and you started to build a new house?

A. Yes.

Q. Do you know what the contract price for the new house that you were building was? If you don't recollect I have got proof of it otherwise, but I thought maybe you might recollect.

A. I ought to, because I did most of the planning of it, but I do not.

Q. At the time you separated you did not feel that you could take the house on Chestnut Street, which was just about being completed, and live in it, did you?

A. I couldn't.

Q. The amount of money which was paid to you was not sufficient to maintain a home of that kind?

A. No, because I had to have help and lots of other things.

Q. As a matter of fact, your physical condition

was such that you were glad to separate under any circumstances?

A. I was.

Q. Now, how much have you drawn out of your saving account during this last year?

Mr. Grier: If your Honor please, at this time I want to enter a formal objection to any testimony being produced touching upon the support of the petitioner. The petitioner has identified this separation agreement which was entered into between the parties in conjunction with the father of the petitioner as trustee on the 10th day of December, 1915, and this expressly sets forth that the petitioner herein waives every other payment of money, and it sets forth that the sum of $125.00 per month, payable each and every month for a period of ten years from the date of these presents, after which time said sum is to be increased to an amount to be agreed upon at that time, and until said new agreement is made the payment of $125.00 per month is to continue, "which the said party of the second part"—which is the petitioner in these proceedings—"does hereby agree to take in full satisfaction for her support and maintenance and all alimony whatever." I don't think you can question for a moment but what she is bound by that agreement.

The Master: I will take the testimony subject to the objection so there will be no question of it coming back to be taken over again. Without formal objection, it is understood that the testimony on that line is taken subject to your objection.

Mr. Grier: All testimony with reference to any alimony or support for herself.

Q. How much have you drawn out of your saving account during last year?

A. $400.00, more than $400.00, but $400.00 at one time myself.

Q. How much more, if you recall?

A. Possibly $75.00.

Q. Now, during the last year or so, have you had some other sickness in the home where you are living besides yourself and your children?

A. Yes.

Q. Your mother has been sick?

A. Yes.

Q. And do the children in the house there annoy or bother your parents to any extent or not?

Mr. Grier: The mother ought to testify to that, Judge.

A. She is'nt here to testify. My father isn't in the house very much.

Q. Do you know whether they have or not?

A. Not when she is well.

Q. Not when she is well?

A. No.

By Mr. Grier:

Q. Just one other question; would you be willing to let your husband have the custody of these children?

A. I will not.

Q. And you would not entrust those children to the custody of his mother?

A. No.

Q. So that you object to anyone having the custody

and support of those children with the exception of yourself?

A. I do.

The Master: (After conference with counsel.) The above questions were only asked with respect to the amount claimed for the maintenance of the children and not with respect to the proper custody of the children.

Q. Now, Mrs. Hires, this past year—by that I mean 1919—has that been the most expensive year for you and the children since your separation?

A. Why, 1918 and 1919 run somewhat alike.

Q. Now, as I understand, during the year 1919, you of course spent your $1500, did you?

A. I did.

Q. And you drew $400.00 out of the bank, out of your savings account?

A. Yes.

Q. And where did you get that $400.00 from?

A. The other two years I deposited off and on.

Q. So that you had saved out of your $1500 since 1915 a sufficient amount to draw out $400.00 this past year?

A. I have been able to save it by my father paying lots of my bills, and the first two years he gave me some money beside the $1500.00.

Q. And in addition to the $400.00 you still have a balance, you say, of $300.00 in the bank?

A. You see that $300.00, Mr. Grier, was given me to last me until March 10th. It is not February 10th yet and I have got another month to go on that money.

Q. So that you have saved a material sum of money out of the $1500.00?

A. Not this last year I haven't saved it.

Q. Now, during this past year you have spent your $1500.00 plus $400.00?

A. Yes.

Q. What else have you spent the last year?

A. $100.00 daddy gave me.

Q. Anything else?

A. That is all I have. Well, he has given me money off and on that he can't tell me, in checks and things like that, because, as I say, it has been money I have borrowed.

Q. You testified you thought that was $100.00?

A. No, the $100.00 he has given me in actual money. He has got checks, back checks for it, some of it, and in actual money, that doesn't include the little bits of money that he has given the boys and I along.

Q. Well now, how much do you suppose that would aggregate?

A. I can't tell you.

Q. Was it about $50.00, do you suppose?

A. Oh, yes, more than that.

Q. Well, $100.00?

A. I can't tell you, because I wouldn't be telling the truth if I tell you, because I don't know; he gives it to me off and on.

Q. But the total amount expended by you for your own support and support of the children for everything last year was $1500.00 plus the $400.00 which you had drawn out of your savings, and $100.00 from your father, and possibly another $100.00 which he gave you in small change from time to time?

A. Living under the conditions that I have lived.

Q. Living in the same house that you have been for several years?

A. With his supporting me the way he has.

Q. So that the total would be $2100.00 for the past year?

A. Paying board for one person instead of three.

Q. Paying board as you have set forth here, ten dollars?

A. It has not been ten dollars.

Q. $400.00 for the three of you?

A. And I have given that to my mother, not to my father.

LEWIS H. AYRES, sworn.

By Mr. Waddington:

Q. Mr. Ayres, you live in the City of Salem?

A. Yes.

Q. 39 Walnut Street?

A. Yes.

Q. And you are the father of the petitioner in this cause?

A. Yes, sir.

Q. Since 1915 in December she has been living at your house?

A. Yes, sir.

Q. With the two boys?

A. Yes.

Q. And what arrangements were made between you and her relative to board when she came there, any arrangements made—what was done?

A. Why, she gave her mother $100.00 when she got her money; she got the money quarterly, I believe it was quarterly, every three months, I believe, that she got the money.

Q. That amounted to about $400.00 a year?

A. Yes.

Q. And that is the only charge which has ever been made to her for the support of her and the children?

A. That is correct.

Q. And what was the condition of your daughter at the time she came home?

A. Her health?

Q. Yes.

A. Well, she was in very poor health.

Q. What was the trouble?

A. Well, she had had an attack, nervous I suppose, and head trouble.

Q. Paralysis?

A. Well, yes, it was verging on that or partial paralysis at that time.

Q. And at the time they separated what was your attitude in regard to the necessity of a separation?

Mr. Grier: I object to that; it has absolutely nothing to do with the amount of alimony or support for these children as to what this witness' attitude was on their separation.

The Master: No, I don't think the question is proper.

Mr. Waddington: All right; I will withdraw the question.

Q. You were present at the time the agreement was entered into relative to the payment of $1500.00 a year?

A. I was.

Q. And will you state why you entered into such an agreement?

A. Well, I felt in regard to my daughter's health and the situation she occupied and the surroundings and so forth, it was either a case of burying the girl or having her under some other different conditions.

Q. And you had come to the conclusion it was absolutely necessary for her to have a change?

A. That was my opinion; that was my judgment in the case.

Q. And you were of the opinion that the life of your daughter was at stake in making that ——

Mr. Grier: That is the same question in a different form; we object to it. If there is any reason for the question as to cruelty ——

Mr. Waddington: The reason, may it please the Master, is this: I want to show that the agreement was entered into as the best possible thing that could be done at that time, that it was absolutely necessary for some change to be made to save the life of the petitioner, and that this was accepted rather than—The change would have to be made whether anything was ever paid or not; that was the situation.

The Master: He has said that once; that it was the best thing that could be done and it was necessary, he felt, for his daughter's safety. If you want to go into the reasons for it and prove the facts, that is another thing, but his opinion about it is not of much value; it is a question of what the facts were if you want to go into it; I don't suppose he knows those except by hearsay.

Mr. Waddington: Well, I will withdraw the question. In entering into this agreement what was your conclusion relative to it as to the amount under the circumstances?

Mr. Woodruff: I object to his conclusion. What was done is the important thing.

The Master: The question is overruled. You may show that that was not a sufficient sum but the circumstances were such that you had to accept it and why it wasn't a sufficient sum, I suppose.

Q. Has the $400.00 which has been paid to you or your wife by your daughter ever been sufficient to maintain her and the two children at your home a year?

A. No.

Q. And how much do you feel would be an amount which would be necessary to support them at your home for a year at the present time?

A. Well, that is a pretty difficult question for me to answer.

Mr. Waddington: I will withdraw that question.

The Witness: They are part of the family.

Q. I will withdraw the question. You don't do the buying?

A. No. Well, I might say partially; I often buy, but I don't do the whole buying. The women folks have charge of that end of the house; they do the buying principally.

Q. Since your daughter has been home with you, has she had any recurrence of the physical condition

which she had at the time she came home, more or less?

A. Not in an aggravated form; she has had symptoms of it when she is nervous or overtired.

Q. And how much have you contributed in actual money during the last year toward the support and maintenance of your daughter beside what you contributed in helping maintain them in the home?

A. Well, the moneys that I have given Reba I have never kept any special account of anything of that kind; I gave it to her, but I figure around possibly $100.00, in the neighborhood of $100.00 that I know that was given her just last year in actual money. I have two checks of $40.00 that were given her and several times I gave her money; I gave her money last winter, gave her money in May, gave her money in July; I gave her some money in October, but to remember all the times that I have given her money, of course, it would be a little difficult for me to remember all of it.

Q. Did you sometimes buy shoes or other odds and ends of clothing and things of that kind for the boys?

A. I have done just this way: When they came to live with us they were part of the family, and as far as I was personally concerned they were taken care of on those lines just as a part of the family. Now, in that way I would spend money for them just the same as I would for myself or my wife.

Q. And when she first returned did you make any special effort so that she might save money?

A. I did for two years; as soon as she came home I advised her as far as it would be possible to save some of her money so she could have a fund of her own, and on those lines she co-operated with my wishes and ideas and did it. Now, in order for her to do that, every opportunity that I had I would pay

a bill for her in any and every way that I could do it, and that helped, of course, that saved her money, and I did that for two years. Now, the last two years I haven't been doing that like I did before, but the first year I did.

Q. What is the result—do you know whether or not she has saved anything during the last two years?

A. In the last two years I don't think she has.

Q. Do you know whether or not she has drawn out of her saving fund?

A. Only by hearsay.

Q. Only by what she told you?

A. Yes, I have heard her say so.

Q. Does she have any property or any real estate of her own?

A. Not to my knowledge.

Q. And her total income is what she received from her husband?

A. Yes.

Q. And what you have given to her for yourself and the children?

A. Yes.

Q. If she was required to maintain a home by herself separate from your home would she be able to do for herself and the children alone—would she be physically able to do it?

A. No, I wouldn't consider she could.

Q. Would she need the assistance of a housekeeper or maid to maintain such a home?

A. She would have to have help.

Q. Have you had help from time to time at the home where you live now by reason of the children being sick or anything of that kind?

A. Yes, we have had help more or less ever since she has been home, except in the last three or four months.

Q. The reason you have not had it in the last three or four months is because you can't get it?

A. That seemed to be the trouble.

Q. Was this help caused by the fact that she was at home and your family been increased?

A. Well, my wife and her sister took charge of keeping things going there without extra help previous to her coming home.

Q. This extra help you have paid for?

A. Partially; when she first came she paid.

Q. When she first came she brought a girl, didn't she?

A. Yes, she brought a girl and she paid her.

Q. Within the last two years you have been paying for it yourself?

A. Yes.

Cross-examination.

By Mr. Woodruff:

Q. Mr. Ayres, how old are you?

A. I was born in 1857, March.

Q. And your wife is still living?

A. Is my wife living?

Q. Yes, your wife is living?

A. Yes.

Q. How old is she?

A. She is about three years younger than I, I think.

Q. You are both in pretty good health, are you?

A. Well ——

Q. Considering your years?

A. I was in good health up until about seven or eight years ago when sugar got in my system and that damaged my physical condition very much.

Q. Have you any other children beside the petitioner in this case?

A. No.

Q. The only child you had?

A. We buried a boy prematurely.

Q. Otherwise this is the only child that grew up?

A. Yes.

Q. She had lived with you up until the time of her marriage, hadn't she?

A. Yes.

Q. And just the three of you had made up the family, is that correct?

A. Well, that is our immediate family. My wife's sister is with us.

Q. She lives with you, too?

A. She does and has been for several years now.

Q. And did you live in this same house before your daughter's marriage?

A. Yes.

Q. And what was your business at that time?

A. I was in the canning business.

Q. At the time she was married?

A. Yes.

Q. You were then in the canning business, too?

A. Yes.

Q. Did you have then a canning factory of your own?

A. I think, well, at the time of her marriage?

Q. Yes.

A. No, I think the business was incorporated at that time; I think it was operated as a corporation; previous to that I had.

Q. And you were on salary, were you?

A. I was at that time, yes.

Q. Did you have any other income in the family except just your salary?

A. Not at that time.

Q. Do you recollect what it was?

A. Now, one minute; I am a little previous on that. I was interested in another business beside this corporation.

Q. Is that the one at Alloway?

A. Yes, I was interested in that business at that time.

Q. And did you own that factory at Alloway?

A. Well, you see, you are speaking now of the time that Reba was married?

Q. Yes, at the time she was married? I will put it in another way: Did you have any income beside your salary at that time, any income from the Alloway plant?

Mr. Waddington: I object to this; it seems to me it is entirely immaterial; it is too far from the point at issue.

The Master: It is a long ways off as to what the income of the father was.

Mr. Woodruff: I am getting at the condition of the wife.

The Master: I see your point.

Mr. Waddington: It seems to me the condition of the wife—it don't make any difference what it was before she was married. She is entitled to have it at the time she was married, not what it was before.

The Master: I suppose she is entitled to what the social condition was at the time of the separation or now, and it wouldn't make any difference what his

income was at the time or what her social condition was at the time unless there was some wide divergence.

Q. Now, Mr. Ayres, you never, of course, from the time that your daughter was married even up to the present time, have regarded the situation from a financial viewpoint, have you, never considered dollars and cents in treating with this situation?

A. Well, you don't suppose ——

Q. My supposition is immaterial; I am asking you whether you yourself have ever treated this situation as a proposition of dollars and cents?

Mr. Waddington: Just give him your attitude at the time it started and on through at the present time.

A. Well, my attitude at the time that separation was made was this, that something had to be done to relieve Reba of the situation and the conditions at that time, that existed at that time, otherwise we would bury the girl. Now, that was my candid opinion at that time. Now, then, my income possibly at that time wasn't a whole lot; it would buy food, and I would take my daughter home rather than bury her, and her two children, and share a crust with her as far as that is concerned.

Q. Well, that is what I mean.

A. Well, I would do that. Now, as for considering the money that she got, I did not consider at that time that it was my duty to take another family and support them when there was sufficient money to support them, and we did not consider that $1500 was a whole lot of money.

Q. Now, Mr. Ayres, you knew of course the conditions when your daughter came back to Salem to live, didn't you, from Philadelphia?

A. Yes.

Q. And after she came back I suppose she visited you frequently and you visited them while they were living together there before the separation?

A. More or less.

Q. You knew of the fact that she and her husband were about to separate?

A. Well, we knew that after.

Q. Didn't you know that that was going to happen before it actually did happen?

A. Well, it happened very quick.

Q. Did you talk with your daughter about it?

A. I did.

Q. Complain about it?

A. I asked her, I quizzed her to know what her attitude was. Of course, it wasn't my business to separate them.

Q. No, of course not.

A. It was her business; I wanted to find her attitude and her feelings in regard to it. She was home visiting us when she was able to get out of the house, in possibly a week.

Q. Now, you had no hesitancy at all in taking your daughter and her children into your home, had you?

A. No, none whatever.

Q. Of course not.

A. Certainly not.

Q. And you immediately considered them as part of your family and have always treated them so since?

A. Yes, sure.

Q. And from that time up to the present you kept

no account of what money you spent on either your daughter or the grandchildren, have you?

A. No.

Q. And you have never considered that as a part of her upkeep or considered it from that viewpoint, have you?

A. She had her money, I supported or provided for the house. If she chose to use any of her moneys to help herself and her children, that was her affair. I wouldn't ask her to unless I would get entirely out of money and hadn't any, why, that would be another proposition.

Q. And this $400.00 a year that she has paid, you haven't figured it as exact board, have you?

A. Never figured on it; that was her and her mother's arrangement.

Q. That is what she gives her mother every quarter, $100.00?

A. Yes.

Q. Now, did you know about the arrangement that was made for a separation agreement before it was actually signed?

A. I was there when the agreement was made and signed.

Q. And you were the trustee for your daughter, weren't you?

A. Yes, signed it.

Q. And you knew about the fixing of the amount?

A. Why, I suppose I did.

Q. Didn't you go and consult with Mr. Sinnickson about that?

A. I don't know that I expressly consulted with him, no.

Q. You were with your daughter when she was

A. I was with my daughter; I guess that was all

fixed and arranged for at the time between Mr. Hires, Reba and myself with Mr. Sinnickson; I think we were all there when that was discussed. I think that feature of it was discussed at that time.

Q. Isn't it correct that that amount was fixed and the agreement drawn before Mr. Hires was called in at all, by consultation between you and your daughter and Mr. Sinnickson?

A. If it was I don't recall it.

Q. Well, now, the $1500 that was agreed upon— you knew that that was the sum, didn't you?

A. After it was agreed upon of course I did.

Q. And what was that to take care of?

A. That was to be given to George's wife, given to Reba.

Q. And she was taking care of the children?

A. She would very naturally have to take care of her children if she had $1500 given her.

Q. That was the understanding at the time, wasn't it?

A. I couldn't answer that question in that light, in that way.

Mr. Waddington: I object.

The Master: The agreement speaks for itself.

Q. Had she come back to live with you at that time?

A. Had she?

Q. Yes.

A. No, not until after the separation.

Q. I mean, at the time the paper was drawn up?

A. She was visiting us at that time.

Q. Visiting you at that time?

A. Yes, she had been there about a week.

Q. She had not actually come there to live, made it her home?

A. Yes.

Q. Did she have the children there with her?

A. Now, I just don't remember about that. The youngest child was a baby at the time; of course she no doubt had him. I just don't recall about George, whether George was at our house with her or not. I really don't know; I can't tell.

Q. Well, now, this agreement was entered into and you signed it, didn't you?

A. Yes.

Q. And shortly after that your daughter did come back and make her home with you permanently, and brought her children with her?

A. Yes.

Q. And they have lived with you ever since, haven't they?

A. Yes.

Q. As part of your immediate family?

A. They have been with us ever since.

Q. You have a house have you?

A. We have a house with two rooms front, dining room, kitchen and open shed on the first floor; we have three bedrooms on the second floor and a bathroom, one bedroom—there are two rooms on the third floor; one is George's room. It is fitted up for a bedroom, George uses that.

Q. There is plenty of room for the family as it is now made up?

A. Yes, we have always had sufficient room for ourselves. If we have company, of course, we have to do some twisting around to take care of them.

Q. You haven't any idea of your daughter's leaving you, have you, recently, going away and establishing a home of her own?

A. I haven't heard her say so.

Q. That has not been discussed at all in the family, has it?

A. No, sir, not to my knowledge.

Q. And you wouldn't want her to go and take the children, would you?

A. Well, I am not asking her to.

Q. Can you tell what it costs to keep the family as it is made up there in your home a year?

A. No, I don't know that I could.

Q. You don't keep any accounts of your expenses?

A. No, I don't keep any account. I know I can spend $5.00 very easy when I go in the store, I know that.

Q. But you can't say what it has cost to keep Mrs. Hires and the two children or what it has cost to keep the entire family?

A. No, $2,000 or more a year.

Q. For all of you, you mean?

A. To run us; it would take all of that or more.

Q. That includes, of course, the food of the other three that have come in, your daughter and her two children?

A. Yes. See here; it would be impossible, man, for me to tell you what it would cost to keep my family in food, because I don't keep a record of it. I know about how much money—about where my money gets to; I know that at the end of the year.

Q. That is what I am getting your best judgment on, Mr. Ayres; you have yourself, your wife and her sister and your daughter and her two children.

