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Notice of Appeal.

NOTICE OF APPEAL.

In Chancery of New Jersey

Between

NATALIE WILDEY FARLEE,
Petitioner,

and

HART SCUDDER FARLEE,
Defendant.

*On Petition,
etc.
Notice of
Appeal.*

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To John L. Ridley, Esq., solicitor for petitioner,
1 Exchange Pl., Jersey City, N. J.

SIR:

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The defendant, Hart Scudder Farlee, hereby
appeals from the whole and every part of the
order increasing the alimony to be paid by the
defendant to the petitioner, which order is dated
April 4, 1927, filed in this Court April 5, 1927,
and made by the Chancellor on the advice of
Vice-Chancellor John Bentley, to the Court of
Errors and Appeals, the court of last resort in
all causes.

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Dated, May 9, 1927.

JACOB L. NEWMAN,
Solicitor for and of Counsel with Defendant.

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Petition on Appeal.

PETITION ON APPEAL.

New Jersey Court of Errors and Appeals

10	Between NATALIE WILDEY FARLEE, <i>Petitioner-Respondent,</i> and HART SCUDDER FARLEE, <i>Defendant-Appellant.</i>	} <i>On Appeal.</i> <i>Petition on Appeal.</i>
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To the Honorable, the Court of Errors and Appeals, the court of last resort in all causes:

20 The petition of Hart Scudder Farlee, the appellant in the above-stated cause, respectfully shows:

1. That your petitioner finds himself aggrieved by the order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable John Bentley, one of the Vice-Chancellors, bearing date the fourth day of April, Nineteen Hundred and Twenty-

30 seven, in a cause therein pending, wherein the said Natalie Widley Farlee, is petitioner, and Hart Scudder Farlee, is defendant, in the following respects, to wit:

(a) That the said order adjudges that the defendant, Hart Scudder Farlee, do pay to the petitioner, Natalie Widley Farlee, or her solicitor, until the further order of the said Court, the annual sum of Four Thousand Dollars (\$4,000.00) in equal weekly installments, at the beginning of each and every week from the date of

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Petition on Appeal.

the said order (\$3,000.00) of said annual sum being considered and deemed a suitable allowance for the support of the petitioner, Natalie Wildey Farlee, and the sum of \$1,000.00 of said annual sum being considered and deemed a suitable allowance for the infant child of the parties (Natalie Potter Farlee).

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(b) That the said order adjudged that the defendant, Hart Scudder Farlee, pay to the petitioner, Natalie Widley Farlee, or her solicitor, the sum of One Thousand Five Hundred Dollars (\$1,500.00), which it is therein adjudged and decreed is a reasonable counsel fee for the counsel of the petitioner.

And your petitioner humbly appeals from the decree of the Chancellor, which decrees the payment of Four Thousand Dollars (\$4,000.00) in weekly installments as aforesaid, and also from that part of the order that decrees the payment of the sum of One Thousand Five Hundred Dollars (\$1,500.00) as counsel fees, upon the ground that the same is erroneous, in that, said allowance for alimony is excessive, unreasonable and improper, and that the amount of allowance for counsel fees is excessive, and that the defendant is unable and has not the faculties wherewith to pay the same.

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Your petitioner, therefore, prays that the said order or decree of the 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 may seem just.

Dated, May 11, 1927.

JACOB L. NEWMAN,
Solicitor of Defendant-Appellant.

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Petition on Appeal.

Service of a certified copy of the within petition on appeal is acknowledged this 18th day of May, 1927.

JOHN L. RIDLEY,
Solicitor of Respondent.

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Answer to Petition on Appeal.

ANSWER TO PETITION ON APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p><i>Between</i></p> <p>NATALIE WILDEY FARLEE, <i>Petitioner-Respondent,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HART SCUDDER FARLEE, <i>Defendant-Appellant.</i></p>	}	<p><i>On Appeal from the Court of Chancery.</i></p> <p><i>Answer to Petition on Appeal.</i></p>	10
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The answer of Natalie Wildey Farlee, the above-named respondent, to the petition of appeal of Hart Scudder Farlee, the above-named appellant. 20

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that an order was, on the 4th day of April, 1927, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order, this respondent begs leave to refer thereto when the same shall be produced. 30

This respondent is advised and believes that the said order is agreeable to equity; and she prays that the same may be affirmed with costs to be taxed in favor of this respondent.

JOHN L. RIDLEY,
Solicitor for and of Counsel with Respondent.

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Order.

ORDER.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	
10	NATALIE WILDEY FARLEE, <i>Petitioner,</i>	}
	<i>and</i>	
	HART SCUDDER FARLEE, <i>Defendant.</i>	
		<i>On Petition, etc. Order.</i>

20 This matter being opened to court by John L. Ridley, solicitor for and of counsel with the petitioner on application for an order requiring the defendant to pay the petitioner a proper allowance for her support and maintenance and that of the child of the marriage in her custody, and in payment of a reasonable counsel fee and that the decree for permanent alimony entered herein may be changed accordingly:

30 It is, on this 22nd day of November, 1926, ORDERED that the defendant Hart Scudder Farlee show cause before the Chancellor at the Chancery Chambers in Jersey City, No. 1 Exchange Place, Jersey City, New Jersey, on Monday, the 29th day of November, 1926 at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, why the decree for permanent alimony entered herein, should not be changed so that the defendant be required to pay to the petitioner Natalie Wildey Farlee a proper allowance for her support and maintenance and that of the child of the marriage in her custody and a reasonable sum for counsel fee on this application and why the defendant Hart Scudder Farlee

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Order.

should not be compelled to pay such proper allowance for the support and maintenance of the petitioner Natalie Wildey Farlee and of the child of the marriage in her custody and to pay a reasonable sum for counsel fee on this application.

It is further ORDERED that copies of this order, the petition and affidavits upon which it is founded, which said copies may be certified by the solicitor of the petitioner as true copies, be served on the defendant personally or by leaving the same with a member of his family over the age of fourteen at his usual and customary place of abode, within or without the State of New Jersey, and also by serving copies of said papers certified as aforesaid, on his solicitor, which said service shall be made within two days from the date hereof.

E. R. WALKER,

C.

Respectfully advised,

JOHN BENTLEY,
V.-C.

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Petition.

PETITION.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> NATALIE WILDEY FARLEE, <i>Petitioner,</i> <i>and</i> HART SCUDDER FARLEE, <i>Defendant.</i>	}	<i>On Petition, etc. Petition.</i>
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To his Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

20 The petition of Natalie Wildey Farlee, the above-named petitioner, respectfully shows:

1. On March 23, 1917, a final decree of divorce was entered herein in an uncontested suit instituted by me.

2. Thereafter, in the same year, a decree for permanent alimony was entered in this cause, wherein I was allowed the annual sum of \$720 for the support and maintenance of myself and the child of the marriage between me and the defendant, to wit: Natalie Potter Farlee. 30

3. Petitioner is informed and verily believes that the defendant has an income of at least \$25,000 a year derived from his business as a stock broker in New York City and from an interest he has in the estate of Henry S. Potter.

4. Petitioner has been unable to adequately support, maintain and provide for herself and her daughter on the alimony she has been getting and it has been necessary for her to work and 40

Petition.

secure the assistance of her relatives. She is now unable to continue work due to her physical condition and the help heretofore given her by her relatives has ceased.

5. Petitioner's expense has largely increased since the award of the alimony so made, due to the decrease of the purchasing price of a dollar and the fact that her daughter's expenses have been increased as she has grown older. 10

6. Petitioner prays that an order may be made requiring the defendant to pay her a proper allowance for her support and maintenance and that of the child of the marriage in her custody; also to pay forthwith a reasonable sum for the fees of counsel; and for such other relief as the circumstances of the case may render fit, reasonable and proper. 20

And your petitioner will every pray, etc.

JOHN L. RIDLEY,
Solicitor and of Counsel with Petitioner.

JAMES H. FARRELL,
Of Counsel (of the New York Bar).

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Affidavit of Natalie Wildey Farlee.

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;"><i>Between</i></p> <p>NATALIE WILDEY FARLEE, <i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p>HART SCUDDER FARLEE, <i>Defendant.</i></p>	}	<p><i>On Petition,</i> <i>etc.</i></p> <p><i>Affidavit.</i></p>
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STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

20 NATALIE WILDEY FARLEE, of full age, being duly sworn according to law, on her oath deposes and says:

1. I am the petitioner named in the foregoing petition. I have read the same and the matters and things therein contained are true to the best of my knowledge, information and belief.