A. There is six of us in the family.

Q. And I am trying to get your best judgment of what it has cost you the past year to live there, the whole six of you?

A. It is pretty difficult for me to give it to you.

Q. Can't you tell how much you have spent altogether to keep you and the other five people there?

A. No, if I kept a book account I could, otherwise I cannot.

Q. Can't you give us your best judgment on that?

A. Well, it would be a guess, that is all.

Q. What would be your guess?

A. Well, really, I don't think a guess in a case of this kind is proper.

Mr. Waddington: I object to a guess on it.

The Master: Well, he can give his best judgment about it.

The Witness: Well, I should say $2,000 or $2500 it would take to pay the running expenses of the house. I know about what moneys have come to me in the last few years, and I know pretty nearly what I have got. Now, I was thinking that over here recently and it just occurred to me that about that amount of money for the last three or four years had gone away from me.

Q. That is what I am trying to get at.

A. I said to myself, "I guess it takes for me around $2000 or $2500 a year."

Q. Now, that includes, Mr. Ayres, the food and living of six people except for clothing of your daughter and children?

A. That includes the money that gets away from me; now, just for food and clothing, to put it down in that shape, I don't know as I could; I didn't spend it all just for that, just for food and clothing.

Q. It would include the table for six people; includes the living expenses in the home?

A. Yes, it would practically include the ——

By the Master:

Q. What happened to the $400.00 that was given to your wife?

A. What happened to it?

Q. Yes, would that be included in the total expense?

A. Well, my wife—I don't know what she does with that money.

By Mr. Woodruff:

Q. That is her own money?

A. Yes, she took that money; she never gave me that money at all. If she wanted to put it in the bank or a portion of it in the bank with some of my money, why, she did it; if she wanted to buy some clothing with it she did it; I never bothered about the money that Reba gave her.

Q. Now, Mr. Ayres, this $2,000, $2500 that provides the table for six people, it provides your clothing and your wife's clothing and keep, I suppose?

A. It did not include my wife's clothing, because what moneys she got through Reba she used moneys from that money.

Q. Of this $400.00?

A. Yes, she used money that way for clothing.

Q. Well, it included the maintenance of the house, did it?

A. Yes.

Q. Whatever coal and heat and those things were required?

A. Yes, things of that kind.

Q. Did it cover also whatever you contributed to Reba and the children?

A. Yes, it would take it all in.

Q. And the maintenance of the machine?

A. Well, it would have to come out of it; I suppose you would have to consider it that way. I don't know, I don't know how to itemize an account of that kind when I haven't got anything to work by.

Q. Well, you know the sum total, don't you, that you practically had to spend that way?

A. Yes, I know it ran up around in the neighborhood of $2500.00, the moneys that got away from me; just how it went ——

Q. Part of that went for the machine, didn't it?

A. Went for the machine?

Q. Keeping the machine?

A. Well, the machines were—one machine that was in use was used in a business way, for business.

Q. I mean the machine that your daughter drives?

A. Well, that machine was used—she used it when I didn't want it.

Q. But the gasoline and oil, the upkeep of it, was paid for by you, wasn't it?

A. Not altogether, no, because it was used as a business machine, the business from both of these factories. One factory was about three miles and the other about six from where I live, and that small machine was used in a business way.

Q. Well, you have two machines, haven't you?

A. Yes.

Q. And one the license is in your daughter's name?

A. Yes.

Q. Is that the one you mean is used in a business way?

A. That is the one I have reference to now, the small machine.

Q. This one where the license is in her name, you don't pay the expense of that out of the business, do you?

A. If we want to use it for the business; previous to having that machine I had a Ford, and I exchanged the Ford or sold it and got this in order that Reba could use this machine when I didn't want it.

Q. And the expenses incident to her using it for the pleasure of the family or you using it for the pleasure of the family ——

A. I don't use it for the pleasure of the family very much, very little; if I used any machine for the pleasure of the family it was the larger machine, and the expense of that machine was up to me.

Q. And was paid for out of your $2,000 or $2500, wasn't it?

A. Yes, that machine was not run very much; it hasn't been run very much. I have owned it about three years or more, and it hasn't run much over 5,000 miles in the three years.

Q. You have had either one or the other machine to use whenever you really wanted it, haven't you?

A. Yes.

Q. For your family?

A. Yes.

The Master: Oh, Mr. Woodruff, you are taking an awful lot of time on a thing that is very immaterial.

The Witness: Unfortunately I haven't an itemized account.

The Master: I suppose his income is about so much and I suppose he has used it for the upkeep —

The Witness: I wouldn't run that machine for business, going out visiting farmers all over the country, and then pay for the gasoline myself; I don't do it that way. When I did work of that kind it went to the factory, the business paid that expense the same as it would any other expense.

By Mr. Waddington:

Q. Mr. Ayres, do you own your home there on Walnut Street or do you rent it?

A. We own it.

Q. You pay no rent?

A. No.

By Mr. Grier:

Q. How much was it assessed for, Mr. Ayres?

A. How much? $2500 I think the property is assessed for.

Q. What was the tax rate last year?

A. I paid eight-two or eighty-three dollars, eighty-three dollars and fifty cents, I think that is around it.

By Mr. Waddington:

Q. What is the actual value of the property?

A. Why, that property cost about $7500 when it was built, them two properties. It was built in '80 some. We have always kept it in good repair. The property next to it—it is a double house—the property next to us was badly out of repair and it was sold in the early winter for $3500 and those people will spend at least $1500 before they get it in as good repair as my property.

The Master: Is this important?

Mr. Waddington: Not now it isn't; I got in what I wanted.

WILLIAM T. MIFFLIN, sworn.

By Mr. Waddington:

Q. Mr. Mifflin, where do you live?
A. Salem, New Jersey.
Q. And you are at the present time sheriff of the county?
A. Yes, sir.
Q. And you are also engaged in the real estate business?
A. Yes.
Q. In 1915 were you engaged in the operation of building a house for George Hires, Jr. and his wife?
A. I was.
Q. What was the contract price of that house?
A. $6500 ground and house, that is, I sold the ground to him, too; the house and grounds was $6500.
Q. What did the house actually cost to complete it?
A. Well, completed as he wanted it then was $6500. The man who purchased it since spent $500 more, made it $7,000.
Q. What does a house like that rent for in the City of Salem?
A. Under present conditions it would rent for $35.00 to $40.00, but at that time, that was before the Dupont boom—you couldn't have rented the house

for that amount; it would have rented for $25.00 or $30.00, that is, back in 1915.

Q. At the present time you could get $40.00 a month for it?

A. Well, say $35.00 anyhow.

Cross-examination.

By Mr. Grier:

Q. Sheriff, do you know why Mr. Hires did not go on and take over that property? He didn't have enough money to pay the contract price, did he?

A. I couldn't say just ——

Q. You know he was badly in need of money, don't you, before the building operation was completed?

A. Yes.

Q. And he sold what interest he had in there at a considerable loss in order to get out, didn't he?

A. I know that.

J. Forman Sinnickson, Esq., sworn.

By Mr. Waddington:

Q. Mr. Sinnickson, you live in Salem?

A. I do.

Q. Are you acquainted with Reba Hires and George Hires, Jr.?

A. I am.

Q. You have known them for a long time?

A. I have.

Q. Do you know whether or not the petitioner has resided in Salem for the last four or five years?

A. George Hires? Oh, the petitioner?
Q. Yes.
A. That is Reba?
Q. Yes.
A. She has.
Q. And the defendant has also resided there for that length of time?
A. He has except—his residence has been there; of course he went to war, he was in France.
Q. At the time they were living together they associated socially with the best people of Salem, didn't they?
A. They did.
Q. They had access to practically any sociable home in Salem in the better class that they wanted to go?
A. As far as I know.
Q. And the defendant was the son of George Hires, Sr.?
A. He was.
Q. Who was a prominent man in Salem?
A. Very prominent; he was former Congressman Hires.
Q. And prominent socially also?
A. He was.
Q. And when did he die?
A. I think it was in 1911.

The Defendant: February 16, 1911.

The Witness: I think it was 1911; I have a copy of his will here. I see his will was probated on the 28th day of February, 1911, and I presume he died probably two weeks before that.

Q. How much was his estate worth?

Mr. Grier: I object to that; it is not material what the estate of the defendant's father was worth.

The Master: It is in testimony here that the defendant did not work, and it is assumed whatever he got he got from the estate of his father. I suppose that is preliminary to showing——

Mr. Waddington: This is preliminary to the situation; I will show this is material.

The Master: The objection is overruled.

The Witness: Answer the question, did you say?

The Master: Yes.

A. Well, to the best of my recollection it was something over $400,000, about. I can't give you the exact figures, but about four hundred and sixteen or eighteen thousand dollars, or something like that. Judge, have you got the figures? I haven't a memorandum of them with me.

Q. Well, that is near enough.

A. Well, I think that is close to it.

Q. Now, were you one of the executors under the will?

A. I was.

Q. Under that will you were made trustee for several different bequests, weren't you?

A. I was jointly with another trustee, Mr. Plummer in some trusts, and Mr. Lucius Hires in one trust.

Q. You and Mr. Plummer were made joint trustees for Mr. Hires' wife, Arthalinda C. Hires?

A. I was.

Q. And you and Mr. Plummer were jointly made trustees for Bessie K. Hires, the daughter of Mr. Hires?

A. We were.

Q. You were also jointly made trustees for George Hires, Jr.?

A. We were.

Q. And for Ethel K. Hires, is that right?

A. I don't think her name is Ethel K.—Mary Ethel Kearney; we were.

Q. You have taken up the active management of those trusts?

A. Yes, we both of us have the active management of them, but I keep all the accounts and everything like that; the money is all paid to me, and everything of that kind, but Mr. Plummer is associated with me in all loans and everything of that kind.

Q. Now, this estate, how much of it—Well, I offer this certified copy of the will of George Hires.

(Said paper is marked Exhibit 3 for identification.)

Q. You took over the management of the estate of George Hires, Jr.?

A. That is, the trust estate, you mean?

Q. Yes, the trust for George Hires, Jr.?

A. I did, yes.

Q. How much money was in that trust at the time you took over the management as trustee?

A. Will you allow me to use a memorandum?

Q. I will.

A. I have with me the books, the original books of account, but I also have with me and am now holding

in my hand a certified copy of the last account that we filed in the Orphans' Court of the County of Salem, and attached to that is a list of the securities which are carried at the same price that they were when the account was originally opened, and I see that they amount—when I say the same, perhaps there might be a slight variation, but only a few hundred dollars one way or the other, I see they amount to $66,867.25.

The Master: That is the principal account.

The Witness: That is the principal account.

The Master: Now, what was the income account per year?

Q. Give us the income account for the year 1917.

A. Will you allow me to use a memorandum that I have made for the purpose of this? I have taken it from my original books that I have with me, Judge, those books are not balanced at the end of the calendar years, and thinking that you would probably want them for the calendar years I have taken the amount that I paid to George Hires is that what you want?

Q. Yes.

A. The amount I have paid to George Hires for the different years off on an adding machine which I now hold in my hand and have compared it myself personally with the original books and know it to be correct. Now, if I can use that as a memorandum I can give the figures; otherwise I can't from memory.

Q. All right, proceed.

A. What year?

Q. 1917.

A. In 1917 Mr. Plummer and I paid George Hires $5765.63 as his trustees.

Q. How much did you and Mr. Hires pay him as trustees?

A. Lucius E. Hires?

Q. Yes.

A. What year are you asking for?

Q. 1917.

A. We paid him $1575. The total was $7340.63 from the two trusts.

Q. Now, what was the income for the year 1918?

A. In 1918 Mr. Plummer and I paid him $12,474.23.

Q. That was the total of both trusts?

A. No, that is what Mr. Plummer and I paid him.

Q. How much did you and Mr. Hires pay him?

A. Paid him $1294.85. The total was $13,769.08.

Q. And what for the year 1919?

A. 1919 Mr. Plummer and I paid him $11,039.82; Mr. Hires and I paid him $1,000; making $12,039.82. I would state there, Judge, that the income Mr. Hires, Lucius Hires, and I pay him is from a farm; and that $1,000 was paid him in I think February of the year 1919; and nothing has been paid him since, the farm hasn't paid anything this last year, farm year, but as the calendar year of 1919 ——

Q. That which came in ——

A. That which was paid over to him, but it really was the income of the farm for the previous year.

By the Master:

Q. What generally, not specially, but what generally is the character of the investment in the other trusts?

A. The character of the investments?

Q. Yes, are they stocks or bonds or mortgages or what?

A. They are both.

Q. Something with a fixed income?

A. The most of them are fixed, but some of the stocks vary, one of the stocks especially varies.

Q. What proportion of the whole total is in the stocks, about?

A. I will have to look.

By Mr. Woodruff:

Q. Perhaps you can tell us what the dividends were from Hires-Turner?

A. I can give you a list of them here very quickly, if you would like to have them.

Q. Well, we are not particular about a list.

A. West Jersey and Seashore is $3510.

Q. Well, that is fixed, practically.

A. Hires-Turner Glass is $37,500; Camden Fire is $600.

Q. Well, the Hires-Turner Glass is the one that is the uncertain factor?

A. That is the one that caused the increased income.

Q. And it may decrease or increase as the circumstances of trade happen to be?

A. Exactly.

Q. Its proportion of $66,000—that is about $37,000—is something a little over half?

A. Yes, I will say that that income that was paid to George Hires during probably all of the three years the Judge asked me about, certainly the last two, a good lot of it was paid to him in Liberty Bonds, government loans that were subscribed for by

the Hires-Turner Glass Company, and they declared them in the way of dividends to us, and we turned them over to the cestui que trust. I can give you those amounts that were declared that way if you want it from the book.

Mr. Waddington: I don't know that it makes any material difference whether it is in Liberty Bonds or whether it is money.

By Mr. Waddington:

Q. Now, the $37,000 of the Hires-Turner which you carried there is calculated at what value per share?

A. Calculated at a value that Mr. Hires in his will directed us to value it at, $150.00 per share. You notice in one clause of his will that he puts a valuation on his legacies and he directs what we shall take them at, and he directed that they should be taken at $150.00 per share.

Q. What is the value per share of the Hires-Turnner Glass stock today?

(Objected to.)

The Master: Oh, well, we will take it, I don't know that it is material.

Mr. Grier: He certainly don't know about that; he isn't a director or shareholder of the Hires-Turner.

The Master: He is a trustee; he holds $37,000 of it, he probably knows what it is worth.

Mr. Waddington: I want to show the value of it at this time.

The Master: Mr. Grier's objection is that the witness don't know. I suppose the witness can tell whether he knows or not; I can't.

The Witness: I can say that I don't know.

(It is agreed between counsel that the book value of the Hires-Turner Glass Company stock will be submitted by a director of the company and will be accepted by counsel as the book value of the stock at the time it is submitted.)

Q. Now, what is the value of the estate held by you as trustee for the benefit of the wife of George Hires, Sr.?

(Objected to.)

The Master: Why is that material?

Mr. Waddington: I want to show that under this will George Hires subsequently receives or will some day receive a fourth of that amount.

The Master: Well, why wouldn't that question come in on a question of an increase or decrease or something of the present alimony? Why is that pertinent now? Of course I have no desire to limit the taking of testimony if it is at all material and if counsel thinks that it is material we will take it, but I can't see that it is of value now; it may be in the future.

Mr. Grier: That is the point exactly; whatever amount is determined upon in this action, the petitioner, if the defendant's income at any time materially increases, she is not bound by that; she can come back and ask for an increase; but what he might or might not receive some ten or fifteen years from now is entirely problematical and certainly can't be used as a basis for fixing the alimony.

The Master: He might die without ever receiving it.

Mr. Grier: Yes, he might never get it.

Q. Now, Mr. Sinnickson, does George Hires, Jr. conduct any business or is he employed in any place?

A. I am afraid my answer would have to be hearsay.

Q. You have no knowledge of his being employed anywhere?

A. Not employed; he told me recently that he is now acting as an agent for an automobile, selling automobiles, and had sold one car at quite a nice profit and had another one about sold, but this cold weather froze up the engine and burst it, so that is all I know about his business, and I don't know of any other.

Q. This is just recently?

A. He told me that quite recently, yes. I have seen him riding around.

Cross-examination.

By Mr. Grier:

Q. Mr. Sinnickson, when did you and Mr. Plum-

mer take charge of this trust estate of the defendant's—in 1912, was it, the first year?

A. I think it was in 1912, yes; probably we took charge of the trust estate within a year, about a year after George's death, or maybe a little over. Lucius Hires and I were executors and wound up the executors' estate.

Q. The corpus of the trust estate has been practically the same from the inception of the account up to the present time, hasn't it?

A. Yes.

Q. And you have testified that during the year 1917, you paid over to the defendant, that is in your capacity as co-trustee with Mr. Lucius Hires as well as Mr. Plummer, the total sum of $7340.63. Now, can you tell me what the total amount paid over to the defendant was in 1916?

Mr. Waddington: I object to going back further. The cases have held that the income at the time of the Master's report and the value of the securities held at the time of the Master's report is the controlling matter in the case and it ought to be based on that figure. That also is true in regard to the allowance by the Court of Chancery, in allowing application for an increase or decrease according to the defendant's income, and for that reason it ought to be determined on the amount at the time of hearing.

The Master: I will take the testimony, because I can see where it might be very material to know that fact, and particularly in this estate in view of that question of the uncertainty of the Hires-Turner Glass Company.

Mr. Grier: That is the only object of wanting that testimony.

Mr. Waddington: May I have an objection to it?

The Master: Oh, certainly.

(Question repeated.)

A. Mr. Plummer and myself as trustees of George Hires in 1916 paid him $2787.61. Mr. Lucius Hires and myself as trustees of George Hires didn't pay him anything that year.

Q. So his total income in 1916 was $2787.61?

A. From those two trusts.

Q. Now, have you the 1915 figures there?

A. Yes.

Q. That was the total amount received by him that year?

A. In 1915 Mr. Plummer and myself as trustees paid him $3290.00, and Mr. Hires and myself paid him $750.00, making a total of $4040.00.

Q. And how much in 1914?

A. In 1914 Mr. Plummer and myself paid him $2500.00, and Mr. Hires and myself paid him $200.00, making a total of $2700.00.

Q. And is that about the way the income from this trust estate ran from the time that you entered upon your duties as trustees up until the time of the boom during the war in the Hires-Turner Company?

A. There was only two years before that.

Q. Well, let's have those two years.

A. I can give you the figures for the two years. In 1913 the total was $3308.19; in 1912, which also in-

cluded part of 1911, I believe on the farm, if not on both, he got $6,609.64.

Q. As I understand the defendant's father died in February of 1911?

A. Yes.

Q. And the last figures that you gave undoubtedly cover the balance of 1911 and 1912?

A. I think it undoubtedly did on the farm, because we must have had the income from the farm that entire year. Then I think some of the legacies were specific legacies in which the income commenced before the end of the year.

Q. Now, Mr. Sinnickson, since 1915 these amounts that you have given as being the amounts paid to the defendant, in these various amounts, the $1500.00 which the petitioner, his wife, has received is included in those?

A. Yes.

Q. So that he did not actually receive those various amounts from 1915 on, but what he received was that amount less $1500.00?

A. Under the agreement we had with his wife and George, I paid them the money, the $1500.00, and of course George receipted for it and would sign receipts for it to me. That is included, of course, in these amounts.

Q. Now then, this increase in the income during the last two years, was that wholly represented by dividends from the Hires-Turner Company?

A. Practically so, yes, there might have been a slight increase in some little bank stock we had, but the bulk of it was from the Hires-Turner Glass Company.

Q. And a large portion of it during this past year was paid as a dividend from Liberty Bonds pur-

chased by the Hires-Turner Company, is that correct?

A. I think for two or three years they have been making extra dividends of Liberty Bonds which we turned over to our cestui que trust.

Q. And of course, it is problematical what the income from that stock will be?

A. Yes, as far as I am concerned it depends on the business success, of course, of the company. It is an industrial concern.

By the Master:

Q. Is it a manufacturing concern or just a selling concern?

A. Both, but jobbing is the principal business, but they manufacture looking glasses and certain other lines of plate glassware. They don't make the glass, but the glass comes to the concern and they put the finishing on.

By Mr. Grier:

Q. Do you know, Mr. Sinnickson, how long the Hires-Turner Company have been in existence in this business?

A. No, I do not, a good many years. It was founded by George Hires, Sr. at first on Arch Street in Philadelphia, Sixth and Arch, then they moved out to West Philadelphia.

Q. And from your familiarity with the late Mr. Hires and the affairs of the Hires-Turner Company and the management of this trust, are you able to state whether or not the dividends are abnormal during the past two years?

A. It would seem to me that they speak for themselves.

Q. Well, what I mean, for a period of a number of years prior to that, there had been no such dividends paid?

A. No.

By the Master:

Q. What was the rate of dividend prior to that, if you know?

A. I can give you what we got; I don't know that I figured on the rate; I think about six per cent.

Q. What was the rate during the past two years?

A. There were so many extras I did not figure the rate. They came in so nice I didn't figure the rate. If you would like to have it I can give it to you.

Q. The increase was extra dividends, was it?

A. Extra dividends, always in the shape of extra dividends or special Liberty Loan dividends. They continued their old dividend the same and then they put in specials.

Q. The regular dividend was six per cent?

A. I think it was six; that is my recollection. In 1918—I am reading now from my original book—on February 23rd, there was a dividend of the Hires-Turner Glass of Liberty Bonds of $2500.

Q. That was ten per cent. on $25,000?

A. The par, I think, is a hundred; yes. That was an extra dividend of Liberty Bonds. Then the next dividend, Hires-Turner Glass on March 19th, there was a dividend of $1,000 in Liberty Bonds. On June 17th there was $500 cash dividend and Liberty Bonds $750. On September 14th the same year, 1918, there was Liberty Bonds $2250 cash special $250 and a

cash dividend of $500. On December 18th there was a dividend of $1250; that wasn't Liberty Bonds, but I don't know whether it was special or not. We trustees thought it was paying very good and we didn't have any doubt about the investment.

By Mr. Waddington:

Q. Do you know whether or not they have laid aside a considerable surplus during the last two years?

A. I believe they have laid aside a surplus, yes; I believe so, I don't know what the amount is now. I knew all these things, I had the data at one time, but I haven't got them at present.

Q. And they have increased the size of their business considerably, haven't they?

A. What do you mean by that?

Q. Branched out and doing a great deal more business than they ever did before?

A. Since the death of George Hires, Sr., they have established branches in Washington and in Rochester, and for the first two years after they did that they were not profitable, those places—I don't know that they were a loss, but my recollection of it is that they were somewhat disappointing but when the boom of business came on, at the time the war broke out I think those places both became profitable as well as the Philadelphia business, but I can't say the amount. Mr. Plummer, being so very familiar with all that part of the work, and I not knowing much about the glass business, I can't tell you, except I know it has been profitable.

By Mr. Grier:

Q. Mr. Sinnickson, prior to this abnormal condition existing in the Hires-Turner Company, what was the normal dividend they paid?

A. You mean the percentage?

Q. Yes.

A. I can give you the amount, but I can't recollect the percentage. As near as I can figure it they paid about six per cent. a year.

Q. That was based on the par value of $100.00?

A. Yes.

Q. And he had $25,000 of par value?

A. Yes.

Q. So what he got was six per cent. on $25,000 worth of stock?

A. I wouldn't want to be tied down that that was the exact percentage, but that was what my recollection was; it was a number of years ago.

Q. Well, take 1914, for instance; that was a year in between?

Mr. Waddington: I have an objection to this.

A. If you could take down these figures, there was $500 paid us from the Hires-Turner Glass—now, this is the amount that was paid to Plummer and Sinnickson, trustees—the dividend on March 19th of that year, $500 and the next dividend was June 19th —that is a quarterly dividend—that was $375; on September 18th Hires-Turner Glass paid us $375 and on December 19th, $375. You see they were all —they were quarterly dividends of $375 each, excepting the first one seems to have been $500.

By the Master:

Q. Yes, that was more than six per cent. Mr. Sinnickson, why do you say that this business in the two years of 1918 and 1919 was abnormal?

A. Well, they did a very large business and the price of glass had gone up very high, and they were enabled to get very much larger profits, like all glass concerns. Then they did a very much larger business; in other words, they increased their business and the stock on hand had appreciated largely, I suppose it did, and they had been fortunate enough in buying out, just before the rise they had bought out I think it was the Lucas Paint people were in the glass business also and they had bought their stock of glass, quite a big stock, at a low price, and when glass went up, they were able to make money.

By Mr. Waddington:

Q. Do you know this of your own knowledge?

A. I know it only from the knowledge I would get in my examination as one of the trustees of the estate, in talking to Mr. Plummer, who was active in the business, that is all.

Mr. Waddington: Well, I object in regard to the price at which it was bought and in regard to the price for which it was sold.

The Witness: I don't know.

Mr. Grier: That is an important part of this examination.

The Witness: I don't know anything about that, except Mr. Plummer told me it had been very profitable. That is not my own knowledge, no Judge, it is not; of course I wouldn't know, wouldn't be in

New Jersey State Library

a position, I couldn't. I was answering your question.

The Master: Yes, I just wanted to know why you thought it abnormal.

By Mr. Waddington:

Q. They have carried on a legitimate business, haven't they?

A. Oh, absolutely.

Q. Have not been profiteering?

A. Not that I know of; they haven't been accused of it.

Q. If they had not been profiteering, this would be the natural growth of their business, wouldn't it?

A. I think it has been a fortunate growth of their business, it speaks for itself.

COMPLAINANT RESTS.

The Master: Now, do you think you have made a complete case for divorce? (To Mr. Woodruff.) Do you want to offer this?

Mr. Woodruff: Yes, I offer that in evidence.

The Master: The defendant offers the agreement in evidence.

Mr. Waddington: I object to its being offered in evidence as not being properly proved.

The Master: The witness is here.

J. Foreman Sinnickson, recalled on behalf of the defendant.

By Mr. Grier:

Q. Will you look at that paper and can you identify it?
A. Yes.
Q. Were you present—is that your signature there as a witness?
A. It is.
Q. Were you present when these other three parties, George Hires, Jr., Rebecca Hires and Lewis H Ayres signed it?
A. I was, I drew it or dictated it to the typewriter.

Mr. Grier: I offer it.

The Master: It is offered and received subject to objection and marked Exhibit 1 for the defendant.

Mr. Waddington: I would like to call Thomas Waddington back here on the question of the divorce.

Thomas Waddington, recalled.

The Master: As I understand, no further testimony is going to be introduced except on the question of the divorce?

Mr. Waddington: Yes, that is right.

By Mr. Waddington:

Q. At the time you lived at Sinnickson's Landing, I asked you before whether or not you had seen any acts or expressions of affection between Florence Plummer and George Hires, Jr.; it wasn't answered at that time and left go over; I forgot it later. Will you tell us now what signs of affection you saw between those people?

A. Well, I saw them talking to one another and playing with their arms around one another and the likes of that.

By the Master:

Q. Where were they when their arms were around one another?

A. In the house, in the cottage.

Q. And you saw them through the window?

A. I did.

Q. Was the room they were in a bedroom?

A. It was not; they were in the front room then.

Q. How were they dressed?

A. How were they dressed?

Q. Fully dressed?

A. They were dressed, yes, it was summer time, and I didn't notice, but they were dressed; they didn't have on night clothes, they had on the clothes that they had in the daytime.

Q. And this was in the night time?

A. This was in the evening.

By Mr. Waddington:

Q. Did you see any expressions of kissing or anything of that kind?

A. I never did see them kiss.

Rebecca A. Hires, being recalled says in answer to a question by the Master, that there have been no previous proceedings had between the defendant and myself respecting the marriage or its dissolution and my maintenance except the separation agreement Exhibit 1 of defendant. There has been no co-habitation or marriage relations between the defendant and myself since December 10, 1915, and a month before that even, not since the nurse came, about November 2, 1915. The confession of the defendant was subsequent to that time.

REBECCA A. HIRES.

Sworn and subscribed before me this fifth day of February, 1920.

THOS. E. FRENCH,
Master in Chancery of N. J.

STIPULATION.

IN CHANCERY OF NEW JERSEY.

Between REBECCA A. HIRES, *Petitioner,* and GEORGE HIRES, JR., *Defendant.*	On Petition for Divorce. On Exceptions to Master's Report. Stipulation.

This matter having been opened to the Court by counsel upon exceptions taken to the report of Thomas E. French, Special Master, and it appearing that

the income of the defendant, George Hires, Jr., is paid to him through trustees, and that the trustees' accounts are balanced as of April first of each year, and that since the taking of testimony before said Special Master an annual account has been completed by trustees of the defendant as of April first, A. D. 1920, which account shows a net income payable to the defendant less than the amount suggested in the testimony of J. Foreman Sinnickson, trustee:

Now, therefore, it is stipulated by and between counsel for the petitioner and the defendant that the affidavit of J. Foreman Sinnickson hereto attached shall be submitted to his Honor Edmund B. Leaming, Vice-Chancellor, and by him considered as evidence of the facts therein set forth as if said J. Foreman Sinnickson had appeared in person before said Vice-Chancellor and testified to such facts, and that said Vice-Chancellor shall, in addition to the exceptions filed and the matters presented by argument, consider said additional testimony of J. Foreman Sinnickson with respect to the amount of allowances, if any, which should be made to the petitioner, the children of the parties, and counsel for petitioner.

Dated, May 25th, 1920.

W. A. W. Grier,
Of Counsel with Defendant.

E. C. Waddington,
Of Counsel with Petitioner.

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

Between
REBECCA A. HIRES,
Petitioner,
and
GEORGE HIRES, JR.,
Defendant.

Affidavit.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF SALEM, }

J. FORMAN SINNICKSON, being duly sworn upon his oath deposes and says—that he is one of the trustees under the will of George Hires, deceased, and as such trustee has charge of the collection of all moneys, and the payment of the same to the defendant herein; that, since the creation of the trust estate, your deponent and his co-trustee have kept their accounts from April 1st to April 1st of each year, and that for the fiscal year beginning April 1, 1919, and ending March 31, 1920, the total receipts amounted to the sum of nine thousand, seven hundred twenty-seven dollars and sixteen cents ($9,727.16). Out of this sum the commissions of five per cent. due to the trustees, was deducted, namely the sum of four hundred, eighty-six dollars and thirty-six cents ($486.36), leaving a net balance paid to the

defendant herein amounting to nine thousand, two hundred thirty-eight dollars and eighty cents ($9,238.80).

Your deponent further says that he is also a co-trustee with Lucius E. Hires of a farm belonging to the defendant. The defendant herein has received nothing during the said fiscal year from said trust.

The total net income of the defendant from April 1, 1919, to March 31, 1920, was therefore, the sum of nine thousand two hundred and thirty-eight dollars and eighty cents ($9238.80).

J. Forman Sinnickson.

Sworn and subscribed before me this 20th day of May, 1920.

Florence Haynes,
Notary Public of N. J.

MASTER'S REPORT.

(Filed Mar. 17, 1920.)

IN CHANCERY OF NEW JERSEY.

Between
Rebecca A. Hires,
Petitioner,
and
George Hires, Jr.,
Defendant.

Divorce &c.
Master's Report.

In pursuance of an order of this Court made in the above-entitled cause, bearing date the twenty-

second day of January, nineteen hundred and twenty, whereby it was referred to me, the subscriber, one of the Special Masters, to ascertain and report as to the truth of the allegations of the petition and my opinion thereon and to further report what, if any, is a suitable sum to be allowed to the petitioner for her suitable support and maintenance and what, if any, is a suitable sum to be allowed her for the suitable support and maintenance of the infant children of her marriage to the defendant, and whether the custody of the said children should be committed to the petitioner and if so, upon what terms, if any, and what security the defendant should be required to give for the performance of any decree or order that may be made herein, and that I do return, together with my report and as part thereof, such depositions and other evidence as might be taken before me in pursuance of said order.

I do respectfully report that I have been attended by Honorable Edward C. Waddington, solicitor for petitioner and William A. W. Grier, Esquire and Albert S. Woodruff, Esquire, solicitors for defendant, and have taken the depositions of the witnesses produced before me and have examined into the matters referred to me.

And I find and report that the said petitioner, whose maiden name was Rebecca Hickman Ayres, and the defendant, George Hires, Jr., were lawfully married on June 4, 1910, at Salem, New Jersey, as in the petition alleged.

And I do find and report that it is proved to my satisfaction that the defendant committed adultery with one Florence Plummer at the house of the defendant at Sinnickson's Landing about one mile from the City of Salem, New Jersey, on the sixteenth and seventeenth days of September, 1919, and

on other days in the years 1915, 1916 and 1919 at said place and in the City of Salem, New Jersey as in said petition alleged.

And I do further report that the petitioner has not co-habited with the said defendant since her knowledge of his said acts of adultery.

And I find and report respecting the residence of the parties that it is proved to my satisfaction that the petitioner and defendant were *bona fide* residents of the State of New Jersey when this cause of action arose and that they have ever since continued to be *bona fide* residents of this State, residing at Salem in the County of Salem.

And I find and report that the following children were born of the marriage:

George Hires, 3rd, who will be nine years of age on the twenty-first day of March, 1920, and John A. Hires who will be five years of age on the twenty-fifth day of March, 1920, both of whom are in the custody of the petitioner.

And I find and report that the defendant and petitioner with Lewis H. Ayres, father of the petitioner as trustee, entered into a written agreement bearing date December 10, 1915, whereby defendant agreed to pay or cause to be paid for and towards the better support and maintenance of the petitioner the sum of one hundred and twenty-five dollars ($125) per month for a period of ten years from the date of the agreement, after which time said sum is to be increased to an amount to be agreed upon at that time, the petitioner agreeing to take said sum of $125.00 per month in full satisfaction for her support and maintenance and all alimony whatever, which agreement is marked Exhibit 1 of defendant and a copy thereof is hereto attached. Said agreement further provides that the petitioner is to

have the custody and control of the children and the defendant is to have the right to see said children at all reasonable times and places. I further find and report that since the making of said agreement circumstances have changed; the cost of petitioner's maintenance has increased and the defendant's ability to pay has largely increased; that the sum provided by said agreement is now inadequate for the proper support and maintenance of the petitioner. I further find and report that the income of defendant from the trust estates held for his benefit was in the year said agreement was made, 1915, the sum of $4040 and in the year 1919 the sum of $12,039.82; that the principal of the main trust estate was originally $66,867.25 carrying the 250 shares of stock of the Hires-Turner Glass Co., at $150 per share as directed by the will of George Hires and that the book value of said stock December 31, 1919, was $542.88 per share.

And I find and report that the sum of three thousand dollars each year is now a reasonable sum to be allowed to the petitioner for her suitable support and maintenance.

And I further find and report that the sum of two thousand dollars each year is at this time a suitable sum to be allowed for the suitable support and maintenance of said two infant children of the marriage of petitioner and defendant to be paid to the petitioner and used by her for the support and maintenance of said two children.

And I find and report that the custody of the said two children of said marriage should be committed to the said petitioner, subject to the right of the defendant to see said children at all reasonable times and places.

And I find and report that the defendant should be

required to give bond to the Chancellor in the sum of $20,000 with surety or sureties to be approved, conditioned for the performance by him of such order or decree as may be made herein for the support and maintenance of the petitioner and for the support and maintenance of said two children.

All of which will more fully appear by the testimony of the witnesses produced before me and the exhibits offered in evidence and marked and by me and which are annexed to this my report and returned herewith.

And I do further report that I am of the opinion that all the material facts charged in the petition are true and that a decree for divorce should be made for the cause of adultery pursuant to the prayer of the petitioner.

Respectfully submitted this fifteenth day of March, 1920.

THOMAS E. FRENCH,
Special Master.

True copy.
JESSE R. SALMON,
Clerk.

EXCEPTIONS TO MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY.

Between REBECCA A. HIRES, *Petitioner,* and GEORGE HIRES, JR., *Defendant.*	On Petition for Divorce. Exceptions to Master's Report.

Exceptions taken by the petitioner to the report of Thomas E. French, Special Master, submitted March 15th, 1920.

First exception. For that the said Special Master has reported as follows: "I further find and report that since the making of said agreement circumstances have changed; the cost of petitioner's maintenance has increased and the defendant's ability to pay has largely increased; that the sum provided by said agreement is now inadequate for the proper support and maintenance of the petitioner. I further find and report that the income of defendant from the trust estates held for his benefit was in the year said agreement was made, 1915, the sum of $4040, and in the year 1919, the sum of $12,039.82; that the principal of the main trust estate was originally $66,867.25 carrying the 250 shares of stock of the Hires-Turner Glass Co., at $150 per share as directed by the will of George Hires and that the

book value of said stock December 31, 1919, was $542.88 per share."

Second exception. For that the said Special Master has reported as follows: "And I find and report that the sum of three thousand dollars each year is now a reasonable sum to be allowed to the petitioner for her suitable support and maintenance."

Third exception. For that the said Special Master has reported as follows: "And I find and report that the defendant should be required to give bond to the Chancellor in the sum of $20,000 with surety or sureties to be approved, conditioned for the performance by him of such order or decree as may be made herein for the support and maintenance of the petitioner and for the support and maintenance of said two children."

In which several matters and respects the exceptant prays the judgment of the court.

W. A. W. Grier,
Albert S. Woodruff,
Solicitors of Defendant.

STATEMENT.

(Filed July 13, 1920.)

IN CHANCERY OF NEW JERSEY.

Between	On Petition, &c., for Alimony.
Rebecca A. Hires, *Petitioner,*	Hearing on Exceptions to Master's Report.
and	Statement.
George Hires, Jr., *Defendant.*	

Hon. Edward C. Waddington, for petitioner.
Albert S. Woodruff, Esq., for defendant-exceptant.

Leaming, V. C. (Orally):

I think it would be foolish to determine this matter now in the likelihood that an application would be made in a short time for modification of the order on the ground of reduced income, and it looks as though it is practically certain that such an application will be made, unless it is found that the income has no relation at all to the amount that is to be paid.

I think the case had better go back to Mr. French on a re-reference, simply to hear the testimony of Mr. Sinnickson touching the balance of the year, and

if he wishes to modify his report he may do so, if not he can make it the same. The exceptions can stand or be re-filed to the report, if changed, and counsel may file their proofs with me and I will take it up. That can all be done in a week, if you choose. I think that would be the better course.

Monday, May 10th, 1920.

CONCLUSIONS.

(Filed June 7, 1920.)

IN CHANCERY OF NEW JERSEY.

Between REBECCA A. HIRES, *Petitioner,* and GEORGE HIRES, JR., *Defendant.*	On Petition for Divorce. Hearing on Exceptions to report of Special Master. Conclusions.

HON. E. C. WADDINGTON, for petitioner.
A. S. WOODRUFF, ESQ., for defendant-exceptant.

LEAMING, V. C.:

By the petition filed herein petitioner seeks a di-

vorce from defendant on the ground of adultery and prays that the custody of the two minor children of the marriage may be awarded to her and that defendant may be compelled to pay to petitioner a suitable amount for the support of petitioner and the two children.

No answer having been filed by defendant a reference was made to a Special Master. Before the Special Master the charge of adultery was fully established and considerable testimony was taken to determine the amount that defendant should pay for the support of petitioner and the children.

The Master reported in favor of a decree of divorce for the adultery of defendant, and fixed $3000 per year as the amount defendant should pay for the support of petitioner and $2000 per year as the additional amount he should pay for the support of the two children whose custody the Master awarded to petitioner; the Master also reported that defendant should give bond to the amount of $20,000 to secure these payments.

The present hearing is on exceptions to the Master's report which have been filed by defendant.

No exceptions have been filed to that part of the report which finds defendant guilty of adultery as charged and recommends a divorce on that ground; nor are exceptions filed to the award of the custody of the children to petitioner; nor are exceptions filed to that part of the report fixing $2000 per year as the amount to be paid to petitioner by defendant for the support of the children. The exceptions relate alone to the award of $3000 per year to be paid by defendant for petitioner's support and to that part of the report requiring defendant to give bond of $20,000 to secure the payments referred to in the report.