2. I reside at 149 West 12th street, New York City, New York, and am thirty-seven years of age.

30 3. On or about July 6, 1915, I instituted suit for divorce against my husband, Hart Scudder Farlee, on the ground of desertion. The action was not contested and a decree *nisi* for absolute divorce was entered in this Court on September 22, 1916, and a final decree was entered on March 23, 1917.

40 4. The care and custody of Natalie Potter Farlee, the child of the marriage between me and the defendant, Hart Scudder Farlee, was awarded to me, by said decree.

Affidavit of Natalie Wildey Farlee.

5. In 1917 after the final decree a decree for permanent alimony was entered in this cause wherein and whereby it was ORDERED, ADJUDGED and DECREED that the defendant, Hart Scudder Farlee, do pay to me the annual sum of \$720, in twelve equal monthly installments in advance, the first of such payments to be made on December 1, 1917, for my support and maintenance and for the support, maintenance and education of the child of the marriage between me and the defendant. 10

6. This decree was based on the representation that the income of the defendant was very small.

7. The alimony and maintenance awarded to me by virtue of said order has been insufficient to support me and my daughter. In order to provide, support and maintain myself and my daughter I have had to work and have also received material assistance from my sister, Mrs. Edna Welty. Since I have been working I have earned on an average of between \$25 and \$30 a week. Because of my employment, I could not maintain a home for my daughter and myself and my daughter lived with my sister in Bronxville, New York, where I spent the week ends, living in the City of New York during the week so as to be near my employment. 20 30

8. About a month ago I was ordered by my physician, Dr. William F. Wright of New York City, to give up all work because of a nervous and physical collapse and I was forced to resign my position. I have been out of employment since that time and have been told that I would not be able to resume work for an indefinite 40

Affidavit of Natalie Wildey Farlee.

period, as appears from the affidavit of Dr. William F. Wright annexed hereto.

9. Since the award of alimony, the expense necessary to support and maintain my daughter have largely increased due to the fact that she is now fifteen years of age, whereas she was only six years old when the award was made. For the past year my daughter has been at St. Catherine's School, a boarding school located at Westhampton, Virginia. The expense of maintaining her there has been borne by my sister. The school expense amounts to about \$1,000 per annum with clothing, spending money, doctor's and dentist's bills extra. These other expenses amount to approximately \$300 a year. Inasmuch as the school is only in session from September to June, I have the additional expense of paying board for my daughter from June to September, which amounts approximately to \$600. My own living expense amounts to approximately \$50 a week.

10. During the time of our married life, which existed for about four years, my husband and I lived in Plainfield, New Jersey. For the first two years we lived right in the City of Plainfield, occupying a nine-room house in the best residential section of the city. We had three servants at that time and a coachman, the ground having stables thereon. We maintained at that time four horses. For the last two years of our married life we lived on a thirty-acre farm in Netherwood or Fanwood, New Jersey. We maintained the same number of servants on the farm and the same number of horses. During the four years of our married life we were living at the rate of approximately \$18,000 a

Affidavit of Natalie Wildey Farlee.

year at that time, which at the present purchasing price of a dollar would be approximately \$25,000 a year. During the last three years of our married life we had a Fiat automobile.

11. The defendant, Hart S. Farlee, is the son of J. S. Farlee, head of the firm of J. S. Farlee & Co. at 66 Broadway, New York City. The firm of J. S. Farlee & Co. are stock brokers and have a seat on the New York Stock Exchange.

12. It is a firm of about forty or fifty years' standing and has a very large and profitable business.

13. I am informed and believe that my husband is now associated with that firm and that he derives a considerable income therefrom.

14. The alimony and maintenance which has been paid to me under the decree of this Court has been paid by the check of the firm of J. S. Farlee & Co.

15. My husband, Hart S. Farlee, has always been accustomed to a life of luxury. He was educated by private tutors and matriculated at Princeton University, where he spent some time.

16. I had always been accustomed to good living. My father's home was in Plainfield, New Jersey, where we lived in a large house with a number of servants. During my girlhood my father was the owner of the Herald Square and Cosmopolitan Hotels. He died in 1913 and left no estate, having lost all his money. I was educated at the Merrill and Vanleer School the predecessor of the present Chapin School, and at the Dana School at Morristown.

Affidavit of Natalie Wildey Farlee.

17. Since the divorce, the defendant has re-married and is now living at the Livingston Court Apartments in the Brooklyn Heights Section, which is the fashionable section of Brooklyn. I am informed that the rent of his apartment is at least \$2,800 a year. I am also informed and believe that he maintains a country home at Huntington, Long Island. As a matter of fact, the Social Register of New York lists him as having such a home. I am informed and believe that he is living at the present time at the rate of at least \$25,000 a year.

18. It has also recently been brought to my notice that my former husband is the beneficiary of a trust estate created by the will of one Henry S. Potter, who died in 1884. The trustees under his will are the Security Trust Company of Rochester and Darrell D. Sully, an attorney of Rochester, New York.

19. The said Henry S. Potter left five children. His will provided for the distribution of the income equally among them. One of his children was Mary E. Hart. She received the income until her death. She died leaving three children, one of whom was Mary D. Farlee, the mother of Hart S. Farlee, my former husband. Under the trust, the said Mary D. Farlee received one-fifteenth of the income of the Potter Estate during her lifetime. Since the death of the said Mary D. Farlee my former husband, Hart S. Farlee, her only child, has been receiving the share which was formerly paid to his mother.

20. To date, the receipts of my said former husband, Hart S. Farlee, from the Potter Estate, as shown by the account filed in the office of the

Affidavit of Natalie Wildey Farlee.

Surrogate of the County in which Rochester is situated, have been as follows:

August 1, 1924.....	\$3,038.89	
February 1, 1925.....	3,024.75	
Plus surplus	625.43	
August 1, 1925	2,944.79	
February 1, 1926	3,028.68	10
Surplus	664.12	

21. From the foregoing figures it appears that Hart S. Farlee's income from the Potter Estate alone is in excess of the annual sum of six thousand six hundred dollars (\$6,600).

22. The life of the trust created by the will of Henry S. Potter is measured by the lives of two grandchildren, Henry N. Potter and Reynolds P. MacAlpine, but, under the terms of the will, if Henrietta Potter, the sole surviving child of the testator, predeceases the two grandchildren, then the trust ends. According to the will, the corpus of the estate, upon the termination of the trust, is to be divided among the ten grandchildren or their children. Henrietta Potter, the only living child of the testator, upon whose death the trust will end, is, I am informed and believe, over ninety years of age.

23. My former husband, Hart S. Farlee, has an expectancy at present, I am informed and believe, of one-ninth of the corpus of the estate, Reynolds P. MacAlpine, one of the two grandchildren above referred to, having died and without issue.

24. The value of the Potter Estate, when it was taken over by the present trustees on February 11, 1924, was one million four hundred and thirty-two thousand one hundred and twenty

Affidavit of Natalie Wildey Farlee.

dollars and ninety-one cents (\$1,432,120.91) as appears from the figures on file in the Surrogate's Court.

10 25. Since the divorce, the defendant herein has not seen our daughter, nor has he made any attempt to see her or in anyway exhibited the slightest interest in her.

26. My sister will not be able to give me hereafter any financial assistance. She has moved to Akron, Ohio, and she and her husband are under great expense because he is now quite ill and has been compelled to give up all work.

NATALIE WILDEY FARLEE.

20 Sworn to and subscribed before me this 18th day of November, 1926.

GEORGE E. MAGEE,
Notary Public N. Y. Co.
New York County Register's No. 30.
Commission expired March 30, 1928.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

30 WILLIAM F. WRIGHT, being first duly sworn according to law, deposes and says that he is a physician duly registered and licensed to practice medicine in the State of New York. That he was graduated from the College of Physicians and Surgeons in 1879, has been connected with New York Hospital and other hospitals and dispensaries and has devoted much time to disease of the nervous system.

40 That the above-named Natalie Wildey Farlee has been under his professional care since September, 1926. That she suffered a physical col-

Affidavit of Natalie Wildey Farlee.

lapse on September 26, 1926, attended by such a degree of nervous disturbance that it has been necessary for him to order, and he has ordered, that she refrain from all work for an indefinite period. That she may never be able to resume such work as she has been accustomed to or any regular employment.

10

WILLIAM F. WRIGHT.

Sworn to before me this 12th day of November, 1926.