By the testimony taken before the Master it appears that the sole source of income of defendant is the amount paid to him from year to year by testamentary trustees of a certain trust estate. Since the amount payable to defendant during the last year of the trust could not be definitely known when the trustee testified, a stipulation has since been filed supplying that information.

It appears by the testimony that in the year 1915 a formal separation agreement was entered into by the respective parties in which, among other things, it was agreed that $1500 a year should be paid by defendant to petitioner for her support, which amount she agreed to receive "in full satisfaction for her support and maintenance, and all alimony whatever." That amount, in monthly installments, defendant has since paid. It is now contended by defendant that notwithstanding the fact that a decree of divorce is now to be entered against him by reason of his adultery, no order for alimony for his wife in that decree can properly exceed in amount the rate stipulated in the separation agreement. The agreement is for the period of the joint lives of the parties and provides that payments shall be made at the rate named for ten years at the end of which time a larger amount will be agreed upon, but that the rate named shall continue after the expiration of the ten years until such new agreement shall be made. The separation agreement contains no stipulation limiting its operation to the period of chastity of either of the parties.

The question is thus directly presented whether the wife is to be bound by her covenant to accept $1500 per year for her support after she shall have procured a divorce from her husband by reason of his adultery, since the evidence touching her present

needs and her husband's present income clearly discloses that but for her covenant to accept $1500 for her support she should be awarded a larger amount.

I find no authority in this state that may be said to directly dispose of the present inquiry. In Buttlar vs. Buttlar, 71 N. J. Eq. 671, the wife divorced her husband because of his adultery, but no decree for alimony was made. Subsequently she sued her divorced husband to enforce the payment by him of the amount due her under a separation agreement made while the parties were husband and wife, the recovery sought being the amount that had accrued since the decree of divorce. The obligation of the defendant under that agreement was there recognized and enforced; no claim was there made based upon the complainant's rights or needs in excess of the amount specified in the separation agreement. In Halstead vs. Halstead, 74 N. J. Eq. 596, the same Vice-Chancellor held that where the wife had sued for divorce and pending that suit had procured an order for alimony *pendente lite,* she could not pending that action maintain a separate suit to recover a larger amount under her separation agreement during the period the alimony order was running, since she had elected the former remedy. And inquiry is to what effect her divorce decree, when procured, either with or without alimony, would have upon her rights under the separation agreement, was expressly reserved in the decision. In Rennie vs. Rennie, 85 N. J. Eq. 1, it was held, in conformity to Halstead vs. Halstead, supra, that a separation agreement which stipulated the amount the husband should pay for his wife's support afforded no impediment to awarding the wife temporary alimony in her suit for divorce on the ground of his adultery. In that case the payments under the separation

agreement were in arrears and the wife's prayer for alimony pending her divorce suit was treated as an election of remedies; the additional circumstance there existed and was emphasized that the amount specified in the separation agreement for the wife's support was inadequate to support her and the children of the marriage then in her custody. Boehm vs. Boehm, 88 N. J. Eq. 74, is in point only to the extent that it suggests that the husband's duty to support his wife flows from the matrimonial relation, and Section 25 of our Divorce Act imposes upon the Court of Chancery the duty to enforce that obligation either pending a suit for divorce or after decree of divorce. Whittle vs. Schlemm (N. J. Ct. of Errors), 109 At. Rep. 305, (disapproving Devine vs. Devine, 89 N. J. Eq. 51), holds that a wife who has committed adultery subsequent to her separation agreement may recover the amount stipulated in that agreement for her support unless and until the husband shall have procured a decree of divorce against her, unless the agreement of separation shall contain a clause limiting its operation to the period of chastity of the wife.

The question here involved has been before the English courts on repeated occasions. After varying decisions based on varying grounds the Court of Appeals in Bishop vs. Bishop, 1897 p. 138, fully reviewed the prior decisions and finally determined in that jurisdiction the effect of a dissolution of the marriage by reason of the husband's adultery upon the wife's covenant contained in a separation agreement to accept a specified sum for her support for the joint lives of the parties. It was there held that the powers and duties conferred on the court by 20 and 21 Vic. (1857) c. 85 s. 32 and 29 and 30 Vic. c. 32, s. 1, as to a divorced wife's maintenance, which stat-

utes contemplated that regard should be had to the wife's fortune, to the ability of the husband, and to the conduct of the parties should not be disregarded and attention only paid to the terms of the separation agreement; that the wife cannot preclude herself by her agreement from invoking the aid of the court to obtain further maintenance in the events stated. Alimony, after divorce, was accordingly justified in amount in excess of the amount specified in the agreement. Although unnecessary to the decision of the case it was there also strongly intimated that even an express covenant of a wife contained in a separation agreement not to sue for an amount in excess of the amount specified in the event of a divorce would be void as contrary to public policy, and it was accordingly held that such a covenant could not be deemed implied by a covenant referring to the period of the joint lives of the parties.

The powers and duties of the Court of Chancery of this state conferred by Section 25 of the Divorce Act (2 Comp. Stat. p. 2035) do not essentially differ from those conferred by the English acts referred to. Our act provides: "Pending a suit for divorce or nullity, or after decree of divorce, it shall be lawful for the Court of Chancery to make such order touching the alimony of a wife, and also touching the care, custody, education and maintenance of the children, or any of them, as (from) the circumstances of the parties and the nature of the case shall be rendered fit, reasonable and just." It seems to me to be impossible to doubt that under this statute where the wife who is without fault is awarded a decree of divorce by reason of her husband's adultery, it becomes the duty of the Court in determining the amount of alimony to be paid to her to base that determination

upon her needs and her divorced husband's ability to pay, and to disregard the amount specified in a prior separation agreement when that amount is less than the amount that would be otherwise ascertained as "reasonable and just."

Another circumstance exists in this case which should lead to a similar conclusion. The separation agreement is wholly silent touching any provision for the support of the children. The custody of these children are to be awarded to the wife. While they were in the wife's custody when the separation agreement was made, and that fact may have been taken into account by the parties, although no stipulation was expressly made for their support, they have since necessarily grown materially older and a source of increased expense. To that extent conditions have materially changed. The right of this Court to make suitable provision for their support is unquestioned, and an aggregate allowance for the wife and children would seem appropriate. The Master has determined the amounts separately and exceptions have been filed only to the amount allowed to the wife. I will, in consequence, advise a similar separation, but should, I think, take into account the entire needs of the wife for herself and her children considered as a whole.

The Master awarded $2000 per year for the children and $3000 per year for the wife. These amounts are, in my judgment, reasonable and just. Since the Master's report was filed it has been ascertained that defendant's income has been reduced, but I think his present income and earning capacity sufficient to justify the amounts recommended by the Master. I see no reason why defendant's ability to augment his income by personal efforts should not be taken into account merely because he prefers to

live a life of idleness. I think, also, that the bond advised by the Master should be required. The exceptions to the Master's report are accordingly overruled.

Submitted: May 26, 1920.
Determined: June 3, 1920.

A true copy.
JESSE R. SALMON,
Clerk.

DECREE NISI.

IN CHANCERY OF NEW JERSEY.

Between REBECCA A. HIRES, *Petitioner,* and GEORGE HIRES, JR., *Defendant.*	On Petition for Divorce. Decree Nisi.

This cause coming on to be heard in the presence of E. C. Waddington, solicitor for and of counsel with the petitioner, and W. A. W. Grier and Albert S. Woodruff, of counsel with the defendant, whereupon and upon reading the pleadings and proofs in this cause and the report of Thomas E. French, one of the Special Masters of this court, to whom, by

previous order of the Court made in this cause it was referred to take depositions and other proofs offered by the said petitioner in support of the allegations of the petitioner, and to report the same, together with his opinion thereon;

And the said Master having made report, exceptions were filed to the same by the defendant, and after hearing additional proof and the argument of counsel upon the same, it now appears to the satisfaction of the Court that the petitioner and the defendant were joined in the bonds of matrimony on or about the 4th day of June, A. D. 1910, and that the defendant has been guilty of the adultery charged against him in the said petition and that, at the time the cause of action for divorce arose, the petitioner and defendant were *bona fide* residents of this state and the said petitioner and defendant have continued so to be down to the time of the commencement of this action.

And it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this state.

It is, thereupon, on this 14th day of June, 1920, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court and of the Acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree that the said petitioner, Rebecca A. Hires, and the said defendant, George Hires, Jr., be divorced from the bonds of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court why this decree should not be

made absolute within six months from the date hereof.

And it is further ordered, adjudged and decreed that the exceptions taken by the defendant, George Hires, Jr., to the Master's report, be and the same hereby are dismissed.

And it is further ordered that the said defendant, George Hires, Jr., do pay to the petitioner, Rebecca A. Hires, or to her solicitor, the annual sum of five thousand dollars ($5,000) payable in equal monthly installments, that is to say, that within ten days after service of a copy of this decree upon him, or his solicitor, defendant do pay to the petitioner or her solicitor, the sum of twelve hundred fifty dollars ($1250) as and for the allowance from the 15th day of March, 1920, the date of the Master's report, to the 15th day of June, 1920, being a period of three months, and that the defendant do pay to the petitioner, or her solicitor, the sum of twelve hundred and fifty dollars ($1250.00), as and for an allowance for the current quarterly period of June 15, 1920, to September 15, 1920; and that the said defendant do pay to the petitioner or her solicitor the sum of twelve hundred and fifty dollars ($1250.00) on the 15th day of September, December, March and June of each year thereafter, and until further ordered by the Court to the contrary, so much of the said annual sum as amounts to three thousand dollars ($3,000) or two hundred fifty dollars ($250) per month, being considered and deemed a suitable allowance for the petitioner's support and maintenance, and the balance of the said sum being deemed a suitable allowance for the care, maintenance, education and clothing of George Hires, 3rd, and John A. Hires, infant children of the marriage aforesaid;

And it is further ordered, adjudged and decreed that a copy of this decree be served forthwith upon the defendant or his solicitor, and that within ten days after said service, the defendant do give bond to the said petitioner in the sum of twenty thousand dollars ($20,000) with sufficient surety or sureties, to be approved as to form and security by Thomas G. Hilliard, one of the Special Masters of this Court, for the punctual payments of the alimony, by this decree awarded to be paid at the time and in the manner in this decree directed; and upon neglect or refusal of said defendant to give said bond within the time so specified, or upon his default, or that of his surety or sureties, to pay the said sum or sums when the same shall fall due, according to this decree; that the petitioner be at liberty to apply to this Court to award and issue process of sequestration, and for such other process or order as this Court may, under the circumstances, deem equitable and just, and as may be consistent with the power and authority of this Court.

And it is further ordered, adjudged and decreed that the said defendant do further pay to the petitioner or her solicitor the cost of this suit to be taxed, and also the sum of seventy-one dollars and sixty-five cents ($71.65), which is allowed to the petitioner as suit money, being for expenses of an expert physician, obtaining copy of Master's report, obtaining certified copy of the will of George Hires, Sr., and expenses of Thomas Waddington, the constable, and also the sum of one hundred and fifty dollars ($150.00), which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of the said petitioner, and that the said petitioner do have execution for the said costs, suit money and counsel fee, according to the practice of this Court;

And it is further ordered, adjudged and decreed that this decree, from the date hereof, shall be a lien upon the real and personal estate of the defendant within this state;

And it is further ordered, adjudged and decreed that the said petitioner have the exclusive care, custody, education and control of the said George Hires, 3rd, and John A. Hires, infant children of the marriage aforesaid, until the further order of the Court;

And it is further ordered, adjudged and decreed that either party be at liberty to apply, upon a future change of circumstances of the parties, for a variance and modification of this decree touching said alimony and maintenance as shall be just and equitable.

E. R. WALKER.

Respectfully advised,
E. B. LEAMING,
V. C.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between REBECCA A. HIRES, *Petitioner,* and GEORGE HIRES, JR., *Defendant.*	On Petition for Divorce. Notice of Appeal.

The defendant hereby appeals from the decree nisi made and entered in this court in the above-

stated cause, on June 14, 1920, and from the whole and every part thereof, except the part thereof which adjudges that the petitioner and defendant be divorced from the bonds of matrimony, to the Court of Errors and Appeals in the last resort in all causes.

Dated June 24, 1920.

W. A. W. GRIER,
Solicitor of Defendant.
WALTER H. BACON,
Of Counsel with Defendant.

I conceive there is good cause for appeal in the above-stated cause.

WALTER H. BACON,
Of Counsel with Defendant.

PETITION OF APPEAL.

(Filed June 29th, 1920.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between REBECCA A. HIRES, *Petitioner and Respondent,* and GEORGE HIRES, JR., *Defendant and Appellant.*	On Petition for Divorce. Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of George Hires, Jr., the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree nisi made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date June 14, 1920, wherein Rebecca A. Hires was petitioner, and George Hires, Jr., was defendant, in this respect, to wit:—that the said decree adjudges that the exceptions taken by the defendant, George Hires, Jr., to the Master's report be dismissed, and that the defendant, George Hires, Jr., do pay to the petitioner, or her solicitor, the annual sum of $5000 in installments, as specified in the decree, and that the defendant, George Hires, Jr., give bond to the petitioner in the sum of $20,000, with surety, for the punctual payment of said alimony, and that said defendant pay costs and sundry allowances, and that the said decree be a lien on the real and personal estate of defendant, and that said decree awards the custody of the defendant's two sons to petitioner, and allows her the sum of $1000 each per annum for their care and maintenance.

And your petitioner humbly appeals from those parts of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that, the exceptions taken by the defendant, George Hires, Jr., to the Master's report should have been allowed and sustained, and said allowance for alimony and maintenance should not have been made, and the said defendant should not have been required to give bond as aforesaid, nor to pay said costs and allowances, and said decree should not have been made a lien on defendant's real and personal property, nor should the custody of defendant's two sons have been awarded petitioner,

nor should defendant have been required to pay to petitioner the sum of $1000 each per annum for the care and maintenance of said two children, and for that, the said Court of Chancery was without jurisdiction to make said award and allowance for alimony in any sum in excess of the amount fixed and determined in a certain articles of separation between the said petitioner and defendant and a trustee bearing date December 10, 1915, which was offered in evidence before the said Master and marked Exhibit No. 1 for defendant, the said instrument being in full force and virtue between the parties, and no proceeding having been taken to abrogate or cancel the same, and defendant being still bound by the terms thereof, and for that the said decree was and is in equitable and unjust in all the matters aforesaid, and also deprives defendant of the privilege of visiting and seeing his said two sons which right is accorded to him by the law of the land, and was specifically recognized in the said articles of separation, and for that the said decree attempts to cancel and annul said articles of separation without making Lewis H. Ayres, the trustee therein named, a party to the suit.

Your petitioner, therefore, prays that the said decree nisi of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

W. A. W. Grier,
Solicitor of Appellant.
Walter H. Bacon,
Of Counsel with Appellant.

ORDER TO STAY PROCEEDINGS.

(Filed June 29, 1920.)

IN CHANCERY OF NEW JERSEY.

Between	
REBECCA A. HIRES, *Petitioner,*	On Petition for Divorce.
and	Order to Stay Proceedings.
GEORGE HIRES, JR., *Defendant.*	

This matter being opened to the Court by Walter H. Bacon, of counsel with the defendant, and it appearing that the defendant has filed an appeal from the interlocutory decree made in this cause on June 14, 1920.

It is, on this twenty-ninth day of June, 1920, Ordered, that all further proceedings in this Court, in the above-stated cause, be stayed pending the said appeal.

Provided the defendant shall pay for the support of the petitioner and the two children, pending the determination of said appeal, the sum of three thousand dollars per annum, in equal quarterly payments, commencing August 10, 1920, which said payments shall include, and not be in addition to the payments which are made under the Articles of Separation between the said parties, bearing date December 10,

1915, Exhibit D1, amounting to fifteen hundred dollars per annum.

EXHIBIT NO. 1.

THIS INDENTURE, made this tenth day of December, nineteen hundred and fifteen (1915),

BETWEEN GEORGE HIRES, of the City of Salem, County of Salem and State of New Jersey, of the first part, and REBECCA HIRES, his wife, of the same place, of the second part, and LEWIS H. AYRES, of the same place, as Trustee of the said Rebecca Hires, of the third part:

WHEREAS divers disputes and unhappy differences have arisen between the said party of the first part and his said wife, for which reason they have consented and agreed and hereby do consent and agree to live separate and apart from each other, during their natural lives; therefore this indenture witnesseth, that the said party of the first part, in consideration of the premises, and in pursuance thereof, does hereby covenant, promise and agree to and with the said Trustee, and also to and with his said wife, that it shall and it may be lawful for her, his said wife, at all times hereafter, to live separate and apart from him, and that he shall and will allow and permit her to reside and be in such place and places, and in such family and families, and with such relations, friends and other persons, and to follow and carry on such trade or business as she may from time to time choose or think fit; and that he shall not, nor will at any time, sue or suffer her to be sued for living separate and apart from him, or compel her to live with him; nor sue,

molest, disturb or trouble any other person whomsoever for receiving, entertaining, or harboring her, and that he will not, without her consent, visit her or knowingly enter any house or place where she shall dwell, reside or be, or send or cause to be sent any letter or message to her; nor shall or will at any time hereafter claim or demand any of her money, jewels, plate, clothing, household goods, furniture or stock in trade, which she now has in her power, custody or possession or which she shall or may at any time hereafter have, buy or procure, or which shall be devised or given to her, or that she may otherwise acquire, and that she shall and may enjoy and absolutely dispose of the same as if she were a feme sole and unmarried; and further that the said party of the first part shall and will well and truly pay or cause to be paid, for and towards the better support and maintenance of his said wife, the sum of one hundred and twenty-five dollars ($125.00) per month, payable each and every month, for a period of ten years from the date of these presents, after which time said sum is to be increased to an amount to be agreed upon at that time and until said new agreement is made, the payment of the one hundred and twenty-five dollars ($125.00) per month is to continue, which the said party of the second part does hereby agree to take in full satisfaction for her support and maintenance, and all alimony whatever.

And it is further agreed by and between the parties to these presents, that the said Rebecca Hires, is to have the custody and control of the children of the said George and Rebecca Hires, the said George Hires to have the right to see said children at all reasonable times and places.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

George Hires, Jr. (SEAL)
Rebecca Hires, (SEAL)
Lewis H. Ayres, (SEAL)

Signed, Sealed and Delivered
in the presence of
J. Forman Sinnickson.

In Chancery of N. J.
Ex 1 for ident for deft
Hires vs Hires Ex 1 for defendant
2/1/20 Thomas E. French, M. C. C.

EXHIBIT NO. 2 OF PETITIONER, 2/2/20.

ALLOWAY PACKING CO.
United States Food Administration
License Number G27548
Packers

Factory
At Alloway

United States Food Administration
License Number G27548
Salem, N. J.

Board	$400.
Dixon Fogg	15.56
Dr. Davis	44.50
" Hirst	$50.00
Wedding presents √	15.00
Dr. Grayson	5.00 √
Car fare dinners medicine to Dr. Burke	20.00 √
Gimbels	56.65
Lumis repair 2 clocks √	2.75
Strawbridge & Clothier	52.10
Magazines	10.00

Club dues	5.50
John Wanamaker	129.65
Wanamaker & Brown	46.50
Mrs Clark fur work	12.00
Geo. shoes, half soles & boots	35.00
John	25.00
My shoes	30.00
Mrs. Willis Rug for Geo. room	2.90
Jas Hitchner	10.00
Smith Lewis Powell	7.50
Hats boys	15.00
Myself	24.50
Dress maker	33.25
Hospital bill	10.00
Car for incidentials	4.00
Vacation & week ends trips √	125.
	$1177.06 (over)
	($1177.06)
Suit	$25.00
Gloves	6.50
Darlingtons winter robe & etc	12.50
Xmas toys & bill at Wanamakers	10.00
Car fare this winter for Geo. & myself	12.00
Boys Xmas trip	5.00
Laundry	78.
Milk	60.
Star Course Chautauqua concerts entertainments	15.00
Church myself & Geo. regular	25.00
Apples (6 baskets for boys)	7.50
Dr. Morrison Geo	5.00
Myself	5.50
Piano tuned & looked over	10.00
Nose glasses Wheelers	11.50
	$1455.56

EXHIBIT NO. 3 OF PETITIONER, 2/5/20.

BE IT REMEMBERED, That on the twenty eighth day of February in the year of our Lord one thousand nine hundred and eleven Lucius E. Hires and J. Forman Sinnickson the executor named in a paper writing, bearing date the thirtieth day of June A. D. 1910 and Codicil thereto, dated July 2, 1910 and purporting to be the last Will and Testament and Codicil thereto of George Hires deceased, late of the county of Salem and State of New Jersey, appeared before the Surrogate of the said county of Salem, and made application to have the said Will and Codicil proved; and on said application said Surrogate adjudged the said Will and Codicil to be valid, and the proof thereof to be sufficient, which said last Will and Testament and Codicil thereto, and the proof thereof, are as follows, that is to say:

I, George Hires, of the City and County of Salem and State of New Jersey, being of sound and disposing mind and memory do hereby make and publish this my last Will and testament, in manner following, to wit:—

First: I do order and direct that my executors, hereinafter named, shall pay all my just debts and funeral expenses as soon as conveniently may be after my decease.

Item "A"—I give, bequeath and devise unto my brother-in-law, William Plummer, Jr., of Quinton, New Jersey, and J. Forman Sinnickson, of Salem, N. J., their heirs, and to the survivor of them, in trust, the following stocks, bonds, mortgages and other securities, moneys and real estate, namely: Fifty shares of the capital stock of the West Jersey & Seashore Railroad Company, also sixty shares of the capital stock of the Pennsylvania Railroad

Company, also fifty shares of the capital stock of the Cambria Steel Company of Johnstown Pa., also twenty shares of the capital stock of the Salem National Banking Company, of Salem, N. J., also a bond and mortgage given by Robert C. Folwell on lands near Mullica Hill, Gloucester County, N. J., for the sum of five thousand dollars, also a bond and mortgage given by Jonathan Woodnutt on lands in the township of Mannington, Salem County, N. J., for the sum of five thousand dollars, also two bonds of one thousand dollars each of the Altoona and Logan Valley Electric Railroad Company, also two bonds of one thousand dollars each of the Camden and Suburban Railway Company, also three bonds of one thousand dollars each of the Cape May Illuminating Gas Company, also two hundred shares of the capital stock of the Hires, Turner Glass Company, of Philadelphia, Pa., also the sum of thirty two thousand five hundred dollars ($32,500) in money or other securities amounting to that sum in value, also my double house and lot of land pertaining thereto, situate on the East side of Chestnut Street, Salem, N. J. To have and to hold the same in trust, for the following uses and purposes: First, to invest and keep the same invested in good security or securities, and it is my Will and I hereby give my said trustees and the survivor of them full power and authority to keep the same invested in the above named securities or such securities as I may have at the time of my death, or to sell and collect the same or any of them, if in their judgment they should deem it best, and to re-invest the proceeds of such sale or sales in bonds secured by first mortgage upon real estate, or such other security or securities as are allowed by the laws of this State at the time such investments are to be made.

And I especially direct that if my said trustees invest any of said funds in bonds secured by first mortgage upon real estate, they shall not be limited to mortgages upon real estate estimated to be worth at least twice the amount loaned, but they shall have full power and authority to invest in such bonds secured by first mortgage as they or the survivor of them shall think best: And upon the further trust that they do pay the net interest and income arising from said trust funds or estate unto my wife, Arthalinda C. Hires, for and during the term of her natural life, to be paid in semi-annual payments during the continuance of this trust; and in the further trust to lease and rent the real estate above devised in trust, and after the payment of all taxes and necessary repairs and other legal charges, to pay over unto my said wife the net income derived therefrom, she to have the privilege of occupying said houses during the term of her natural life rent free, if she so desires, and I do further give my said trustees full power to sell said houses and lots, either at public or private sale, provided my said wife shall consent thereto, and I further direct that if such sale is made, that the proceeds thereof shall be added to the general trust fund or estate hereby created in this item of my Will. And after the death of my said wife I give, bequeath and devise all of said trust estate, the income of which I have above given unto my said wife for life, in manner following:— First, I give and bequeath the sum of five thousand dollars unto Anna P. Hall (the daughter of my said wife) her heirs and assigns. Second—I give and bequeath the sum of five thousand dollars unto Ella F. Davis (the daughter of my said wife) her heirs and assigns. Third—I give and bequeath the sum of five thousand dol-

lars unto my grand-daughter, Clementina P. Hires, her heirs and assigns. Fourth—I give and bequeath the sum of five thousand dollars unto my grand-daughter, Anna S. Hires, her heirs and assigns. Fifth—I give and bequeath unto my son, George Hires, Jr., his heirs and assigns, the two hundred shares of the capital stock of the Hires, Turner Glass Company, mentioned in the above fund if the same has not been sold or disposed of by my said trustees, and in case the same has been sold or disposed of by my said trustees, I give and bequeath the whole amount of the proceeds of the same unto my said son George Hires, Jr., his heirs and assigns. Sixth—All the rest, residue and remainder of the said trust fund or estate, above mentioned, both real and personal, except the double house and lot on Chestnut Street if the same has not been sold, I give, bequeath and devise unto my daughter, Mary Ethel Kearney, her heirs and assigns—And I hereby expressly direct, and it is my will that the bequests made in this will in trust for my said wife, shall be in lieu of any right of dower which she may have or claim to have in my estate.

Item "B"—I give, bequeath and devise my Homestead property, situate on the corner of Market and Griffith Streets, Salem, N. J. where I now reside, unto my wife, Arthalinda C. Hires, and my daughter, Bessie K. Hires to have and to hold the same jointly for and during the terms of their natural lives, or the life of the survivor of them, provided, however, that my said wife, shall remain my widow, but if my said wife shall marry again, then it is my will that her interest or estate in said Homestead property shall cease, and the whole interest in said property as herein devised shall go to my said daughter, Bessie K. Hires, for the term of her nat-

ural life; and if at any time my said wife and my said daughter, Bessie K. Hires, or in case of the marriage of my said wife, my said daughter Bessie K. Hires, shall desire to sell said Homestead property, I hereby authorize them, or such one of them as shall then hold the sole interest therein, to do so, either at public or private sale, and to give the purchaser or purchasers thereof a good and sufficient deed therefor, and in case of such sale I do order and direct that the proceeds thereof shall be paid over unto my executors to become part and parcel of my residuary estate hereinafter disposed of. And after the death of both my said wife and my said daughter, Bessie K. Hires, or in the event of the death of my said daughter, Bessie K. Hires, and the re-marriage of my said wife, provided said Homestead property has not been sold under the power hereinbefore conferred, I do order and direct my said executors to sell said Homestead property, either at public or private sale, and to give good and sufficient deeds of conveyance to the purchaser or purchasers thereof, and direct that the proceeds derived therefrom shall become a part of my residuary estate as hereinafter disposed of.

Item "C"—I give and bequeath all of my household furniture, goods and chattels, horses and carriages and all other personal property in and about said Homestead Residence, other than moneys or securities for moneys, unto my said wife, Arthalinda C. Hires, and my said daughter, Bessie K. Hires, jointly, it being clearly understood, that any articles, which I may have given to either of them in my lifetime are not intended to be in any way covered by this bequest.

Item "D"—I give and bequeath unto the said William Plummer, Jr., and J. Forman Sinnickson, their

heirs and to the survivor of them, in trust, the following stocks, bonds, mortgages and other securities, and moneys, namely: Fifty shares of the capital stock of the West Jersey and Seashore Railroad Company, also fifty shares of the capital stock of the Pennsylvania Railroad Company, also two hundred shares of the capital stock of the Camden Fire Association, of Camden, N. J., also fifty shares of the capital stock of the Cambria Steel Company, of Johnstown, Pa., also twenty shares of the capital stock of the Salem National Banking Company, also one hundred shares of the capital stock of the Hires, Turner Glass Company, and also fifty thousand dollars ($50,000) in money or other securities amounting to that value—to have and to hold the same in trust, for the following uses and purposes: First—to invest and keep the same invested in good security or securities, and it is my will and I hereby give my said trustees and the survivor of them full power and authority to keep the same invested in the above named securities or such securities as I may have at the time of my death, or to sell and collect the same or any of them, if in their judgment they should deem it best, and to reinvest the proceeds of such sale or sales in bonds secured by first mortgage upon real estate, or such other security or securities as are allowed by the laws of this State, at the time such investments are to be made, and I especially direct that if my said trustees invest any of said funds in bonds secured by first mortgages upon real estate, they shall not be limited to mortgages upon real estate estimated to be worth twice the amount loaned, but they shall have full power and authority to invest in such bonds secured by first mortgages as they or the survivor of them shall think best; and upon the further trust that they do

pay the net interest and income arising from said trust funds or estate, unto my said daughter, Bessie K. Hires, for and during the term of her natural life, in semi-annual payments during the continuance of this trust. And I do hereby give my said daughter, Bessie K. Hires, the right to dispose of by will of the sum of twenty five thousand dollars ($25,000) of said trust funds or estate. And I do further order and direct that after the death of my said daughter, Bessie K. Hires, the trust created in this item of my will shall cease, and I give, bequeath and devise all of the said trust estate, including the twenty five thousand dollars, which I have given my said daughter, Bessie K. Hires, the right of disposal by will, if she does not exercise such power, unto my three children, Lucius E. Hires, Mary Ethel Kearney and George Hires, Jr., their heirs and assigns, to be divided between them equally, share and share alike.

Item "E"—I give, bequeath and devise unto the said William Plummer, Jr., and J. Forman Sinnickson, their heirs, and to the survivor of them, in trust, the following personal property, namely: Fifty shares of the capital stock of the Hires, Turner Glass Company of Philadelphia, Pa., also twenty shares of the capital stock of the Salem National Banking Company, of Salem, N. J., and also twenty five thousand dollars ($25,000) in money, or other securities amounting to that sum in value, to have and to hold the same in trust for the following uses and purposes: To invest and keep the same invested in good security or securities, and it is my will, and I hereby give my said trustees and the survivor of them full power and authority to keep the same invested in the above named security or securities, or such securities as I may have at the time of my

death, or to sell and collect the same or any of them, if in their judgment they should deem it best, and to re-invest the proceeds of such sale or sales in bonds secured by first mortgage upon real estate or such other security or securities as are allowed by the laws of this State at the time such investments are to be made, and I especially direct that if my said trustees invest any of said funds in bonds secured by first mortgage upon real estate, they shall not be limited to mortgages upon real estate estimated to be worth at least twice the amount loaned, but they shall have full power and authority to invest in such bonds secured by first mortgage as they or the survivor of them shall think best, and upon the further trust that they do pay the net interest and income arising from said trust fund or estate unto my daughter, Mary Ethel Kearney, for and during the term of her natural life, to be paid to her in semi-annual payments during the continuance of this trust.

And after the death of my said daughter, Mary Ethel Kearney, I do give and bequeath five thousand dollars ($5,000) of said trust funds or estate unto her husband, if she leave a husband her surviving, and the balance of said trust funds or estate, I give and bequeath unto her lawful issue, provided she leave issue her surviving at the time of her death, in fee simple, if she leave no husband at the time of her death, but leave lawful issue, then and in that case I give and bequeath all of said trust funds or estate to said lawful issue; if she leaves a husband and no lawful issue then and in that case I give and bequeath five thousand dollars ($5,000) of said trust funds or estate to her said husband and the balance of said trust funds or estate shall vest in and go to my three children, Lucius E. Hires, Bessie K. Hires

and George Hires, Jr., their heirs and assigns, to be divided between them equally share and share alike; and in case she shall die without leaving either a husband or lawful issue her surviving, then said trust fund or estate shall vest in and go to my said three children Lucius E. Hires, Bessie K. Hires and George Hires, Jr., their heirs and assigns, to be divided equally between them, share and share alike. The words lawfull issue to include any descendants of the said Mary Ethel Kearney.

Item "F"—First, I give, bequeath and devise unto my son Lucius E. Hires and J. Forman Sinnickson, of Salem, N.J. their heirs and to the survivor of them, in trust, my Homestead Farm, situate on Alloways Creek, about one mile below Quinton, in the township of Quinton, Salem County, N. J. to have and to hold the same in trust for the following uses and purposes: To keep the same in proper repair and in a good state of cultivation and to have the same farmed in a good farmer like manner, and after paying all taxes, insurance, repairs and other expenses and retaining five per cent of the annual gross receipts of said farm as compensation for their care and management of the same, to pay over annually the net income derived from the same to my son, George Hires, Jr., for and during the term of his natural life or until this said trust is terminated as is hereinafter set forth: And I do further order and direct that if after fifteen years from the date of this my will, my said trustees shall in their opinion, or in the opinion of the survivor of them think it advisable and proper to terminate said trust, I hereby authorize and empower them or the survivor of them, to terminate the same, and to grant and convey unto the said George Hires, Jr., said farm in fee simple, and make and execute unto the said George

Hires, Jr., all necessary deeds and conveyances for the full and legal assurance to him of full title to the same, And after the death of my said son, George Hires, Jr., provided this trust has not been terminated previous to that time, I give, bequeath and devise said farm unto his lawful issue, provided he leave such issue him surviving at the time of his death, the words lawful issue to include any lawful descendants of the said George Hires, Jr., and if the said George Hires, Jr., shall die without such lawful issue him surviving, then said farm shall vest in and go in fee simpe to my three children Lucius E. Hires, Bessie K. Hires and Mary Ethel Kearney, their heirs and assigns. Second, I give and bequeath unto my said son, George Hires, Jr., my gold watch and chain.

Third, I give, bequeath and devise unto the said William Plummer, Jr., and J. Forman Sinnickson, their heirs, and to the survivor of them, in trust, two hundred and fifty shares of the capital stock of the Hires, Turner Glass Company of Philadelphia, Pa., and also eight thousand dollars ($8,000) in money, or other securities amounting to that sum in value, to have and to hold the same in trust for the following uses and purposes: to collect and pay over the net income derived therefrom unto my said son George Hires, Jr., for and during the term of his natural life, annually during the continuance of said trust, and I do hereby give my said trustees full power and authority to keep the same invested in said stock of said company or such other securities as I may have at the time of my death, or to sell and dispose of the same, if in their judgment they should deem it best, and if they should sell or dispose of the same it is my will and I hereby give my said trustees and the survivor of them full power and author-

ity to re-invest the proceeds of such sales in bonds secured by first mortgage upon real estate, or such other security or securities as are allowed by the laws of this State at the time such investments are to be made, and I especially direct that if my said trustees invest any of said funds in bonds secured by first mortgage upon real estate they shall not be limited to mortgages upon real estate estimated to be worth at least twice the amount loaned, but they shall have full power and authority to invest in such bonds secured by first mortgage as they or the survivor of them shall think best. And I do further order and direct that if after my said son, George Hires, Jr., shall reach the age of thirty-two years, my said trustees shall in their opinion, or in the opinion of the survivor of them, think it advisable and proper to terminate said trust, I hereby authorize and empower them or the survivor of them to terminate the same, and to pay over unto my said son, George Hires, Jr., all of said trust funds or estate mentioned in this sub-division "third" of item "F" of this my will, and make and execute unto the said George Hires, Jr., all necessary deeds of conveyance for the full and legal assurance to him of full title to the same, And after the death of my said son, George Hires, Jr., provided this trust has not been terminated previous to that time, I give, bequeath and devise five thousand dollars of said trust funds or estate unto the wife of my said son, George Hires, Jr., if he leave a wife him surviving, and the balance of said trust funds or estate I give and bequeath unto his lawful issue, provided he leave such issue him surviving, at the time of his death, if he leave no wife him surviving at the time of his death, but leave lawful issue, then and in that case I give and bequeath all of said trust funds or estate to said

lawful issue, if he leave a wife and no lawful issue him surviving then and in that case I give and bequeath five thousand dollars of said trust funds or estate to his said wife and the balance of said trust funds or estate shall vest in and go to my three children, Lucius E. Hires, Bessie K. Hires and Mary Ethel Kearney, their heirs and assigns, to be divided equally between them, share and share alike; and in case he shall die without leaving either a wife or lawful issue him surviving, then said trust funds or estate shal vest in and go to my said three children, Lucius E. Hires, Bessie K. Hires, and Mary Ethel Kearney, their heirs and assigns to be divided between them equally share and share alike. The words "lawful issue" to include any descendants of the said George Hires, Jr.

Item "G"—I give and bequeath the sum of five thousand dollars ($5,000) to Ella F. Davis (daughter of my said wife)—

Item "H"—I give and bequeath the sum of five thousand dollars ($5,000) to Anna P. Hall (daughter of my said wife).

Item "I"—I give and bequeath unto the said William Plummer, Jr., and J. Forman Sinnickson, their heirs and to the survivor of them, in trust, the sum of five thousand dollars for the following uses and purposes, to invest and keep the same invested in good security or securities, and to pay over the net interest and income arising therefrom unto my granddaughter, Clementina P. Hires, for and during the term of her natural life, and after the death of the said Clementina P. Hires, I give and bequeath said trust fund or legacy unto her lawful issue, provided she leave lawful issue her surviving at the time of her death, the words "lawful issue" to include any descendants of the said Clementina P.

Hires, and in default of such issue, I give and bequeath the same unto my four children, Lucius E. Hires, Bessie K. Hires, Mary Ethel Kearney and George Hires, Jr., their heirs and assigns, to be divided between them equally, share and share alike.

Item "J"—I give and bequeath unto the said William Plummer, Jr., and J. Forman Sinnickson, their heirs, and to the survivor of them, in trust, the sum of five thousand dollars, to have and to hold the same, in trust, for the following uses and purposes, to invest and keep the same invested in good security or securities, and to pay over the net interest and income arising therefrom unto my grand-daughter, Anna S. Hires, for and during the term of her natural life, and after the death of the said Anna S. Hires, I give and bequeath said trust fund or legacy unto her lawful issue, provided she leave said issue her surviving at the time of her death, the words "lawful issue" to include any descendants of the said Anna S. Hires, and in default of such issue, I give and bequeath the same unto my four children, Lucius E. Hires, Bessie K. Hires, Mary Ethel Kearney and George Hires, Jr., their heirs and assigns, to be divided equally between them, share and share alike.

And it is my will and I hereby give my said trustees and the survivor of them full power and authority to invest the trust funds mentioned in Items "I," "J," and "K" of this my will in any security or securities which I may have at the time of my death, or to invest the same in bonds secured by first mortgage on real estate or such other security or securities as are allowed by the laws of this State at the time such investments are to be made, and I especially direct that if my said trustees invest any of said funds in bonds secured by first mortgage

upon real estate, they shall not be limited to mortgages upon real estate estimated to be worth at least twice the amount loaned, but they shall have full power and authority to invest in such bonds secured by first mortgage, as they shall think best.

Item "K"—I give and bequeath unto the said William Plummer Jr., and J. Forman Sinnickson, their heirs, and to the survivor of them, in trust, the sum of twenty five hundred dollars, to have and to hold the same in trust for the following uses and purposes, to invest and keep the same invested in good security or securities, and to pay over the net interest and income arising therefrom unto my sister Mary E. Hires, for and during the term of her natural life, and after the death of the said Mary E. Hires, I give and bequeath the said trust fund or legacy unto my daughter Bessie K. Hires, her heirs and assigns.

Item "L"—I give and bequeath unto my niece, Lizzie Diamond, daughter of my brother, John, the sum of two hundred dollars ($200) and to my niece, Eva Green, wife of James H. Green, the sum of two hundred dollars ($200).

And I also especially direct that if at any time my said trustees shall foreclose any mortgage upon real estate, which they may hold, and they shall deem it best in order to protect my estate to purchase said real estate, I give them full power and authority to do so, and sell the same again and give all necessary deeds for the proper conveyance for the same. And I further direct and it is my will that my executors, hereinafter named, shall as soon as they can conveniently do so, pay unto my said wife, Arthalinda C. Hires, the sum of five hundred dollars ($500) every three months for her support, and shall also pay unto my said daughter, Bessie K. Hires, the sum of

five hundred dollars ($500) every three months for her support, said payments to continue until my said executors shall transfer and set over unto my said trustees the funds or securities hereinbefore specifically devised to said trustees in trust for my said wife and daughter Bessie K.—And I direct that said payments shall not in any way be considered a charge against said trust funds or estates.