GEORGE E. MAGEE,
Notary Public.

(Certificate of County Clerk, New York County.) 20

30

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Order.

ORDER.

IN CHANCERY OF NEW JERSEY.

10	Between NATALIE WILDEY FARLEE, <i>Petitioner,</i> and HART SCUDDER FARLEE, <i>Defendant.</i>	}	<i>On Petition for Divorce.</i> <i>On Petition for Increase of Alimony.</i> <i>Order.</i>
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20 This matter coming on to be heard in the presence of John L. Ridley, solicitor for and of counsel with petitioner and William J. Morrison, Jr., of Morrison, Lloyd & Morrison, solicitor for and of counsel with defendant, on application by the petitioner for increase of alimony, and good cause being shown by the petition, affidavits and proofs taken in open court why the petitioner is entitled to relief in the premises;

30 It is thereupon, on this 4th day of April, 1927, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED that the defendant, Hart Scudder Farlee, do pay to the petitioner or her solicitor, until the further order of this Court to the contrary, the annual sum of Four Thousand (\$4,000) dollars, in equal weekly installments at the beginning of each and every week from the date of this order; Three Thousand (\$3,000) dollars of said annual sum being considered and deemed a suitable allowance for the petitioner's support and maintenance, and the sum of One Thousand (\$1,000) dollars of said
 40 annual sum being considered and deemed a suit-

Order.

able allowance for the care, maintenance, education and clothing of Natalie Potter Farlee, the infant child of the marriage.

And it is further ORDERED, ADJUDGED AND DECREED that the defendant, Hart Scudder Farlee, forthwith pay to the petitioner or her solicitor, the sum of \$1,093.33 said sum representing the difference between the amount which would have been paid to the petitioner or her solicitor under this order, if this order had been made on November 29, 1926, the date of the return of the order to show cause herein, and the amount paid by the defendant under the former order of this Court; (it having been agreed between counsel that adjournments of the hearing procured at the defendant's request should not delay the payment of increased alimony, if awarded).

It is further ORDERED, ADJUDGED AND DECREED that the defendant, Hart Scudder Farlee, further pay to the petitioner or her solicitor, the costs of this proceeding to be taxed and also the sum of \$1,500.00 which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of the petitioner; that the said petitioner do have execution for said costs and counsel fee according to the practice of this Court.

E. R. WALKER, 30
C.

Respectfully advised,
 JOHN BENTLEY,
 V.-C.

Hart Scudder Farlee, direct.

Q What was the nature of that business? A Brokers—bond and stock brokers.

Q Where was the business located? A 66 Broadway, New York City.

Q Is that business still in operation? A It is being carried on by my father; yes, sir. 10

Q Was the business a successful business? A No, it was not. It was, up to a certain point.

Q And what point? A In 1920 and 1921.

Q And what happened at that time? A We lost a great deal of money.

Q What is your present occupation? A My present occupation is, I am a broker in—well, wholesale broker in stocks. At least, that is what I endeavor to make it.

Q Do you receive any salary or wages? A No, sir. 20

Q And do you make any profit out of your present business? A I did not last year, no, sir.

Q You have an interest, have you not, in the Potter estate? A Yes, sir.

Q What relation was Potter to you? A My great grandfather.

Q And what share of his estate were you entitled to? A I think it is an undivided 9th. It is a portion of a 9th. 30

Q Do you receive at present, and have you received for some time, a part of the income of the Potter estate? A Yes, two years, since my mother's death.

Q And that is all you have received and are now receiving from the Potter estate? A Yes, sir.

Q Do you hold the entire ownership of your share in the Potter estate? A I don't quite understand you. 40

Hart Scudder Farlee, direct.

Q Do you hold, or have you disposed of a part of, your share in the Potter estate? A Yes, sir.

Q Yes, what? A I have disposed of it.

Q I show you a paper, dated April 26, 1923, and ask you whether you know the signatures on that paper? A I do, sir. 10

Q And whose signatures are they? A My mother's, my own, and Mary A. Brigham.

Mr. Morrison: This paper is an assignment of a part of the estate. I offer it in evidence.

(Admitted and marked Exhibit P. 1.)

Q I show you another document, dated April 6, 1923, and ask you whether you know the signatures on that document? A I do, sir. 20

Q And whose signatures are they? A Marabel H. Farlee's and my own.

Q And Marabel H. Farlee was your mother? A Yes.

Mr. Morrison: I offer this in evidence.

(Admitted and marked Exhibit P. 2.)

Q I show you another paper, dated June 21, 1924, and ask you whether you know the signatures on that document? A Yes, sir. 30

Q And whose signatures are they? A Mary A. Brigham and Hart S. Farlee.

Mr. Morrison: I offer that paper in evidence.

(Admitted and marked Exhibit P. 3.)

Q I show you still another paper, dated June 21, 1924, and ask you whether you know the 40

Hart Scudder Farlee, direct.

signatures on that paper? A Yes, sir, Frederic A. Hodgman and Hart S. Farlee.

Mr. Morrison: I offer that in evidence.
(Admitted and marked Exhibit P. 4.)

10 Q I show you a paper dated October 20, 1924, and ask you whose signature is annexed to that?
A That is my signature.

Q And I show you another paper, dated October 20, 1927, and ask you whose signature that is? A My signature.

Q Were these two papers one transaction?
A Yes, sir.

Mr. Morrison: I offer, together, the two papers last-mentioned, being a note and an assignment.

20 (Admitted and marked Exhibit P. 5.)

Q I show you a paper dated December 21, 1926, and ask you whose signatures are annexed to that paper? A Hart S. Farlee and Nelson Baldwin Farlee.

Mr. Morrison: I offer that in evidence.
(Admitted and marked Exhibit P. 6.)

30 Q Mr. Farlee, I direct your attention to Exhibit P. 1, which is a paper dated April 6, 1923, signed by your mother and yourself to Mary A. Brigham; will you tell what, if anything, was the consideration for the making of that agreement?
A The consideration?

Q Yes. Were you paid some money, or owe some money? A No, the firm of J. S. Farlee & Company owed Mary A. Brigham the sum mentioned.

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Hart Scudder Farlee, cross.

Q Were you one of the partners of that firm?
A I was.

Q I call your attention to Exhibit P. 2, dated April 6, 1923, made by your mother and yourself to Frederic A. Hodgman; what, if anything, was the consideration for that? A The firm of J. S. Farlee & Co., owed Mr. Hodgman that amount of money.

Q I call your attention to the paper marked Exhibit P. 3, made by yourself to Mary A. Brigham, dated June 31, 1924; what if anything was the consideration for that? A That is the same amount, and it is a supplementary contract, I believe, after the death of my mother.

Q Supplementing the one marked Exhibit P. 1? A Yes, sir.

Q I call your attention to Exhibit P. 4, between yourself and Frederic A. Hodgman, dated June 21, 1924; was that also a supplement to Exhibit P. 2? A Yes.

Q I call your attention now to the two papers, the note made by you of \$40,000, dated June 20, 1924, and the agreement accompanying it; what was the consideration, if any, for that? A The firm of J. S. Farlee & Company owed my aunt that amount of money.

Q I call your attention now to the last exhibit, P. 6, dated December 21, 1926, between yourself and your second wife; what, if anything, was the consideration for that paper? A Moneys loaned to me.

Cross examination by Mr. Ridley.

Q In reference to this Exhibit P. 1, let me ask you whether or not that \$74,520 was paid simultaneously with the execution of this agreement? A No, sir.

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Hart Scudder Farlee, cross.

Q Was the agreement executed and the money paid in one and the same transaction? A No, sir; that was a debt of the company's—J. S. Farlee & Co.

Q And the firm of J. S. Farlee & Co. consisted of you and your father? A Yes, sir.

10 Q No other partner or partners? A No, sir.

Q Was the indebtedness of Mary A. Brigham contracted in one transaction, or had it run over a period of time? A That had run over a period of time, but it was one transaction; the amount of money was deposited in one lump sum.

Q I mean, what was it, money for the purchase of stocks placed with the firm? A Yes, sir.

Q And at the time this was executed was the firm of J. S. Farlee & Co. in funds to pay this or not? A No, sir.

Q Mary A. Brigham is the wife of Mr. Brigham, a New York lawyer? A Yes, sir.

Q As I understand it, P. 1 and P. 3, which is the agreement dated June 21, 1924, are one and the same transaction? A Yes, sir.