Item "M"—I give, bequeath and devise all the rest, residue and remainder of my estate, both real and personal, unto my executors, hereinafter named, and direct that they shall sell and dispose of all my real estate (which I have not hereinbefore specifically disposed of), either at public or private sale as to them shall seem best, and to give and to execute good and sufficient deeds of conveyance to the purchaser or purchasers thereof, and direct that the proceeds arising therefrom shall be added to my residuary personal estate and become a part thereof, to be disposed of as follows, namely: in the first place to pay all my just debts and funeral expenses, the costs and charges of the administration of my estate, all collateral inheritance taxes, which under the law have to be paid on any bequests or legacies bestowed and given under this my will, and if after the payment of the same, and of all legacies hereinbefore given or bestowed, there shall remain any surplus, then in the first place to pay over unto my son Lucius E. Hires, his heirs and assigns, the equal one-fourth part thereof, and the equal one-fourth part thereof unto my said trustees to be held and disposed of by them unto the same trusts and purposes as hereinbefore mentioned for my said daughter, Bessie K. Hires, according to the terms and conditions as set forth in item "D" of this my will, and the equal one-fourth part thereof unto my said

trustees to be held and disposed of by them unto the same trusts and purposes as hereinbefore mentioned for my daughter, Mary Ethel Kearney, according to the terms and conditions as set forth in item "E" of this my will, and the equal one-fourth part thereof unto my said trustees William Plummer, Jr., and J. Forman Sinnickson to be held and disposed of by them unto the same trusts and purposes as hereinbefore mentioned for my son, George Hires, Jr., according to the terms and conditions as set forth in sub-division third of Item "F" of this my will—.

If after the death of my said wife the said houses and lots on Chestnut Street mentioned in Item "A" of this my will have not been sold, I direct my said trustees to sell the same either at public or private sale, and to give good and sufficient deeds of conveyance to the purchaser or purchasers thereof, and direct that the net proceeds derived therefrom shall become part of my residuary personal estate as hereinbefore disposed of.

I direct and fix the following to be the value of the stocks, bonds or other securities specifically devised in this my will:

West Jersey & Seashore Railroad Co. stock per share	$50.00
Pennsylvania Railroad Co. stock per share	$65.00
Cambria Steel Co. stock per share	$50.00
Salem National Banking Co. stock per share	$160.00
Hires, Turner Glass Co. stock per share	$150.00
Camden Fire Association stock per share	$10.00
Bond and mortgage, Robert C. Folwell	$5000.00
Bond and mortgage, Jonathan Woodnutt	$5000.00
Altoona & Logan Valley Electric Railroad Co. bonds, each	$1000.00

Camden & Suburban Railroad Co., bonds each $1000.00
Cape May Illuminating Gas Co. bonds each.$1000.00

If it is found at the time of my death, that I have sold or disposed of any of the stock, bonds or other securities that I have specifically bequeathed to any person or persons in this my will, then in that case I give and bequeath to such person or persons in place thereof so much money, or other stocks, bonds or securities as will be equivalent to the securities so disposed of at the value I have fixed above in this item of my will, and I direct my executors to substitute and pay over or assign the same to such person or persons as aforesaid.

Lastly: I do hereby nominate and appoint my son, Lucius E. Hires, and my friend, J. Forman Sinnickson, to be sole executors of this my last will and testament, and I hereby revoke and annul any and all former wills made by me.

In witness whereof I have hereunto set my hand and seal this thirtieth day of June, nineteen hundred and ten (1910)

George Hires (Seal)

Signed, sealed, published and declared by the said testator, George Hires, to be his last will and testament, in the presence of us, who were present at the same time, and who at his request, and in his presence, and in the presence of each other have hereunto subscribed our names as witnesses.

Charles Mecum
D. Harris Smith

I, George Hires, of the City of Salem, County of Salem and State of New Jersey, do make and publish this codicil to my last will and testament, which will is dated on the thirtieth day of June, nineteen hundred and ten (1910), in manner following: I do hereby ratify and confirm my said will in all respects excepting item "B" thereof which I hereby revoke and direct shall be changed to read as follows:

Item "B"—I give, bequeath and devise my homestead property, situate on the corner of Market and Griffith Streets, Salem, N. J. where I now reside, unto my wife, Arthalinda C. Hires, and my daughter, Bessie K. Hires, to have and to hold the same jointly for and during the terms of their natural lives, or the life of the survivor of them, provided however, that my said wife shall remain my widow, but if my said wife shall marry again, then it is my will that her interest or estate in said homestead property shall cease, and the whole interest in said property as herein devised shall go to my said daughter, Bessie K. Hires, for the term of her natural life, and provided also that my said daughter, Bessie K. Hires, shall not marry, but if my said daughter shall marry, then it is my will that her interest or estate in said homestead property shall cease, and the whole interest in said property as herein devised, shall go to my said wife, if she be living and still remain my widow; and if at any time my said wife and my said daughter, or such one of them shall remain unmarried, shall desire to sell said homestead property, I hereby authorize them, or such one of them as shall then hold the sole interest therein, to do so, either at public or private sale, and to give the purchaser or purchasers thereof a good and sufficient deed therefor and in case of

such sale I do order and direct that the proceeds thereof shall be paid over unto my executors to become part and parcel of my residuary estate hereinafter disposed of. And after the death of both my said wife and my said daughter, Bessie K. Hires, or in the event of the survivor of them marrying or being married, or in case both of them marry, provided said homestead property has not been sold under the power hereinbefore conferred, I do order and direct my said executors to sell said homestead property, either at public or private sale and to give good and sufficient deeds of conveyance to the purchaser or purchasers thereof, and direct that the proceeds derived therefrom shall become a part of my residuary estate as disposed of in my said will.

In witness whereof, to this present writing, which I hereby declare to be a codicil to my last will and testament, and which I direct to be added thereto, and to be taken as part thereof, I have set my hand and seal, this second day of July, nineteen hundred and ten (1910)

Signed, sealed, published and declared by the said George Hires, to be a codicil to his last will and testament, in the presence of us, who were present at the same time and who at his request, and in his presence, and in the presence of each other have hereunto subscribed our names as witnesses.

George Hires (Seal)

Howard B. Keasbey
William J. Casper.

State of New Jersey
County of Salem

I, Loren P. Plummer,

Surrogate and ex-officio clerk of the Orphans' Court, of the County of Salem, do hereby certify that the foregoing is a true copy of the last will and testament and codicil of George Hires, deceased, Lucius E. Hires and J. Forman Sinnickson, Executors as the same remain on file and recorded in the Surrogate's Office of the County of Salem, in Book "N" of Wills, page 407 &c.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Salem, this eighteenth day of June A. D. 1919.

Surrogate Seal of the County of Salem, New Jersey.

Loren P. Plummer,
Surrogate.

[ENDORSED]

SALEM COUNTY
SURROGATE'S OFFICE
Certified
Copy of
the last will and testament
of
George Hires
Deceased
Recorded in Book "N" Folio 407 &c.
Loren P. Plummer,
Surrogate

EXHIBIT NO. 4 OF PETITIONER, 3/9/20.

Rochester, N. Y. New York, N. Y. Washington, D. C.
Buenos Aires, Arg. London, Eng.
Executive Office Philadelphia, Pa.
Founded 1864
HIRES TURNER GLASS COMPANY
Registered Trade Mark
Lighthouse Quality
Glass
"Made in America"
G L A S S
30th. & Walnut Sts.
Philadelphia, U. S. A.
Cable Address "Hireturner" Philadelphia,
Codes A. B. C. 5th Ed. Western Union, Bentleys.
Manufacturers and Distributors of Plate Glass, Window Glass, Mirrors, Corrugated Wired, Plain and Wired Skylight, Opal, Ornamental, Chipped and Ground.
"Safetee Automobile Glass"
Zouri Safety Store Front Construction.
Address All Communications to the Company
In Reply Refer to Writer
All Quotations are Subject to Change Without Notice and Contingent Upon Strikes, Fire, Accidents and Other Delays Beyond Our Control. All Orders are Received Subject to Acceptance by Executive Office in Philadelphia.

Hon. E. C. Waddington.
Atty at Law
Camden N J
Dear Judge—

Replying to your inquiry of some days ago, in reference to the book, value of the stock of this Company, at the close of business Dec. 31st 1919, would advise that the value per share is found to be $542.88.

Yours truly,
W. Plummer,
V Prest.

250,000.	Capital stock	for	1918.	Dec	31.
965,298.69	Surplus	"	"	"	"
$1,215,298.69	Total Capital a/c			"	"

Shares.

$$
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25.00\overline{)1{,}215{,}298.69}(48.6+ \\
10000 \\
\hline
21529 \\
20000 \\
\hline
15296 \\
15000 \\
\hline
2966
\end{array}
$$

The above figures are taken from the financial statement of the Hires Turner Glass Co., being the last official audit of their books, as of December 31st 1918.

W. Plummer,
V President.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between REBECCA A. HIRES, *Petitioner-Respondent,* and GEORGE HIRES, JR., *Defendant-Appellant.*	For Divorce and Alimony.

BRIEF ON BEHALF OF THE PETITIONER-RESPONDENT.

The petition filed by the petitioner prayed for the granting of a divorce, the custody of children and of alimony.

The testimony produced before the Master as regards the divorce was not contested and showed abundant and sufficient proof of the commission of the act of adultery to grant a divorce and no appeal has been taken to this portion of the case.

The appeal relates entirely to the custody of the children and maintenance for them and to alimony for wife and allowances.

First. As to the custody of the children.

The defendant, at the time of taking testimony before the Master, made no objection to the awarding of the custody of the children to the petitioner.

(See testimony of Rebecca A. Hires on pages 56 and 57.) No exception to the finding of the Master placing the custody of the children with the petitioner was taken, nor was that point argued before the Vice-Chancellor and even in the brief submitted on behalf of the appellant, it is now stated that no objection is made to the mother's custody for the present (page 18). As a matter of fact, the appeal on that point was only used for the purpose of the effect it might have on the wife in an endeavor to make a settlement for a less sum of money than had been awarded by the Court.

There is not, nor has there been any contest seriously questioning the right of the wife to the custody of the two children and such a contest could not be sustained in view of the method and mode of living of this defendant, as shown by the testimony taken in this case. It would not be for the benefit of the boys to be placed in their father's custody as the example set by him would be sure to have a bad influence upon them.
(Testimony of Reba Gaynor, page 15, and testimony of Thos. Waddington.)

Second. As to the maintenance for two children.

No exception was taken to the Master's report in this matter and no contest on that particular point was made before the Vice-Chancellor relative to the allowance made to the wife for the benefit of the boys, and, likewise, I do not think that counsel for the appellant seriously contends that such an order should not be made for the benefit and support of these two children.

As regards the custody of the boys and the amount of support to be given to them, no exception having been taken to the Master's report and no argument

on that point having been made before the Vice-Chancellor, it seems to me that the same is not the subject of appeal to this Court. However, that was urged before the Court on a motion to dismiss the appeal as to these particular points and refused. This ruling of the Court is particularly hard on the petitioner, especially as regards the custody of the boys.

At the time of the hearing before the Master, counsel made no objection to the custody of the boys being awarded to the petitioner and considerable evidence could have been submitted showing the character, morals and conduct of the defendant, which was not introduced because it was not thought necessary to encumber the record with such statements.

This was particularly so in regard to the physical condition of the defendant and it does not seem to me proper that the defendant should be allowed, at this stage of the proceedings, to come in and ask for custody of the boys or to change the amount awarded for their benefit by the Master. The amount of the award is discussed after income of defendant is recited.

The next question arising is the alimony due to the wife.

This can be discussed under two heads:

1. The separation agreement.

2. Whether the amount allowed by the Master and approved by the Vice-Chancellor is excessive.

The first can be discussed under the following heads:

1st. The effect and meaning of Section 25 of the Divorce Act.

2nd. Failure of consideration for the separation agreement.

3rd. Condition of the wife at the time of entering into the agreement.

4th. No provision for support of the children in the agreement.

5th. Agreements of this kind have been set aside by the Courts in granting alimony.

6th. The agreement does not furnish adequate support for the wife alone.

7th. The agreement, if any, terminates with the granting of the divorce.

First. The Divorce Act, Section 25, Compiled Statutes of New Jersey, page 2035, provides, "Pending a suit for divorce or nullity, or after a decree of divorce, it shall be lawful for the Court of Chancery to make such order touching the alimony of the wife and also touching the care, custody, education and maintenance of the children or any of them, as the circumstances of the parties and the nature of the case shall be rendered fit, reasonable and just, &c."

This section in the Divorce Act provides what the Court of Chancery shall do when a petition for divorce has been filed and makes it lawful for that Court to award alimony to the wife as the Court may deem proper, considering the circumstances of the party and the nature of the case.

The Court of Chancery, in this case, has seen fit to make an award of alimony to the wife, which award happens to be in excess of a separation agreement entered into between the parties.

Our first inquiry is, does the statute, as passed by the Legislature, mean what it says, "that it shall be lawful for the Court of Chancery to make such order touching alimony of the wife * * * as the circumstances of the parties and the nature of the case shall be rendered fit, reasonable and just," or does it mean that somebody can say that the Court of

Chancery has not the right given by the Legislature, to do the act therein specified?

It is certainly not within the power of any person or persons to say that the Court of Chancery does not have the power granted by the Legislature and yet it is contended in this case that a separation agreement made by two people can defeat the act of the Legislature designating what the powers of the Court of Chancery shall be.

It has been held time and again that two individuals cannot deprive the Court of Chancery of its power to grant a divorce by agreeing to a divorce between themselves, without an order of the Court, so, why then should two individuals agree to deprive the Court of Chancery of its power given to it by the Legislature, as to the fixing of alimony.

It would seem perfectly obvious that two individuals of the State should not be allowed to agree to set aside the statute passed by the Legislature and deprive one of our Courts of its power and authority. Not only was the power given to the Court of Chancery by the Legislature, but it was given prior to the drawing of the articles of agreement in this case, to wit: the act was passed in 1907, and the articles of agreement were drawn in 1915, and they must have been subject to any statute which was in existence at that time. Parties entering into agreements of this nature are presumed to know the law and, knowing the law, must have contemplated that the separation into which they had entered would come to an end with the application for divorce.

Thus, it will be seen that the separation agreement was subsequent to and subject to the law as laid down by the Legislature in the 25th Section of the Divorce Act and, therefore, cannot abridge the power given to the Court under that act.

Second. A reading of the articles of separation, page 128 of the State of the Case, shows the consideration therefor was an agreement to live separate and apart from each other.

It has been held in the State of New Jersey that separation agreements are not enforceable and are not valid agreements to be enforced in a Court of this State.

Aspinwall vs. Aspinwall, 49 N. J. Eq. 302.

If the agreement to live separate and apart is not a valid agreement, what consideration is there to make this agreement binding upon the parties?

Nor does this section of agreement give a consideration:

> "Furthermore, that the said party of the first part shall and will, well and truly pay or cause to be paid for and towards the better support and maintenance of his said wife the sum of $125 per month, * * * which the said party of the second part does hereby agree to take in full satsifaction for her support and maintenance and all alimony whatever."

There can be no valid consideration in this part of the agreement because the husband has not agreed to perform any act which he is not compelled by law to perform, to wit: Support his wife.

I fail to find anywhere else in the agreement anything which ~~in any~~ savors of a consideration for the wife entering into the agreement, unless it be the further agreement with the said wife, she to have the custody and control of the children, which right and duty she already had imposed upon her. It is submitted that there is a failure of consideration, as a careful reading of agreement shows, unhappy differences, agreement to live apart as the designated consideration.

But if this awarding of the custody of the children to the wife should in any way be considered a consideration for the agreement to pay alimony, then there are three considerations which are set up, to wit: To live separate and apart, to pay $125 per month and to give the custody of the children. Which of the three can be said to bind the wife, and does not the rule hold which states where part of the consideration is illegal or unenforceable and it cannot be said whether the return promised was induced by the legal or illegal and unenforceable portion of the consideration, the whole contract must fall.

Elliott on Contracts, Vol. 1, Section 248 and cases cited therein.

It is thus seen that this contract rests upon an unenforceable contract which is void as against public policy, an agreement to do something which the party is already required to do, and therefore, is not valid consideration. *Conover vs. Stillwell*, 34 N. J. L., page 55, and *Nightingale vs. Meginnis*, 34 N. J. L., page 461, and the agreement relative to the custody of the boys, if this last clause can be said to be a part of any consideration for the plaintiff entering into the money part of this contract.

The first two considerations fail and how can it be said that the promise of the petitioning wife can be said to have rested upon the individual one of granting the custody of the children to her.

It is, therefore, submitted that the contract is without a valid consideration and is not binding upon the wife, this making no difference as to whether there was a trustee or not, the trustee adding no validity to the contract in any way and used only for the purpose of allowing a suit at law.

Aspinwall vs. Aspinwall, 49 N. J. Eq. 302.

Third. Nor can it be said that the contract was obtained and signed by the petitioner, the wife, when she was in such condition that a contract could properly be signed by her. It is true that the father acted as trustee and was present when the contract was signed and joined in the same, but his attitude as regards what he thought of the contract is shown by his testimony on page 68 of the State of the Case, lines 18 to 30. The condition of the wife at that time is shown by her testimony, page 25, lines 1 to 25. This testimony shows that the wife had been sick for a month prior to the separation and the father thought that it was necessary to remove her from the house of the husband or lose his child, the wife having been sick for a month past with the trouble of paralysis, which she had, and was not in a condition to understand and enter into an agreement respecting her future and the care of herself and the children and the father's efforts in this behalf were tempered by the fact that he desired to get his child out of the house more than anything else.

Under such circumstances, it would not be proper or just to the wife to confine her to an agreement entered into under such circumstances.

Fourth. The agreement does not provide for the support or maintenance of the children. Whether or not it was contemplated that the $1500 therein mentioned, was to be for the support and maintenance of the wife alone or whether the children were included is undetermined but it is an undenied fact that the wife has supported and maintained them and received no extra compensation.

When the provision is inadequate for wife and children, agreement will be disregarded.

Rennie vs. Rennie, 85 N. J. Eq. 1.

Fifth. The Court has held, on several different occasions, that the agreement between a husband and wife would be enforced in equity only to the extent that it is equitable and just. *Halstead vs Halstead,* 74 N. J. Eq., pages 596-598. And more particularly in regard to the question of alimony in divorce suits the Courts have held that an agreement between the husband and wife for separation and for the payment of money is not an impediment to the awarding of temporary alimony in the wife's suit.

Rennie vs. Rennie, 85 N. J. Eq., pages 1-3.

Also

Boehm vs. Boehm, 88 N. J. Eq., pages 74-79.

The Halstead case, above mentioned, decides that an agreement entered into between the husband and wife, specifying that a certain sum shall be paid for the support and maintenance of the wife, can be changed by the Court of Chancery by making a temporary order for alimony *pendente lite* and the Vice-Chancellor particularly held in that case that if the wife should apply for a divorce and an order for alimony *pendente lite* was made, that as long as the order for alimony *pendente lite* was in effect, the agreement between husband and wife could not be enforced. This appears to be good law, as Chancellor Walker, in the case of *Whittle vs. Schlem,* 109 Atl. Reporter, pages 305-306, cites the Halstead case and states that the Vice-Chancellor found exactly as recited above that the order for temporary alimony set aside the agreement between husband and wife and the same could not be enforced while that agreement was in effect.

If the Halstead case is law and the Court of Chancery has power and authority to set aside the agreement between the husband and wife for alimony *pendente lite,* then there is no reason why it should not be set aside when permanent alimony is asked for. If the agreement is of such a weak character and void so as to be set aside for one class of alimony, it is certainly just as weak or void and may be set aside for the other class of alimony. I can see no distinction between the two and it seems to me that the Halstead case is controlling until reversed, it having been recited with approval by this Court in the case of *Whittle vs. Schlem* above.

The Vice-Chancellor, in rendering his opinion, (See State of Case, pages 112-116) follows the decisions of the English Courts where this matter has been definitely determined and the act relative to the granting of alimony is not dissimiliar to the act of the State of New Jersey.

It would seem that the English decisions to the effect that a wife cannot preclude herself by agreement from invoking the aid of the Court to obtain further maintenance is good, sound law for the reason that the very contract which she is asked to sign deprives herself of such right is based on an invalid and ineffectual consideration, to wit: An agreement to live separate and apart, an agreement to support, which is required by law. Not only that, but it is in contravention of the express power given to the Court of Chancery by the Legislature and it is an abridgement of those powers.

Sixth. As to whether or not the $1500 provided by the separation agreement is adequate for the support of the wife alone: The $1500 provided

for in the separation agreement is not adequate for the support of the wife alone. The law is that a wife is entitled to be supported and maintained by the husband free and clear from her friends' support. *Miller vs. Miller*, 1 N. J. Eq., 386-390, where the Court states:

> "It does not appear from the testimony that she had separate property for her maintenance, nor that the clothing taken by her and property given to her within the ten days mentioned in the articles, would answer for that purpose. How, then, is the complainant to be supported? Her friends may do it if they please, but they are under no legal obligation to provide for her, nor is the public bound to support her as long as her husband has the ability to do it."

And in the same case, on page 391, the Court states:

> "And he is bound to support and maintain her in a suitable manner according to his circumstances. The wife, by marriage, has parted with her property, placed herself under the control of her husband and looks to him for support."

The testimony taken before the Master shows that at the time of separation, the wife could not have lived in the house occupied by her husband and herself on $1500 per year. (See page 53 of the testimony, lines 10-20.) Neither could she have lived in the more expensive house which was being built for them on Chestnut Street, in the City of Salem. (See page 53 of the testimony, lines 18-35.) (Also page 54, lines 20-35.)

The petitioner has testified in this case that during the year 1919, her total expenses were $2175.

(See pages 56 to 59 of the testimony), and that $400 of this was paid to her mother to go upon account of board for herself and two children. The balance, $1775, was shown to have been expended largely as by Exhibit 2 on behalf of the petitioner, page 130. This shows that approximately $1,000 of that amount of money went toward the legitimate expenses of the petitioner. Now, if we add to that $1,000, the expense of boarding and obtaining a room for the petitioner in which she could properly live, it will be seen that it will cost her far more for her individual self than $1500.

It will also be seen by the testimony of Lewis H. Ayres, the father of the petitioner, that what he did was to assist and help the petitioner in the payment of expenses. (See page 63 of the testimony.) Also he has been required to have extra help in his home where, prior to his daughter's return, the extra help was not needed. (See pages 64 and bottom 65 of the testimony.)

The testimony further shows that the wife actually needs to live under such circumstances as would conform to the social standing that she is entitled to have in the maintenance of a separate home as follows: Rent from $360 to $480 (testimony of W. T. Mifflin, pages 79-80); of food from $1250 to $1500 (page 29); of clothing from $1250 to $1500 (page 30); of the employment of one extraordinary maid or two usual maids, which would amount to at least $800 to $1000 per year (page 28); doctor bills, dentist, &c., from $100 to $250 (pages 31 and 32); for magazines, books, churches, etc., $200 (page 32); and there has been no mention made of gas, electric light and water and other miscellaneous expenses of that kind, which amount to in the neighborhood of $400 or $500 per year, and this makes no provision

for social pleasures to equal that which her husband has in the maintenance of an automobile and power launch (page 33), and it shows the actual needs of the wife to be approximately $5,000. If compensation should be added for social amusements equal to those supported and maintained by the husband, the wife would be entitled to at least $1,000 more.

The physical condition of the petitioner enters into this case as shown by the testimony of Dr. McConnell, on pages 9 and 10 of the testimony. It shows that she has had a paralysis which is likely to recur when overworked or nervous; that there has been recurrences of the same, as shown by the petitioner's testimony on page 24 from the middle to the bottom, and on page 25, and also from the testimony of her father on page 60, lines 6 to 20.

A person in the physical condition of the petitioner cannot be properly maintained on $1500 per year. Particularly is that true when you consider the fact that she has two children to look after, make arrangement for and properly care for, and not further injure her own health. The Courts have held that the children should be fully maintained in a manner corresponding with the position in life of the defendant and the wife should not have any burden imposed upon her of a pecuniary character in taking charge of the children. *Richmond vs. Richmond,* 2 N. J. Eq., page 90, which case is cited with approval in *Dietrick vs. Dietrick,* 88 N. J. Eq. page 560.

Some light is thrown upon the reason for entering into the agreement for $1500 yearly, by reason of the physical condition of the wife and in the testimony of Lewis H. Ayres, her father, on page 61 of the testimony, top of the page, and page 68 of the testimony in which Mr. Ayres recites that he did not

think $1500 was a great deal of money, but the conditions under which his wife was living and her health were uppermost in his mind and when it is considered that the husband received that year, from the trust estate of his father, $4040 (page 91, line 22), together with what he might have earned by attention to business, would have made his income for that year in the neighborhood of $6,000 or $7,000. The acceptance of the sum of $1500 shows how anxious the petitioner's father was to protect her life. The petitioner herself was not in any condition to make a contract as she had been seriously sick all of November, preceding the separation, which took place on December 10th, as shown by the testimony of the petitioner (page 25). That testimony shows that the petitioner had a recurrence of the paralysis which she had had in 1913, and, of course, would not be mentally able to give a great deal of consideration to what her proper support should be.

From the above testimony, it certainly appears that while the petitioner probably could exist on the $1500 a year, yet it is not in any way adequate to support and maintain her as shown by the testimony, either with the amount of money which she had during the last year for herself and the method and manner in which she was living or in the maintenance of a home separate for herself and children, it being inadequate. The cases above mentioned all hold that the Court of equity does disregard such agreements between husband and wife. (See *Boehm vs. Boehm, supra.*)

The Master, in his findings, found that the agreement did not provide adequate maintenance for the wife. (Master's report, page 107, lines 6-10.) This was affirmed by the Vice-Chancellor.

Seventh. With the granting of a divorce in this case, the agreement between the parties terminates. They are no longer husband and wife and the agreement to live separate and apart due to unhappy differences is at an end (page 128, line 15), and there appears to be no consideration for the agreement whatever and the Court, to save litigation, should designate the amount of alimony to be given to the wife upon the granting of the divorce.

It is not conceded that the agreement is valid and binding but there is no question but what it would end with the granting of the divorce.

Second. As to whether or not the amount of money allowed and fixed by the Master and the Court of Chancery is excessive, the Special Master designated the amount of $3,000 to be paid to the petitioner and the sum of $2,000 to be paid for the purpose of supporting and maintaining the two children. It is shown by the testimony that the wife had no support, income or property and is physically unable to earn a livelihood. (See testimony of the petitioner, State of the Case, page 30, lines 30 to 35. Page 31, lines 1 to 10.)

The husband's attention to business is shown to have been nothing during the last few years. There is no reason why a man in good physical condition such as he is in and with a good education such as he has had, should not be earning anywheres from $2,000 to $3,000 a year or more and this fact should be taken into consideration in determining the amount of alimony to be allowed. See *Dietrick vs. Dietrick*, 88 N. J. Eq., p. 560, in which the Court expressly states that the husband's property and income, including what he could derive from personal attention to business, should be taken into consideration.

The husband's actual income is testified to by J. Forman Sinnickson, trustee (page 85), and shows his actual income for the year 1918, to be $13,769.08 and for the year 1919, to be $12,039.82. Including in this what the husband could earn of say $3,000 a year, shows an actual income of in the neighborhood of $15,000 per year.

The value of the estate as testified to by Mr. Sinnickson is $66,867.25. Of this amount, $37,500 is Hires-Turner Glass Company stock, which was taken into the estate as directed by the will of George Hires, Sr., at $150 per share. (Pages 86, lines 21 and 87, line 15.)

The figures of William Plummer, Vice-President of the Hires-Turner Glass Company, shows that the book value of each share for the year 1918, was $486 plus, and for the year 1919, $542. (Exhibit, p. 153.) It will be seen that the value of the Hires-Turner stock has increased from $37,500 to $135,000. The testimony of Mr. Sinnickson also shows, as did these figures of Mr. William Plummer, that this is not any extraordinary growth of business but is a permanent growth because of the increased surplus in the business and the value of the shares must be taken at the time of the proceedings for divorce. (See *Richmond vs. Richmond*, 2 N. J. Eq., page 90.) This case is also cited in later cases for approval. Here dividends were increased and surplus increased and business increased all proportionately.

Therefore, figuring the Hires-Turner Glass stock at a value of $135,000 and the balance of the estate at approximately $30,000, it shows that the amount held in trust for George Hires, Jr., at the present time, is $165,000. This, at the rate of six per cent. shows at least an annual income of $9900. This, together with the income of the farm, which is an-

other trust, and what can be earned by the defendant by attention to business or doing some work, would show an income of at least $13,000 or more.

Subsequent to the taking of the testimony before the Master, Mr. Sinnickson, one of the trustees for George Hires, Jr., filed a statement giving the income of George Hires, Jr., from April 1, 1919, to April 1, 1920, which statement shows an income of $9238.80 paid to the defendant. (Pages 103-104.) These figures are slightly different from the figures which were testified to by Mr. Sinnickson for the actual year of 1919, beginning January 1st, to December 31st, which deduction is shown by the testimony of Mr. Sinnickson, in which he states that the trust handled by him and Lucius Hires, to wit, the management of a farm in the County of Salem, had not been successful during the year 1919, and that no income was received from the same. (Page 85, lines 20 to 30.)

The other reduction in the amount is the March dividend of the Hires-Turner Glass Company, which has been reduced approximately $1200, it thereby making a difference, it is claimed, in the amount of income, which will be received by George Hires, Jr., during the year 1920.

It may be fair to the petitioner in this matter to take a three months' period of a year and state that is going to be the income of a given corporation for that year, but I want to call the Court's attention to the fact that the value per share of the Hires-Turner Glass Company is $542. (Exhibit, p. 153); that the company has consistently increased its surplus and increased its business by extending branch stores to different parts of the United States (See testimony of Mr. Sinnickson, page 95), and that the conservative business man always calculates that he

can earn seven or eight per cent. on his invested capital and surplus and in this day and time, as high as ten per cent. on the invested capital and surplus, because that is the money he has to work with and turn over in his business. Therefore, while the Board of Directors has it within its discretion to declare special dividends when they please, they do so when the condition of their company and their surplus in bank warrant and the fact that they did not declare a dividend as large in March as March a year ago, does not signify that the business will not earn as much this year as it did last year, or does not signify that it will not earn at least 6% on the investment.

However, there is little difference between 6% on the investment and the amount of income which is shown in the last statement by Mr. Sinnickson. The interest on the investment at six per cent. on the present value of the Hires-Turner stock amounts to $9900 per year, while the statement shows $9727.16.

In addition to the trust held by Mr. Sinnickson and Mr. Plummer, of which the Hires-Turner stock is a part, there is a farm in Salem County, of which Mr. Sinnickson and Mr. Lucius Hires are trustees for the defendant. This farm, according to the testimony of Mr. Sinnickson, had paid as follows:

1914	$200.00
1915	750.00
1916	000.00
1917	1575.00
1918	1294.85
1919	1000.00

It is stated by Mr. Sinnickson that in 1920, on the 25th of March, when they turned the money over to the defendant, that there would be nothing to turn over.

This income covers a period of six years and shows an average income of $800 per year which, to my mind, is a fair average income from this farm, which is tenanted and not operated by the owners.

With this $800 added to the $9238.80, makes a total income from trust estates of over $10,000. To this must be added, in accordance with the cases, the amount which the husband could earn by giving his attention to business.

Dietrick vs. Dietrick, 88 N. J. Eq., p. 560.

The defendant could earn easily from $2,000 to $3,000 per year. This added to the income which he receives from the trust estate would make at least $12,000 or $13,000 per year as his income.

It, therefore, seems to me that at whichever way the income of the defendant is figured, whether by his actual income at the present time or by the value of the securities held by the trustees at the rate of six per cent., which is that designated by the cases as being correct (See *Andreas vs. Andreas,* 88 N. J. Eq. 130; *Bennitt vs. Bennitt,* 59 Atl. Reporter, 245), the defendant has an income of at least $12,000 per year if he would give any attention to earning money himself.

The Courts have universally held that the wife is entitled to one-third of the amount of the husband's income or income which could be earned by attention to business. That would make the allowance in this case to the wife of at least $4,000.

Andreas vs. Andreas, 88 N. J. Eq., p. 130;
Dietrick vs. Dietrick, 88 N. J. Eq., p. 560,
and numerous other cases.

The defendant has cross-examined Mr. Sinnickson relative to the income of former years. Under the cases, the law is settled that the value of securities

and the income at the time of the Master's report is controlling. (See *Andreas vs Andreas,* 88 N. J. Eq. p. 130; *Richmond vs. Richmond,* 2 N. J. Eq., p. 90.)

This should be the rule as the Court of Chancery allows a modification of the amount of alimony upon the application of either party upon cause being shown that they are entitled to have the same changed.

Also, by reading the will of George Hires, Sr., which is in evidence, it will be seen that the defendant receives two hundred shares of the Hires-Turner Glass stock besides approximately $30,000 or $40,000 additional money from the remainder after certain trusts are executed. Therefore, his income will probably never decrease but will, in all probability, increase. However, should it decrease before the increase comes, he could apply to the Court of Chancery to have the allowance decreased.

Therefore, the Master's report fiindings of the sum of $3,000 as being an adequate and reasonable sum for the suitable maintenance and support of the petitioner is within the decision of our Courts and the Master was very conservative in his allowance to the petitioner considering the income which the defendant has or could possibly earn by his attention to business.

Relative to the allowance to be allowed to the children. The children should be fully maintained in the manner corresponding with the condition in life of the defendant and the wife should not have any burden imposed upon her of a pecuniary character in taking charge of the children. *Richmond vs. Richmond,* 2 N. J. Eq., page 90, which case is cited with approval in *Dietrick vs. Dietrick,* 88 N. J. Eq., page 560.

In the case of *Holmes vs. Holmes,* 29 N. J. Eq., p. 9, a wife and two children were given $4,000 out of a net income of $6,000. Calculating on that basis, an allowance of $2,000 would be proper for the benefit of each child in this case and the allowance of $1,000 for each child is certainly very conservative and the amount thus awarded by the Master should not be distributed.

Relative to the amount of bond designated by the Master, the amount of $20,000 is not excessive. A reading of the will of George Hires, Sr., shows that there is a possibility of the trustees, at some future time, transferring the whole of the estate to the defendant. See will, page 142, lines 10-30. Should such take place, there would be nothing to guarantee in any way that this petitioner would be given the moneys ordered by this Court.

It is, therefore, respectfully submitted that the Master has properly designated the amount of bond into which the defendant should enter to guarantee the performance of the decree by this Court.

The petitioner asks, by way of suit money, for the allowance of $25 paid to Dr. McConnell, an expert physician, who testified, and for $36 paid to Edward I. Berry for a copy of the testimony taken before the Special Master, and for the sum of $5.65 paid to Loren P. Plummer for a certified copy of the will of George Hires, Sr., admitted in evidence, and for the sum of $5 paid to Thomas Waddington, a constable, for expenses relative to renting a cottage adjoining the defendant's cottage at Sinnickson's Landing in the County of Salem, the total expenses amounting to $71.65. The above amounts cannot properly be taxed as costs in the suit and are, therefore, asked for as suit money. (See *Biddle N. J. Divorce Practice,* 2nd Edition, p. 170, citing *Marker*

vs. Marker, 11 N. J. Eq., p. 256, and *Main vs. Main,* 50 N. J. Eq., page 712.)

The allowance of $150 as counsel fee is, to say the least, very conservative.

In answer to the brief for the appellant, I desire to call the Court's attention to the fact that alimony does not arise from any business transaction but from the relation of marriage. It is not founded on contract expressed or implied but on the natural and legal duty of the husband to support the wife.

Audubon vs. Shufeldt, 181 U. S. 575-577.

The appellant would have the Court believe that the alimony in this case should be the result of an agreement and depends largely upon the case of *Galusha vs. Galusha,* 116 N. Y. 635, and *Henderson vs. Henderson,* Oregon 48 L. R. A. 766. The reading of these two cases both show that a separation had occurred prior to the making of the agreement for support. They are vitally different from the case where the separation and the support are provided for at the time the separation actually takes place. The parties had been living together in the same house and separation was not discussed between them until the day before the signing of the articles of separation.

In New York, later, decisions have held that unless the separation takes place prior to the signing of the agreement, it is void.

Poillon vs. Poillon, 63 N. Y. S. 301;
Maney vs. Maney, 104 N. Y. S. 541.

There are also other cases which hold that a separation agreement similar to the one in this case is void and can be disregarded by the Courts.

Blake vs. Blake, (Wis.) 32 N. W. 48-50;
McKnight vs. McKnight, (Neb.) 98 N. W. 62-66;
Campbell vs. Campbell, 73 Iowa 482, 35 N. W. 522;
Norrell vs. Norrell, (Ga.) 74 S. E. 757.

It is, therefore, respectfully submitted that the agreement entered into between the parties was null and void as affecting the right of the wife to obtain alimony after the filing of a petition for divorce.

In regard to the matter of the allowance to the petitioner being excessive, the income received by the defendant is of a permanent nature.

The Hires-Turner Glass Company stock, which is the large portion of the estate, shows by its value being $542 per share that it has made a continuous growth since the year 1913, when its value was $150 per share, its value in 1918, being $486 per share. This is not a result of war conditions. It is a result of growth of business and extending and obtaining the business as shown by the testimony of Mr. Sinnickson, where he states that new business places have been opened up in Washington and Rochester.

It is, therefore, submitted that the allowance is not excessive but is very conservative, considering the actual income and what can be derived by the defendant's attention to business.

The custody of the children. The decree *nisi* was submitted to Mr. Woodruff, who was then acting as counsel for the defendant, and passed upon by him in the presence of the Vice-Chancellor and corrections made in accordance with his suggestion relative to the payments being quarterly instead of monthly.

The petitioner has heretofore, and is willing in the future, to allow the defendant to see the children and, in fact, has sent them to his mother's house, on different occasions, for the purpose of their seeing him, but owing to the fact that he has been at the house of the co-respondent, he has not seen the children.

If this state of circumstances demonstrate the mercenary character of this whole proceeding, it might be well to ask what the receiving of $12,000 a year income by an individual and the payment of $1500 thereof to his lawful wife and spending $10,500 thereof upon a prostitute demonstrates?

Relative to the bond, what has been said relative to the possibility of the trustees transferring the estate to the defendant is called to the Court's attention and for that reason there should be security ordered.

It seems to me that in a case of this kind, where the husband has violated his marital vows and deliberately destroyed a home which would be a happy one, and, subsequent to the confession therein stated, and his reasons therefor, as shown by the testimony of the petitioner on page 24, he has continued to live with the co-respondent, Florence Plummer, and has done so with the exception of the time that he was in the United States Army down to the present time, and still continues to do so, as shown by the testimony of Mrs. Morgan, Reba Gayner and Thomas Waddington.

It also is shown from the testimony that he is not doing any work and that his automobile is seen both day and night at the residence of the co-respondent.

Under such circumstances, it seems to me that the petitioner is entitled to everything that has been given to her by the Special Master, instead of allowing the defendant to throw the money away and squander the same to satisfy his own desires.

It is, therefore, respectfully submitted that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,
E. C. WADDINGTON,
Of Counsel with the Petitioner-Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
REBECCA A. HIRES,
Petitioner and Respondent,
and
GEORGE HIRES, JR.,
Defendant and Appellant.

On Appeal from Chancery.

BRIEF FOR APPELLANT.

I. STATEMENT OF THE CASE.

On September 22, 1919, petitioner commenced suit in the Court of Chancery for divorce on the ground of adultery.