Q Has this money, or any part of it, been paid by the firm of J. S. Farlee & Co., or by anyone for that firm? A No, sir.

30 Q You have no interest in the firm at the present time? A No, sir.

Q When did that interest cease? A January 1, 1924.

Q January 1st? A I believe it was, yes.

Q Nineteen twenty-four? A Yes.

Q And this is, primarily, a firm obligation; it is not your obligation? A It is a firm obligation.

40 Q And when you severed your connection with J. S. Farlee & Company was this firm obli-

Hart Scudder Farlee, cross.

gation taken care of? A It was taken care of by those papers.

Q And these papers were executed prior to your getting out of the firm? A Yes, sir.

Q And thereafter you severed your connection with the firm? A Yes, sir.

10 Q When you severed your connection with the firm did you receive any money or any other consideration from the firm when you were getting out? A No, sir.

Q Was there any agreement made whereby the firm would take care of this firm obligation? A No, sir.

Q There was no agreement, you say? A No, sir.

Q Did the firm of J. S. Farlee & Company own a seat on the Stock Exchange? A The original firm did, yes.

Q Who were the members of the original firm? A It consisted of Mr. Farlee, Mr. Tarbell and Mr. Finch. That firm was dissolved in—I think it was 1914 or 1915.

Q And at that time did you become a member of the firm? A I became a member of the firm after that.

Q How long after? A Immediately after.

Q At that time did the firm own a seat on the New York Stock Exchange? A No, sir.

Q Did it ever subsequently own a seat on the New York Stock Exchange? A No, sir.

Q Did it own a seat or trade in any other market? A No, sir.

Q Where are your offices? A 66 Broadway.

Q With your father? A No, sir; I have desk-room.

Q With him? A No, sir.

Q Not with him? A No, sir.

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Hart Scudder Farlee, cross.

Q What is the number of your office? A 906.

Q 906, 66 Broadway? A Yes.

Q In what office have you desk-room? A
F. Bianchi Tomkins.

The Court: I suppose that is the firm
10 name?

A No; it is a man's own name.

Q How long have you had desk-room with
them? A Two years. It is an individual; it is
not a firm.

Q This agreement, P. 2, and the subsequent
one, P. 4, dated, respectively, April 6, 1923, and
June 21, 1924, states that Jacob S. Farlee is in-
debted to the party of the second part; who was
Jacob S. Farlee? A My father.

20 Q What did he owe to Hodgman \$35,000 for?
A It was a firm matter, sir.

Q And you assumed that obligation of the
firm? A Yes, sir.

Q Has that obligation been paid? A No,
sir.

Q Has any part of it been paid? A No, sir.

Q Who is Mr. Frederic A. Hodgman? A
He is a personal friend of my father's and a cus-
tomer of the concern.

30 Q Not related to you or your father? A No,
sir.

Q Is he alive? A He is.

Q And where does he live at the present time?

A Tuckahoe, New York.

Q What address? A I couldn't tell you, sir.

Mr. Farrell: He has no street address.

Q Have you received from your father any
promise of indemnification to you against these
40 two firm obligations? A No, sir.

Hart Scudder Farlee, cross.

Q Who is Harriet H. Wiltsie? A My aunt.

Q This instrument, comprising Exhibit P. 5,
recites an indebtedness of \$40,000 to Harriet H.
Wiltsie; was that a firm indebtedness? A It
was, sir.

Q That was for money given by Harriet H.
Wiltsie to the firm for these purchases of stock? 10
A No, sir; it was a loan.

Q When was the loan made? A I can't tell
you exactly, but I think it was in 1921.

Q Prior to the execution of this assignment
and this note? A Yes, sir.

Q The \$35,000 owed by the firm to Hartman
was owed prior to the execution of P. 2 and P. 4,
was it not? A Yes, sir.

Q Exhibit P. 6 is an assignment of your in-
terest in the estate of Henry S. Potter to Melli- 20
cent Baldwin Farlee? A Yes, sir.

Q That is your wife? A Yes, sir.

Q Is there any evidence of this or any other
indebtedness that you have to your second wife?
A Two notes, yes, sir.

Q Have you them with you? A No, sir; I
have not.

Q They were executed when? A One was
executed last May and the other one a year ago 30
this month, I believe.

Q They are in your wife's possession? A
They're in my wife's possession.

Q The primary purpose of this agreement,
P. 6, Mr. Farlee, was to prevent your first wife
from reaching this Potter Estate which was
vested in you? A It was not.

Q You are positive of that? A Yes, sir.

Q And it was after you were served with the
papers that you had this assignment executed?
A No, sir. 40

Hart Scudder Farlee, cross.

Q At whose instance was it executed? A It was an assignment in view of the fact—

Q At whose instance was it executed; who asked you? A Nobody asked me to execute it.

Q You executed it of your own free will? A Yes, sir.

10 Q No one suggested it to you? A No, sir.

Q Your second wife didn't suggest it to you? A No.

Q And no one else? A No, sir.

Q Purely voluntarily and a child of your own brain? A Yes, sir.

Q Now, you are living at 59 Livingston street, Brooklyn, aren't you? A Yes, sir.

Q And you occupy there an apartment? A Yes.

20 Q That is an apartment house? A Yes, sir.

Q And it is in a very exclusive section of Brooklyn, is it not? A Not any more; it is a business section.

Q How large an apartment do you occupy there? A Seven rooms.

Q What is the rent of the apartment? A \$2,800 a year.

30 Q And you have been occupying that apartment for how long? A Two years. This is my third year.

Q You maintain a summer place at Huntington, Long Island? A I do not.

Q You did, didn't you? A I did.

Q And up to what time did you maintain it? A A year ago last November.

Q And that consisted of what? A Nine acres of ground, a house and garage.

Q Is that owned by you? A No, sir.

Q Whom is it owned by? A My wife.

40 Q Your second wife? A Yes, sir.

Hart Scudder Farlee, cross.

Q Was that establishment run by you? A Yes, sir.

Q Expenses paid by you? A Some of it.

Q Did you have any servants? A Yes.

Q At Huntington, L. I.? A Yes.

Q How many? A Two maids and a gardener. 10

Q And you maintain a staff of servants at your present address? A One maid.

Q Do you own an automobile? A I do not.

Q How long since you have owned an automobile? A I haven't owned an automobile for three years.

Q Does your wife own an automobile? A She did.

Q Until what time? A A year ago. To be exact, last spring.

20 Q Do the two children by your second wife go to school? A One goes to school and the other goes to a little day nursery.

Q What school does the one go to? A They both go to the same, the Packer Institute.

Q In New York City? A In Brooklyn.

Q And that is a hired school, is it not? A Yes.

30 Q The tuition of which is how much? A \$160 for the oldest and \$95, I believe, for the little one.

Q For how long a period of time? A For the winter.

Q One year or a term? A One year. Pardon me, I believe those figures are correct. Mrs. Farlee paid those bills and I don't wish to be exact about that.

Q (By the Court.) Do you know whether or not they are substantially correct? A Yes, sir.

40 Q Your father, you say, lives with you? A Yes.

Hart Scudder Farlee, cross.

Q And does he pay part of the expense of the establishment? A Once in a while.

Q You are practically supporting your father, are you not? A Yes.

10 Q And he lives there board free? A He is supposed to pay \$100 a month, and that is the reason we took this apartment.

Q Now, Mr. Farlee, I'm not asking you what your reasons are. A I beg pardon.

Q So that you are supporting your father at the present time, I understand? A No, sir; I wouldn't say I was supporting him.

Q You are not supporting him? A No, sir.

Q He is actively engaged in business? A Yes.

20 Q How old a man is he? A Seventy-four.

Q How big an office has he? A He has office rooms in the firm of Henry I. Clark & Co.

Q And does business under the name of Leopold Farlee & Co.? A Yes, sir.

Q Have you any interest whatsoever in that firm? A No.

30 Q Was the firm dissolved by any formal agreement, Mr. Farlee? A The firm was dissolved as a firm and conducted by my father, as I understood.

Q So I understand you to say, but I say, was it dissolved when you got out by any formal writing? A No, I just retired from the firm.

Q Did you execute any papers, or make any statement of any assets or liabilities at the time you got out? A No, sir.

Q Was that always an equal partnership with your father? A No, sir.

40 Q What share did you have in that firm? A Well, I had about a 40% interest.

Hart Scudder Farlee, cross.

Q And that was not incorporated? A No, sir; it was a partnership.