The petition is in the usual form, and prays for dissolution of the marriage, for support for herself and the two infant children of the marriage, and that she may be awarded the custody of the children (p. 2).

Process was served personally on the defendant within this state (p. 3).

Defendant did not file any answer.

January 22, 1920, the cause was referred to Thomas E. French, Esq., Special Master (p. 4).

Pursuant to Rule 262 of the Court of Chancery, notice of the hearing was served on defendant (p. 6).

February 5, 1920, testimony was taken before the Special Master. Defendant was represented by counsel who cross-examined the witnesses on the subject of alimony.

Defendant offered in evidence an agreement of separation between the parties and a trustee, dated December 10, 1915 (p. 128), in and by which, among other things, defendant agreed to pay and petitioner to accept the sum of $1500 per annum "in full satisfaction for her support and maintenance, and all alimony whatever." This amount being subject to increase, by agreement, at the end of 10 years.

March 17, 1920, the Special Master filed his report recommending a decree,

1. For divorce.

2. That $3000 per annum be allowed petitioner.

3. That $2000 per annum be allowed for the children.

4. That custody of the children be awarded petitioner with right of defendant to see said children at all reasonable times and places.

5. That defendant give bond in the sum of $20,000 as security for the payment of alimony and maintenance.

Exceptions were filed to this report.

Afterwards, the matter came on for hearing on the exceptions before Vice-Chancellor Leaming.

The exceptions were overruled (p. 112), the Vice-Chancellor holding that the contract for alimony

contained in the separation agreement was not binding.

June 14, 1920, a decree nisi was entered.

Thereby it is ordered (p. 120),

1. That the parties be divorced.

2. That the exceptions be overruled.

3. That defendant pay petitioner $5000 per annum,

> "Payable in equal monthly installments, that is to say, that within ten days after service of a copy of this decree upon him, or his solicitor, defendant do pay to the petitioner or her solicitor, the sum of twelve hundred fifty dollars ($1250) as and for the allowance from the 15th day of March, 1920, the date of the Master's report, to the 15th day of June, 1920, being a period of three months, and that the defendant do pay to the petitioner, or her solicitor, the sum of twelve hundred and fifty dollars ($1250.00), as and for an allowance for the current quarterly period of June 15, 1920, to September 15, 1920; and that the said defendant do pay to the petitioner or her solicitor the sum of twelve hundred and fifty dollars ($1250.00) on the 15th day of September, December, March and June of each year thereafter, and until further ordered by the Court to the contrary, so much of the said annual sum as amounts to three thousand dollars ($3000) or two hundred and fifty dollars ($250) per month, being considered and deemed a suitable allowance for the petitioner's support and maintenance, and the balance of the said sum being deemed a suitable allowance

for the care, maintenance, education and clothing of George Hires, 3rd, and John A. Hires, infant children of the marriage aforesaid."

4. That defendant give bond in the sum of $20,000.

5. That defendant pay $71.65 suit money and $150 counsel fees.

6. That the decree be a lien on defendant's estate.

7. That petitioner have the exclusive care, custody, education and control of the infant children.

June 14, 1920, defendant gave notice of appeal from the whole and every part of the decree, except that part which adjudges that the parties be divorced.

June 29, 1920, petition of appeal was filed in conformity with the notice.

June 29, 1920, an order was made by the Chancellor staying proceedings pending the appeal.

This order was made on condition that defendant pay alimony and maintenance for petitioner and the children at the rate of $3000 per annum, commencing August 10, 1920, such payments to include and not be in addition to, the payments made under the articles of separation dated December 10, 1915.

Respondent has failed to file any answer to the petition of appeal.

II. SPECIFICATION OF ERRORS.

1. The Court of Chancery was without jurisdiction to set aside and annul the articles of separation between the parties and a trustee, dated December 10, 1915.

2. The exceptions to the Master's report should have been sustained.

3. The allowance for alimony and maintenance should not have exceeded the amount specified in the articles of separation.

4. Defendant should not have been required to give bond, nor to pay costs and allowances.

5. The decree should not have been made a lien on defendant's property.

6. Custody of the children should not have been awarded petitioner.

7. Defendant should not have been required to pay petitioner $2000 per annum for the care and maintenance of the two children.

8. The Court of Chancery was without jurisdiction to make an award and allowance for alimony in excess of the amount fixed by the articles of separation.

9. Because the trustee named in said articles of separation was not made a party to the suit.

10. If the Court of Chancery had power to annul or ignore the articles of separation and to fix alimony in its discretion, such discretion was illegally exercised and the amounts fixed are excessive.

11. The evidence in the cause does not justify the amount of the alimony and maintenance fixed by the decree.

12. The evidence does not warrant giving to petitioner the exclusive care, custody, education and control of the two boys, thus depriving defendant of the right to visit them and to exercise some control over their care and education.

III. BRIEF OF THE ARGUMENT.

A. The Provisions of the Articles of Separation are Valid and Binding With Respect to Alimony and Maintenance and the Court of Chancery Was Without Power to Set Aside or Disregard Them.

Sec. 25 of the Divorce Act (C. S. of N. J. p. 2035), provides:

> "Pending a suit for divorce or nullity, or after decree of divorce, it shall be lawful for the Court of Chancery to make such order touching the alimony of the wife, and also touching the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall be rendered fit, reasonable and just."

The articles of separation between the parties to the suit at bar, and a trustee (Exhibit D1, p. 128), contain the following provisions:

"The said party of the first part shall and will well and truly pay or cause to be paid, for and towards the better support and maintenance of his said wife, the sum of one hundred and twenty-five dollars ($125) per month, payable each and every month, for a period of ten years from the date of these presents, after which time said sum is to be increased to an amount to be agreed upon at that time and until said new agreement is made, the payment of the one hundred and twenty-five dollars ($125) per month is to continue, which the said party of the second part does hereby agree to take in full satisfaction for her support and maintenance, and all alimony whatever.

And it is further agreed by and between the parties to these presents, that the said Rebecca Hires, is to have the custody and control of the children of the said George and Rebecca Hires, the said George Hires to have the right to see said children at all reasonable times and places."

To what extent is this contract binding upon the parties?

May it lawfully be disregarded by the Court of Chancery?

The doctrine of alimony is based upon the common-law obligation of the husband to support his wife, which is not removed by a divorce obtained by her for his misconduct (14 *Cyc.* 743).

In *Lynde vs. Lynde,* 64 N. J. E. 736, Mr. Justice Pitney, speaking for this Court, and referring to the statutory provisions above quoted, said:

"The purpose is to require the husband to pay to the wife periodically such sum, as in

> view of his circumstances and the necessities of the wife, will be a reasonable fulfillment of his continuing duty to support her. The purpose is not to enrich the wife."

Alimony may not be given in a gross sum, nor in a portion of the husband's real estate. It is periodical support.

The agreement for periodical support in the case at bar was entered into between the husband and wife, and Lewis H. Ayres, trustee, on December 10, 1915, after separation.

There is no testimony in the case that the wife was overreached, or that the agreement was the product of fraud or duress. Her father acted as her trustee. The agreement was drawn by counsel who has ever since paid Mrs. Hires the stipulated sums.

If this is a binding agreement, how can it be set aside without proceedings to that end?

If it can be so set aside, why should the Special Master, in fixing the amount, entirely substitute his discretion for the discretion of the parties to the agreement?

In *Galusha vs. Galusha,* 116 N. Y. 635, as in the case at bar, the contract was made after separation, and through the intervention of a trustee. Divorce was subsequently obtained by the wife on the ground of the husband's adultery, and alimony was allowed in disregard of the provisions of the agreement.

The Court held that:

> "A contract by a husband, after a separation from his wife, for the separate support and maintenance of the wife, through the intervention of a trustee, is valid, and is not invalidated by the subsequent infidelity of the husband and

a divorce therefor; and the court in the action for divorce may not terminate the agreement and substitute alimony."

Among other things Judge Parker said:

"Was it error to disregard the agreement between the parties to this action, and the trustee, providing for the support of this plaintiff during her life, and to make such an allowance as to the Court seemed just, is the question presented for our consideration."

After citing numerous authorities in support of the proposition that the provision for support contained in the articles of separation was binding upon the parties and was not affected by the decree of divorce, the opinion continues:

"We have, then, a valid tripartite agreement, and a subsequent judgment of divorce rendered in an action, wherein two of the parties to the agreement only are plaintiff and defendant. The plaintiff did not, in her complaint, ask, as a part of the relief, that the separation agreement be set aside. She did not allege that it had been obtained fraudulently or by means of duress. In no way whatever was its validity attacked, or a foundation laid which would have empowered a court of equity to set it aside. The subsequent order of the general term therefore, in directing such a modification of the judgment of divorce as would terminate the force and legal effect of this valid separation agreement, cannot be sustained. The authority conferred upon the court by the Code, to require the defendant to provide suitably for the support of the plaintiff as justice requires, is not so broad

> and comprehensive as to admit of a construction conferring upon the Court power to ignore all existing rules as to parties, pleadings and proof and arbitrarily set aside a valid agreement, because in the judgment of the Court one of the parties agreed to accept from the other a less sum of money than she ought."

The contract was held binding and the judgment below was modified by striking out the provision terminating the effect of the separation agreement and by striking out the provision allowing alimony. The decree for divorce was affirmed.

It will be observed that the facts in this case are almost identical with those in the case at bar.

The *Galusha* case was cited with approval by the Supreme Court in *Whittle vs. Schlemm,* 93 N. J. L. 78, where it was held that under a similar agreement the trustee could maintain a suit against the husband for the agreed payment, notwithstanding the subsequent adultery of the wife, and by Vice-Chancellor Garrison in *Halstead vs. Halstead,* 74 N. J. E. 596, where he said at p. 599:

> "While the law does not favor separation between husband and wife, it does favor a settlement out of court and without resort to litigation of all matters in dispute. The attitude that the Court takes towards agreements of this nature is well expressed in the case of *Galusha vs. Galusha,* 116 N. Y. 635."

To the same effect are the following:

> "A valid separation agreement whereby the husband is bound to contribute a named sum for the support of his wife is not avoided or annuled by a subsequent divorce of the parties,

and the Court in awarding alimony to the wife cannot disregard it and make provision for the wife inconsistent therewith."

19 *Cyc.* 771.

In *Henderson vs. Henderson,* 48 L. R. A. 766 (Oregon Sup. Ct.), the husband and wife had entered into an agreement for separation, which fixed the amount of the monthly support of the wife. Afterwards there was divorce and the alimony was fixed at the same amount as that stipulated in the agreement. Three years later the husband petitioned the Court to reduce the alimony one-half. This was refused. Among other things, the Court said:

> "The more recent legislation has tended strongly to the removal of all disabilities of the wife which do not exist as to the husband, and she may now contract and incur liabilities and responsibilities to the same extent and in the same manner as if she were unmarried. While this fact should not detract from the reasons which support an allowance for her benefit, yet it is a strong circumstance tending to the support of her contracts relative to her maintenance made with her husband, who has always been accounted *sui juris.*"

There seems to be no case in this state in which this precise question has been decided, but there are many cases holding that such agreements for support are valid and binding and will be enforced, in equity if between husband and wife, and at law if there be also a trustee.

In *Calame vs. Calame,* 25 N. J. E. 548, this Court held that while under the statute of this state, ali-

mony cannot be given in a gross sum, nor in a portion of the real estate of the husband, yet an agreement in writing, made by a husband who had deserted his wife, to give her certain land and money, in lieu of all her claim upon him for maintenance, the offer having been accepted by the wife, will, on a divorce being granted, be enforced in equity.

In *Aspinwall vs. Aspinwall,* 49 N. J. E. 302, it was held that a stipulation to pay an allowance to the wife contained in articles of separation will be enforced in equity.

In *Streitwolf vs. Streitwolf*, 58 N. J. E. 570, Judge Adams speaking for this court said, at p. 576:

> "It is to be remembered that the courts are disposed to recognize and enforce proper agreements *inter partes,* touching the support of the wife."

There is not the element here which was present in *Rennie vs. Rennie,* 85 N. J. E. 1. There the husband had failed to make the stipulated payments. Here, the proof is that the payments have been regularly made by the trustees under the will of George Hires, Sr.

It may also be observed that the opinion below in the case at bar (p. 112) was written by the same Vice-Chancellor who wrote the opinion in *Devine vs. Devine,* 89 N. J. E. 51, and each decision is based upon the English authorities on the subject of the effect of separation agreements. *Devine vs. Devine* was expressly overruled by this Court in *Whittle vs. Schlemm,* 109 Atl. Rep. 305, where the provision for support contained in a separation agreement was enforced in a court of law, in a suit brought by the trustee for the wife, notwithstanding the adultery of the wife.

Upon the authority of that case, Mr. Ayres as trustee for Mrs. Hires, can enforce the provisions of the agreement of December 10, 1915, in a court of law, regardless of the decree of the Court of Chancery.

In the *Whittle* case the Chancellor said that:

> "The common-law obligation of a husband to support his wife continues, unless and until he procures a divorce from her."

This being the law, all that has been done in the case at bar is to enter into a valid contract wherein the parties with the intervention of a trustee, have themselves fixed and agreed upon a sum of money to be periodically paid, in discharge of the husband's common-law obligation.

What power has the Court of Chancery to set aside such a contract except in a direct proceeding to that end, and then only upon the ground of fraud?

There is nothing in either the pleadings or proofs in this case which attempts to challenge the validity of this contract.

Mrs. Hires was not obliged to enter into it. The testimony and the findings of the Special Master indicate that she had as good cause for divorce in 1915 as she had in 1919. She could have filed her petition for divorce as well then as in 1919. She did not do so. Instead, she entered into this agreement. She did this freely and voluntarily. Her father is her trustee under it. It has been faithfully performed. There is no claim that she was defrauded or that the value of defendant's income and property were misrepresented to her.

Married women are no longer in the class with idiots and lunatics. With one or two exceptions,

they are now enabled by law to contract on an equality with men.

Why should she not be bound by the terms of this contract?

It is enforceable against her husband, why not against her?

While not bearing directly upon the subject, an interesting collection of cases will be found on the validity of separation agreements as affected by fraud, etc. in 5 *A. L. R.* 823, and another note on the availability of such agreements as defenses to the husband in civil suit by wife for support in 6 *A. L. R.* p. 75.

While some earlier cases hold that such agreements are of doubtful validity, the more recent decisions of the courts in most of the states seem to be to the effect that they are valid and binding, and that where, in suits for divorce, the wife makes no direct attack upon the provision for support contained in such agreement, and the husband continues to pay thereunder, she will be deemed to have elected to accept such provision in lieu of alimony.

See also *L. R. A.* 1916, B. 921.

Pomeroy's Equity Jurisprudence, Sec. 402, note.

In *Galusha vs. Galusha,* 138 N. Y. 272, the method of attacking the validity of such an agreement is indicated.

We respectfully insist that the agreement of December 10, 1915, is valid and binding and that until set aside in a direct proceeding, the Court of Chancery had no power to award alimony in a greater sum than that fixed in the agreement.

B. Allowance Excessive.

If the separation agreement is to be disregarded, and the matter of allowance for alimony and maintenance be left to discretion, we respectfully insist that such discretion was improperly exercised in the court below.

It will be observed that in fixing the amount, as well as in determining that the separation agreement was not binding, great stress is laid upon the cause for the divorce.

We are unable to find any authority for awarding alimony as a measure of punishment.

In *Andreas vs. Andreas,* 88 N. J. E. 130, it was said:

> "Excessive alimony cannot be awarded by way of punitive damages to penalize the defendant for extreme cruelty to his wife."

Here, there is no evidence of cruelty, and it may be fairly said that the evidence to support the cause for divorce will not bear close examination. At the conclusion of the testimony the Special Master had his doubts (p. 98) and a vivid imagination is required to find evidence of adultery in the re-direct examination of Constable Waddington (p. 99).

Dealing with the subject, therefore, solely upon the basis of discharging the defendant's common-law obligation to support his wife and two sons, how much should he be required to pay?

In *Dietrick vs. Dietrick,* 88 N. J. E. 560, Mr. Justice Trenchard, speaking for this court, laid down the rule as follows:

> "No rigid standard can be set up whereby to measure in every case the amount of permanent

> alimony for the support of the wife, but it is usually about one-third of the husband's income. The amount is not fixed *solely* with regard, on the one hand, to the actual needs of the wife, nor, on the other, to the husband's actual means. There should be taken into account the physical condition and social position of the parties, the husband's property and income (including what he could derive from personal attention to business), and also the separate property and income of the wife. Considering all these, and any other factors bearing upon the question, the sum is to be fixed at what the wife would have the right to expect as support, if living with her husband."

In that case, the wife was allowed $10 out of a weekly income of $45.

In *Mackay vs. Mackay,* 83 N. J. E. 650, this court approved an allowance of $40 per week for the support of a wife and two children out of an income of from $150 to $175 per week earned during a theatrical season of 40 weeks.

In *vonBernuth vs. vonBernuth,* 76 N. J. E. 200, where, as here, the right of visitation was taken away from the father by the act of the mother, an allowance of $46 per week for the support of wife and two children was reduced to $10.

In the case at bar the income of the defendant is derived from a trust estate. The corpus of the estate was the same in 1919 as in 1915. The income was greatly increased during the war period and it was this increase in income, and petitioner's desire to share it, that is the real foundation for this suit.

Defendant's income, as appears from the testimony has been as follows:

1913	$3,308.19
1914	2,700.00
1915	4,040.00
1916	2,787.61
1917	7,340.63
1918	13,769.08
1919	12,039.82

(See testimony of J. Forman Sinnickson, pp. 80-98, stipulation p. 101 and affidavit p. 103.)

From these sums must be deducted 5% commission to the trustees and, also defendant's income tax.

The increase in income was all derived from the Hires-Turner Glass Co., most of which was paid in Liberty Bonds, not in cash. These dividends were entirely the result of war conditions, and are already diminishing.

For the fiscal year from April 1, 1919, to March 31, 1920, the income from all sources was reduced to $9238.80 (p. 104).

The alimony agreed upon in 1915 was $1500 and the income for that year was $4040.

The agreed alimony, it will be observed, is about one-third of the income for 1915.

By decree of the Court of Chancery, the alimony is fixed at a sum which is greatly in excess of the total income for the years 1913, 1914, 1915 and 1916. It is about two-thirds of the income for 1917, and considerably more than one-third of the abnormal income for 1918 and 1919. It is more than one-half of the income for the fiscal year ending March 31, 1920.

We respectfully submit that there is nothing in

the record before this court which will warrant any such extravagant allowance.

Petitioner testified with respect to her needs (p. 32):

> "It would depend on what I had to spend, what I would spend."

She further testified (p. 43), that it was her understanding that she was still bound by the separation agreement as to the allowance for herself. Apparently there was no thought in her mind at that time that she was entitled to anything more for herself and was only asking for an additional allowance for the children.

C. Custody of the Boys.

The policy of the Courts on this subject is too well known to require discussion. No objection is made to the mother's custody for the present. That was provided for in the agreement, but the agreement also provides for the right of visitation by the father. The Special Master reported in favor of such right. The decree advised, however, for reasons which certainly do not find support in the testimony, deprives the father of such right and commits to the mother "the *exclusive* care, custody, education, and control," of the two boys. The father must pay the mother $2000 a year for the support of the boys, but is excluded from any voice in the education of his sons and deprived of the right to even have them temporarily in his custody.

This, if nothing else, demonstrates the mercenary character of this whole proceeding.

D. Bond.

The amount of this is excessive and burdensome under the circumstances. So far as the testimony shows, defendant has no property whatever under his control. His income is derived from a fund, the title to which is in trustees. He has no means of securing sureties on his bond. The provision of the decree making the same a lien on his estate, is ample security to petitioner, and we respectfully submit that this requirement of the decree imposes an undue and wholly unnecessary hardship on the defendant.

CONCLUSION.

On the whole case, we respectfully submit, that the decree below should be reversed or modified in the particulars above mentioned.

November Term, 1920.

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Walter H. Bacon,
Of Counsel with Defendant-Appellant.

Gymnasium