Q Weren't there any partnership papers executed between you and your father? A Yes, sir.

10 Q Have you copies of them? A I haven't them here. I have copies, yes. 10

Q When you got out there was no division of the spoils, was there? A There wasn't anything to divide.

Q There wasn't anything to divide except debts? A Exactly.

Q Did you divide all debts? A What was considered my portion of the debts.

20 Q Did your father assume the payment of any of the firm liabilities? A Firm liabilities? Yes, sir. 20

Q What did those liabilities consist of? A Moneys loaned, moneys on deposit.

Q Amounting to how much? A I can't be exact, sir.

Q Have you any documents or paper to show that? A I haven't; no, sir.

Q You haven't? A No, sir; my father has.

Q Can you procure them? A Yes.

30 Q After you severed your connection with the firm of J. S. Farlee & Co. and took out from that firm nothing but debts, as you say, you then engaged in business for yourself as a stock broker? A No, sir; I went with the firm of T. Hall Keyes & Co. 30

Q For how long were you with them? A I was with them a year and a half.

Q And under what arrangement? A As a partner.

40 Q And when you left them did you take any substantial amount of money with you? A No, sir; that firm lost money also. 40

Hart Scudder Farlee, cross.

Q Did you make any money during that year and a half yourself? A No, sir.

Q For the last two years you have been engaged in business for yourself? A Yes, sir.

10 Q And for the past two years have you made any money? A For the past two years—I will tell you: (Witness takes from his pocket a paper.) In 1925, I made approximately \$11,000. That includes my interest in the Potter estate. That was my gross income.

Q How about 1926? A 1926, this last year, my gross income was \$7,700.

Q Excluding your interest in the Potter estate? A No, sir; including my interest in the Potter estate, \$4,833.47.

20 Q What did that represent? A That represents my gross income, taking out the interest on any share which I had to take out for Mrs. Brigham and Mr. Hodgman, insurance premiums, etc.

Q But it does not include your interest in the Potter estate? A It does; my interest in the Potter estate last year amounted to \$6,626.61.

Q And that \$4,000 is what you made, net, I understand? A That is what I received, net, last year.

30 Q After payment of insurance premiums, etc.? A Yes, but that does not include my office expenses, which amounted around \$1,800.

Q You mean that is your office expenses? A Yes, sir.

Q Now, during this period of time you were living at this Livingston street apartment, paying \$2,800 a year rent? A Yes, sir.

40 Q And maintaining a home at Huntington, L. I.? A No, sir. No, we have not been at Huntington for two years and a half.

Hart Scudder Farlee, cross.

Q You always had servants at your Livingston street address? A No, sir; we had only one.

Q Up until when? A Up until about two months ago.

Q And those consist of what? A A cook and a maid. 10

Q What did you pay the cook? A \$16 a week.

Q What did you pay the maid? A \$17 a week.

Q Was the cook discharged subsequently to the time this application was served on you? A Yes.

Q Have you filed an income tax return? A Not this year. 20

Q Did you file one in March, 1926, for the year prior? A These figures that I am giving you were taken from the income tax.

Q Where did you file your return? A In Brooklyn.

Q With the Internal Revenue Bureau in Brooklyn? A Yes.

Q Did you file a state income tax report? A Yes.

Q Where did you file that? A Albany. 30

Q You have had an income from the Potter estate during the past two years, have you not? A Yes.

Q You were not entitled to an income from the Potter estate prior to that, were you? A No, sir.

Q And do you expect to receive it in the future? A I hope to.

Q Do you know the value of the total estate? A I believe it is around a million, four forty thousand dollars. 40

Hart Scudder Farlee, cross.

Q A million, four forty thousand dollars?
A I believe so.

Q And you have an interest in that of one-ninth of the corpus, have you not? A The one-ninth is divided up into three parts. My aunt, Mrs. Wiltsie gets one-third, another branch
10 gets one-third, and I get one-third.

The Court: I thought there was a recital in one of those assignments that he took an undivided one-ninth.

The Witness: I get \$6,600, or whatever it is; I have it here.

Mr. Brigham: He gets one-fifteenth of the income.

20 Q And that one-fifteenth amounts to \$6,600?
A Approximately that. Sometimes it varies.

Q That is a fair presumption of what the income is? A Yes.

Q Do you know whether the estate of Henry S. Potter, deceased, has shown any increase from year to year? A No, it has not; it has gone along at about that rate as long as I can remember. There were some securities there that I
30 believe proved valueless after awhile which brought the estate down instead of increasing it.

Q As a matter of fact, the corpus of the estate is larger than at the time of Mr. Potter's death, is it not? A No; as a matter of fact, it is smaller. I believe when Mr. Potter died the estate was valued around \$2,000,000.

Q Do you know whether or not there has been any payment made out of the principal of the estate since the death of Henry S. Potter?
40

Hart Scudder Farlee, cross.

A Why, no, sir; not that I know of. I don't believe they would be allowed to.

Q When did you marry your present wife?
A June 8, 1917.

Q That is within two or three months of your final decree or the decree granted to your former wife? A Yes. 10

Q And since your marriage to your present wife you have lived in a very comfortable manner? A In a very comfortable manner, yes.

Q At the rate of about what a year? A Well, I couldn't say exactly; I should say, approximately, \$600 or \$650 a month?

Q Six hundred or \$650 a month? A I should say so. That is roughly speaking. It might be a little more. 20

Q You have had a couple of servants during that time, have you not? A Yes.

Q Where did you live after your marriage?
A We lived at first with my father and mother.

Q Did you pay any part of the household expenses? A Yes.

Q What part? A I can't remember, sir; it is so long ago.

Q Did you have an automobile at one time?
A Yes. 30

Q Have a country home? A We lived with my father and mother in the country at Huntington.

Q Since that time have you taken any trips abroad? A Yes, sir; last summer.

Q Is that the first one? A Yes.

Q Have you taken any trips during the summer to any parts of this country? A I have gone to Maine on a vacation.

Q Did you have a home there? A A camp. 40

Hart Scudder Farlee, cross.

Q Have you owned any automobiles since that time—since you were married? A Yes, sir.

Q How many? A Why, I have had one.

Q Have you had any chauffeur? A No.

Q Never? A I have never had a chauffeur; 10 no, sir.

Q When you were living with your first wife you had a coachman, did you not? A Well, he was a man around the place. I don't know whether you would call him a coachman or not.

Q What were his duties? A To take care of the place; take care of the horses, do work as a gardener—a man of all work.

Q Have you seen your daughter by your first marriage since you were married to your second wife? A No. 20

Q Have you ever made any effort to see her? A No, sir.

Q When was the last time you did see her? A In 1913, sir.

Q Ever written to her? A No, sir.

Q Ever send her any Christmas presents? A No, sir.

Q Any birthday presents? A No, sir. 30

Q Were you in the service during the war, Mr. Farlee? A Yes.

Q What branch? A A branch of the Intelligence.

Q Connected with the army? A Yes, sir.

Q How long were you in the service? A I was in service—I was in service as an individual from May, 1918, and I was inducted into the service on October 8, 1918. I received my discharge in February of 1919.

Q Service in this country or abroad? A In 40 this country.

Hart Scudder Farlee, cross.

Q Do you keep any books of your business, Mr. Farlee? A Why, it hasn't been necessary, sir.

Q Well, have you ever kept any books of your business? A No, sir.

Q Have you a bank account? A Not now.

Q What bank did you have an account in? 10 A Liberty National Bank.

Q When did that cease? A It ceased either the latter part of October or the first of November, sir.

Q Latter part of October or the first part of November, 1926? A Yes, sir.

Q What is the address of the Liberty National Bank? A 57th street, between 7th and 8th avenues, New York.

Q You have had no other bank account in the last year? A No, sir. 20

Q That was a checking account? A Yes, sir.

Q Does your wife have a bank account? A Yes, sir.

Q What bank? A Brooklyn Trust Company.

Q Do you own any real estate? A I do not.

Q Did you ever own any real estate? A I have owned property in Huntington for about two months that was turned over to my wife. At least, I didn't actually own it; it was in my name. 30

Q What consideration was paid for the house in Huntington, Long Island? A \$40,000 was paid by my father-in-law.

Q Will you please confine your answers to my questions. What consideration was paid for the house in Huntington, Long Island? A All right. I was adding it up.

Q Forty thousand dollars? A No, sir; 40 \$65,000.

Hart Scudder Farlee, cross.

Q And that was in cash? A No; twenty-five mortgage and forty cash.

Q Whom was that sold to? A James H. Cauldwell.

Q What is his address? A 115 Broadway.

Q What did he pay? A \$56,000.

10 Q Cash? A Yes.

Q Had the mortgage been paid off prior to the date of Mr. Cauldwell's purchase? A The mortgage was paid off at the sale.

Q Did the \$56,000 include the mortgage, or over and above the mortgage? A It included the mortgage.

Q And the mortgage at the time of the sale was how much? A It amounted to—well, I can't tell you, sir, because Mrs. Farlee received \$16,000 in cash from Mr. Cauldwell.

20 Q When you bought the house did you buy it furnished? A No, sir; the house was built by Mrs. Farlee.

Q And was it thereafter furnished by you? A By Mrs. Farlee and me jointly, and my mother furnished most of the house.

Q When the house was sold were the furnishings sold with it? A Some.

30 Q And was that included in the \$56,000 consideration? A Yes, sir.

Q Did that money go into your wife's bank account? A Yes, sir.

Q This alimony that you have paid to your first wife for the support of herself and your daughter consisted of \$720 a year; that is right, isn't it? A That is correct.

Q Was that paid by your check? A No, sir; paid by check of J. S. Farlee & Co.

40 Q And was it paid at your direction? A It was paid at my direction by giving J. S. Farlee & Co. the equivalent in cash.

Hart Scudder Farlee, cross.

Q It was generally paid behindhand? A It was generally paid around the 4th or 5th or 6th; two or three months it has been later than that.

Q During the period of time since you last saw the daughter by your first marriage have you made any inquiries or received any reports as to how she was being supported? A In a roundabout way; yes, sir. 10

Q And that roundabout way was what? A By asking people who were more or less acquainted.

Q Are you satisfied to have your daughter brought up on the funds of others? A I didn't know that it was being so brought up.

Q You knew that she couldn't live in the same way as the children of your second marriage on \$720 a year? A I understood Mrs. Farlee was receiving other moneys. 20

Q From whom? A I don't know, sir. I believe she worked some—held a position that had something to do with conducting dancing.

Q Do you know whether she is working now? A I do not, sir.

Q (By the Court.) How old is the daughter? A Sixteen next month.

Q You do expect to educate the two children by your second wife, do you not? A I do. 30

Q Send them to private school? A No, sir.

Q They're going to private school now? A They are.

Q Do you expect to take them out of there? A I do.

Q When? A Next year; in fact, this year.

Q Where will you send them? A Wherever we live.

Q Do you expect to move from the Livingston street apartment? A If we can break the lease. 40

Hart Scudder Farlee, cross.

Q How long has the lease to run? A Until next October.

Q And that is signed by you? A Yes, sir.

Q Have you in contemplation any way of making any money in any business? A I don't know; I'm endeavoring to get a position, sir.

10 Q How long have you been endeavoring to get a position? A A month.

Q And yet you haven't made any money for two or three years, have you? A No, sir.

Q What steps have you taken to get a position during the past month? A Why, I have seen a number of people, and also have friends who have been inquiring.

Q Have you any promise of employment? A I have no promise; no, sir.

20 Q Any prospect? A I have.

Q What sort of a prospect? A What do you mean, sir?

Q What is that prospect? A What kind of a firm, do you mean?

Q Yes, what business? A The advertising business.

Q What do you expect to make? A I don't know, sir.

Q Have you any idea? A No, sir.

30 Q When this order was made in this court, requiring you to pay your first wife for her support and the support of the daughter by your first marriage, it was a consent order, was it not? A I don't understand you.

Mr. Morrison: I believe the record will show that.

40 Q Was it a consent order? A I have a letter here from Mr. Condict. I don't know whether it shows it or not.

Hart Scudder Farlee, cross.

The Court: It might and it might not.

Q Does it show your signature? A Yes, sir.

Q Were you present at any negotiations leading up to the consent by you to pay this sum of \$720 a year? A No, sir.

Q (By the Court.) How was it payable, at the rate of \$60 a month? A \$60 a month. 10

Q Was there any testimony taken at that time as to your annual income? A I believe there was, sir.

Q And will you tell us what your annual income was at that time? A I think it was around \$4,000 or \$4,500 a year. I was receiving \$100 a week, I believe.

Q Wasn't there a representation made by you, Mr. Farlee, that you were getting \$25 a week at that time? A I can't remember, sir; I don't know; maybe I was. Maybe my salary was increased after that, sir; I don't know. 20

Q Whom were you working for at that time? A J. S. Farlee & Company.

Q Didn't you have an interest at that time? A No, not at that time.

Q Do you recollect testifying in any proceeding brought by your wife? A I wasn't in court; no, sir. 30

Q You were not in court? A No, sir.

Q Did you sign any affidavit? A I couldn't tell you, sir; that is a long time ago.

Q Do you know whether it was based on an assumed income of \$25 a week at that time? A I don't know, sir.

Q Were the moneys advanced by your second wife paid to you in a lump sum? A One amount consisting of \$28,000, and the firm borrowed from her father on a note, and when her father died that amount was taken out of her 40

Hart Scudder Farlee, cross.

share of his estate, and I stood liable for it, giving her my note for it. The other amounts were given in lump sums.

Q The other amounts were given in various lump sums? A Various lump sums.

10 Q And they ran over what period of time?
A Two or three years.

Q And what sum total? A The sum total is over \$68,000.

Q And what were the moneys used by you for? I see you are looking at something. A Certainly; it is just the figures here, Mr. Ridley. You are perfectly welcome to see them.

Q What are the figures taken from? A From Mrs. Farlee's check book at the time she gave me the money.

20 Q And you took them off when? When did you make this thing up? A Last year.

Q May I look at this? A Yes. This amount here (indicating on paper) is the amount included in Dr. Baldwin's estate, \$28,000.

Q Well, now, you say you received \$16,000 from your wife when she got that money when the house was sold? A Yes, sir.

Q You got \$7,000 out of your father's life insurance? A Yes, sir.

30 Q And \$18,000 from what? A From her portion of the estate of her grandfather.

Q Who were the T. Hall Keyes & Co.? A That was a firm in which I had a partnership.

Q Was that \$18,000 participated in by them? A No, sir.

Q Was that lost in stock speculations by the firm? A Bad deals.

Q Twenty-eight thousand dollars you say your father obtained on a note? A Yes.

40 Q From your wife's father? A Yes, sir.

Hart Scudder Farlee, re-direct.

Q And you assumed that and executed this other note? A Yes.

Q I show you, Mr. Farlee, what purports to be a copy of an answer filed by you in the maintenance suit started by your former wife against you, in which it is said that this defendant, that is you, further answering denies that he has a total income of upward of \$8,000 or \$10,000, but on the contrary earns \$25 a week and that constitutes his entire income. A Well, that was probably so at the time. 10

Q You were just getting \$25 a week from J. S. Farlee & Co.? A Yes, sir.

Q And shortly after that— A I don't know how long afterwards.

Q Well, some time after that you had \$100 a week? A I had a drawing account of \$100 a week. 20

Q And a third of the profits? A Yes, sir.

Mr. Ridley: I think that is all I want to ask him.

Re-direct examination by Mr. Morrison.

Q Mr. Farlee, has your father any other children but you? A No, sir. 30

Q When you receive this six thousand and odd dollars from the Potter estate what do you do with it, keep it? A No, sir; I pay Mr. Brigham and Mrs. Wiltsie their interest, and also the life insurance premiums on the policies which protect my indebtedness to them in case of my death before the estate falls due.

Q How much of that six thousand and odd dollars do you have left? A I have the remainder. 40

Hart Scudder Farlee, re-cross.

Q How much does that amount to? A It amounted this last year—well, with what I made, \$4,800, out of which I pay office expenses, and \$2,900.64 is the interest and insurance premiums.

Q That is the amount you pay out? A Yes.

10 Q Probably \$3,000 out of the \$6,500? A Yes, sir.

Re-cross examination by Mr. Ridley.

Q When did you take that insurance out? A A year ago last July, right after my mother's death.

Q Any subsequent insurance? A Yes.

Q When? A A year ago.

20 Q I mean, since a year ago.

The Court: No, he says he took out the big policies he has been talking about a year and half ago.

Q What company is that in? A The Aetna.

Q And amounts to how much? A \$45,000.

Q A year ago you took out how much? A That is the \$45,000 policy that I took out a year ago to protect Mr. Brigham and Mr. Hodgman.

30 Q (By the Court.) You said a little while ago a year and half ago. A A year and half ago; I beg pardon.

Q And then you said you took out some insurance after that about a year ago. A Yes, sir; \$25,000 in the Mutual Benefit of New Jersey.

Q Any subsequent to that? A No, sir.

Q Whom is the \$45,000 payable to? A Mary A. Brigham and Frederic A. Hodgman.

40 Q And to whom is the \$25,000 payable? A To Mellicent B. Farlee, my wife.

Exhibit P. 1.

Q What is the premium on the \$45,000? A \$410 and some odd once a year.

Q What is the premium on the \$25,000? A \$175 quarterly.

Q What interest do you pay? A Six per cent.

Q And you pay Mr. Brigham what amount? 10
A \$7,200, the amount of my assignment.

TESTIMONY CLOSED.

EXHIBIT P. 1.

THIS AGREEMENT, made this 6th day of April, one thousand nine hundred and twenty-three, 20
between MARABEL HART FARLEE and HART S. FARLEE, of Huntington, in the County of Suffolk, State of New York, as parties of the first part, and MARIE A. BRIGHAM, of the City of New York, County of Kings and State of New York, as party of the second part, WITNESSETH:

THAT, for and in consideration of the sum of One Dollar and a general release by the party of the second part to JACOB S. FARLEE, bearing even date herewith and delivered simultaneously 30
with this instrument releasing said JACOB S. FARLEE from an indebtedness to the party of the second part in the sum of seven thousand two hundred fifty & 20/100—(7250.20) dollars and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, the parties of the first part hereby assign, transfer and set over to the party of the second part, all the right, title and interest of the parties of the first part as remainderman or otherwise, 40

Exhibit P. 1.

under the last will and testament of Henry S. Potter, late of the City of Rochester, County of Monroe and State of New York, and the codicils thereto, duly admitted to probate by the Surrogate's Court of the County of Monroe, on the 13th day of April, 1885,

10 PROVIDED, however, that if the parties of the first part, their heirs, executors or administrators shall pay or cause to be paid to the party of the second part the sum of seven thousand two hundred fifty & 20/100 (\$7250.20) dollars on the 6th day of April, 1928, with interest at six per cent per annum payable semi annually on the 6th days of April and October in each year, or, if the trust now existing in respect of the property hereinbefore mentioned under said last will and testament of Henry S. Potter shall be terminated prior to said 6th day of April, 1928, then and in that event, within one year from the date of such termination, this instrument shall be null and void.

20 THE parties of the first part further covenant and agree to pay the said sum of seven thousand two hundred fifty & 20/100 (\$7250.20) dollars on the 6th day of April, 1928, or one year after the termination of the said trust estate hereinbefore mentioned, with interest at six per cent per annum on said sum payable on the 6th days of April and October in each year until said sum is fully paid, and that the whole of said principal sum shall become due and payable on the failure of the parties of the first part to pay any instalment of interest as hereinbefore provided.

30 THIS instrument is executed simultaneously with another instrument between the parties of the first part and FREDERICK A. HODGMAN, bearing even date herewith, and it is understood that

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Exhibit P. 1.

the rights under each of said instruments are of like priority and right, and that any payments other than payments in full of the sums to become due under and by virtue of both of said instruments shall be made *pro rata* to the respective parties of the second part mentioned in said instruments. 10

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

MARABEL H. FARLEE (L. s.)
HART S. FARLEE (L. s.)
MARIE A. BRIGHAM (L. s.)

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss. 20

On this 6th day of April, 1923, before me came MARABEL HART FARLEE, to me known, and known to me to be the person mentioned in and who signed the foregoing instrument and acknowledged to me that she executed the same.

EDWARD A. RYAN,
(Notarial Seal) Notary Public Richmond Co.
New York Country Clerk's No. 694. 30
New York County Register's No. ~~1124~~
Commission Expires March 30, 1924.

Exhibit P. 1.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

10 On this 6th day of April, 1923, before me came HART S. FARLEE, to me known, and known to me to be the person mentioned in and who signed the foregoing instrument and acknowledged to me that he executed the same.

EDWARD A. RYAN,
(Notarial Seal) Notary Public Richmond Co.
New York County Clerks No. 694.
New York County Register's No. ~~1424~~
Commission Expires March 30, 1924.

20 STATE OF NEW YORK, }
CITY & COUNTY OF NEW YORK. } ss.

On this 6th day of April, 1923, before me came MARIE A. BRIGHAM, to me known, and known to me to be the person mentioned in and who signed the foregoing instrument and acknowledged to me that she executed the same.

30 J. CHARLES TOTTEN,
(Notarial Seal) Commissioner of Deeds,
New York City.
Residing in Kings County.
N. Y. Co. Clerk 30 Register 24010
Kings Co. Clerk 39 Register 4010
Bronx Co. Clerk 4 Register 3015
Queens Co. Clerk 620
Term expires April 25, 1924

Exhibit P. 2.

EXHIBIT P. 2.

THIS AGREEMENT, made this 6th day of April, one thousand nine hundred and twenty-three, between MARABEL HART FARLEE and HART S. FARLEE, of Huntington, in the County of Suffolk, State of New York, as parties of the first part, and FREDERICK A. HODGMAN, of Tuckahoe, in the County of Westchester, State of New York, as party of the second part, WITNESSETH: 10

THAT, for and in consideration of the sum of One Dollar and a general release by the party of the second part to JACOB S. FARLEE, bearing even date herewith and delivered simultaneously with this instrument releasing said JACOB S. FARLEE from an indebtedness to the party of the second part in the sum of thirty-five thousand two hundred forty-three and 75/100 (\$35,243.75) dollars and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, the parties of the first part hereby assign, transfer and set over to the party of the second part, all the right, title and interest of the parties of the first part as remainderman or otherwise, under the last will and testament of Henry S. Potter, late of the City of Rochester, County of Monroe and State of New York, and the codicils thereto, duly admitted to probate by the Surrogate's Court of the County of Monroe, on the 13th day of April, 1885, 20 30

PROVIDED, however, that if the parties of the first part, their heirs, executors or administrators shall pay or cause to be paid to the party of the second part the sum of thirty-five thousand two hundred forty-three & 75/100 (\$35,243.75) dollars on the 6th day of April, 1928, with interest at six per cent per annum payable semi annually 40

Exhibit P. 2.

10 on the 6th days of April and October in each year, or, if the trust now existing in respect of the property hereinbefore mentioned under said last will and testament of Henry S. Potter shall be terminated prior to said 6th day of April, 1928, then and in that event, within one year from the date of such termination, this instrument shall be null and void.

20 THE parties of the first part further covenant and agree to pay the said sum of thirty-five thousand two hundred forty-three & 75/100 (\$35,243.75) dollars on the 6th day of April, 1928, or one year after the termination of the said trust estate hereinbefore mentioned, with interest at six per cent per annum on said sum payable on the 6th days of April and October in each year until said sum is fully paid, and that the whole of said principal sum shall become due and payable on the failure of the parties of the first part to pay any instalment of interest as hereinbefore provided.

30 THIS instrument is executed simultaneously with another instrument between the parties of the first part and MARIE A. BRIGHAM, bearing even date herewith, and it is understood that the rights under each of said instruments are of like priority and right, and that any payments other than payments in full of the sums to become due under and by virtue of both of said instruments shall be made *pro rata* to the respective parties of the second part mentioned in said instruments.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

40 MARABEL HART FARLEE (L. s.)
 HART S. FARLEE (L. s.)
 FREREDICK A. HODGMAN (L. s.)

Exhibit P. 2.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK. } ss.

On this 6th day of April, 1923, before me came MARABEL HART FARLEE, to me known, and known to me to be the person mentioned in and who signed the foregoing instrument and acknowledged to me that she executed the same. 10

EDWARD A. RYAN,
 Notary Public Richmond Co.
 New York County Clerk's No. 694
 New York County Register's No. ~~1124~~
 Commission Expires March 30, 1924

STATE OF NEW YORK, } 20
 COUNTY OF NEW YORK. } ss.

On this 6th day of April, 1923, before me came HART S. FARLEE, to me known, and known to me to be the person mentioned in and who signed the foregoing instrument and acknowledged to me that he executed the same.

EDWARD A. RYAN,
 Notary Public Richmond Co. 30
 New York County Clerk's No. 694
 New York County Register's No. ~~1124~~
 Commission Expires March 30, 1924

Exhibit P. 3.

STATE OF NEW YORK, }
CITY & COUNTY OF NEW YORK. } ss.

10 On this 6th day of April, 1923, before me came
FREDERICK A. HODGMAN, to me known, and known
to me to be the person mentioned in and who
signed the foregoing instrument and acknowl-
edged to me that he executed the same.

J. CHARLES TOTTEN
(Notarial Seal) Commissioner of Deeds,
New York City
Residing in Kings County
N. Y. Co. Clerk 30 Register 24010
Kings Co. Clerk 39 Register 4010
Bronx Co. Clerk 4 Register 3015
Queens Co. Clerk 620
20 Term expires April 25, 1924

EXHIBIT P. 3.

30 This agreement made this 21st day of June,
1924, by and between Hart S. Farlee of Hunting-
ton, New York, party of the first part and Marie
A. Brigham, of the City of New York, County
of Kings and State of New York, party of the
second part, WITNESSETH:

Whereas, the said party of the first part and
Marabel Hart Farlee, since deceased, did enter
into an agreement with the said party of the
second part, dated April 6, 1923, which is hereto
annexed and made a part hereof and

40 Whereas the said Hart S. Farlee and Marabel
Hart Farlee did fail to pay the installment of
interest which by the terms of the annexed
agreement fell due April 6, 1924 and the prin-
cipal sum \$7,250.20 mentioned in said agreement

Exhibit P. 3.

thereby became immediately due and payable
and

Whereas the said party of the first part is
entitled to receive a portion of the net annual in-
come of the trust estate created by the will of
Henry S. Potter, deceased, mentioned in the
said annexed agreement and 10

Whereas said payments of net income are
made to the party of the first part semi-annually
in August and February of each year and

Whereas said party of the first part desires
the party of the second part to waive her
right to consider the principal sum mentioned in
said annexed agreement as now due and payable
on account of the failure to pay the interest
which fell due on April 6, 1924 as by said an-
nexed agreement provided and 20

Whereas the party of the first part has ob-
tained a policy of insurance upon his life from
Aetna Life Insurance Company of Hartford,
Connecticut, for the sum of \$45,000 and has as-
signed said policy of insurance to the party of
the second part to secure the payment of said
sum of \$7,250.20 and interest thereon men-
tioned in said annexed agreement, and to Fred-
erick A. Hodgman to secure an indebtedness of 30
said party of the first part to said Hodgman
for \$35,243.75 and interest thereon.

Now THEREFORE this agreement witnesseth

That for and in consideration of the sum of
One Dollar by each party to the other in hand
paid, receipt of which is hereby acknowledged,
and of the covenants hereinafter contained, it is
mutually covenanted and agreed, as follows:

40 FIRST: That the said agreement hereto an-
nexed shall be modified as follows: That the
next interest payment shall fall due on the 10th

Exhibit P. 3.

day of August, 1924, and thereafter interest shall be paid semi-annually on the 10th days of February and August of each year until the whole principal sum shall be paid in accordance with the terms of said agreement and the said party of the first part agrees to make interest payments in accordance with such modifications and that the whole of said principal sum shall immediately become due and payable on the failure of the party of the first part to pay any installment of interest as so provided.

SECOND: Said party of the first part agrees to pay the premiums as and when they become due and payable on the said policy of life insurance and if the party of the first part fails to make any such payments of interest or premiums of such life insurance policy then in that event he hereby authorizes and directs the executors and trustees of the last will and testament of said Henry S. Potter, deceased, and the codicils thereto to pay to the said party of the second part such unpaid interest and life insurance premiums paid by her out of the next installment of income which shall be payable to him by such executors or trustees and thereafter to pay directly to the party of the second part all future installments of interest under said agreement and to pay directly to said insurance company all future premiums which shall become due on such life insurance policy.

THIRD: If the party of the first part shall fail to pay any premium on said life insurance policy when it becomes due the party of the second part may pay such premium and any sum or sums so paid shall be deemed an addition to said principal sum of \$7,250.20 until paid by said executors and trustees as herein provided.

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Exhibit P. 3.

FOURTH: The said party of the second part acknowledges payment of \$217.50 in payment of the installment of interest which became due April 6, 1924 and waives her right to consider the whole principal sum and interest mentioned in said agreement as now due and payable and consents that the said principal sum and interest thereon shall be payable in accordance with the terms of the annexed agreement as hereby modified.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

MARIE A. BRIGHAM.
HART S. FARLEE.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 21st day of June, 1924, before me personally appeared Hart S. Farlee, to me known and known to be one of the parties who executed the foregoing agreement and duly acknowledged that he executed the same.

MARCUS M. McCULLOUGH
Notary Public Kings Co.
Cert. filed New York Co.

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Exhibit P. 4.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

10 On this 21st day of June, 1924, before me personally appeared Marie A. Brigham, to me known and known to be one of the parties who executed the foregoing agreement, and duly acknowledged that she executed the same.

MARCUS M. McCULLOUGH
Notary Public Kings Co.
Cert. filed New York Co.

EXHIBIT P. 4.

20 This agreement made this 21st day of June, 1924, by and between Hart S. Farlee of Huntington, New York, party of the first part and Frederick A. Hodgman of Tuckahoe, New York, party of the second party, WITNESSETH:

Whereas, the said party of the first part and Marabel Hart Farlee, since deceased, did enter into an agreement with the said party of the second part, dated April 6, 1923, which is hereto annexed and made a part hereof and

30 Whereas the said Hart S. Farlee and Marabel Hart Farlee did fail to pay the installment of interest which by the terms of the annexed agreement fell due April 6, 1924 and the principal sum \$35,243.75 mentioned in said agreement thereby became immediately due and payable and

40 Whereas the said party of the first part is entitled to receive a portion of the net annual income of the trust estate created by the will of Henry S. Potter, deceased, mentioned in the said annexed agreement and

Exhibit P. 4.

Whereas said payments of net income are made to the party of the first part semi-annually in August and February of each year and

Whereas said party of the first part desires the party of the second part to waive his right to consider the principal sum mentioned in said annexed agreement as now due and payable on account of the failure to pay the interest which fell due on April 6, 1924 as by said annexed agreement provided and 10

Whereas the party of the first part has obtained a policy of insurance upon his life from Aetna Life Insurance Company of Hartford, Connecticut, for the sum of \$45,000 and has assigned said policy of insurance to the party of the second part to secure the payment of said sum of \$35,243.75 and interest thereon mentioned in said annexed agreement and to Marie A. Brigham to secure an indebtedness for \$7,250.20 and interest thereon. 20

Now THEREFORE this agreement witnesseth

That for and in consideration of the sum of One Dollar by each party to the other in hand paid, receipt of which is hereby acknowledged, and of the covenants hereinafter contained, it is mutually covenanted and agreed, as follows:

30 FIRST: That the said agreement hereto annexed shall be modified as follows: That the next interest payment shall fall due on the 10th day of August, 1924, and thereafter interest shall be paid semi-annually on the 10th days of February and August of each year until the whole principal sum shall be paid in accordance with the terms of said agreement and the said party of the first part agrees to make interest payments in accordance with such modifications and that the whole of said principal sum shall 40

Exhibit P. 4.

immediately become due and payable on the failure of the party of the first part to pay any installment of interest as so provided.

10 SECOND: Said party of the first part agrees to pay the premiums as and when they become due and payable on the said policy of life insurance and if the party of the first part fails to make any such payments of interest or premiums of such life insurance policy then in that event he hereby authorizes and directs the executors and trustees of the last will and testament of said Henry S. Potter, deceased, and the codicils thereto to pay to the said party of the second part such unpaid interest and life insurance premiums paid by him out of the next installment of income which shall be payable to 20 him by such executors or trustees and thereafter to pay directly to the party of the second part all future installments of interest under said agreement and to pay directly to said insurance company all future premiums which shall become due on such life insurance policy.

THIRD: If the party of the first part shall fail to pay any premium on said life insurance policy when it becomes due the party of the second part may pay such premium and any sum or sums so paid shall be deemed an addition to 30 said principal sum of \$35,243.75 until paid by said executors and trustees as herein provided.

FOURTH: The said party of the second part acknowledges payment of \$1,057.35 in payment of the installment of interest which became due April 6, 1924 and waives his right to consider the whole principal sum and interest mentioned in said agreement as now due and payable and consents that the said principal sum and interest 40 thereon shall be payable in accordance with the

Exhibit P. 4.

terms of the annexed agreement as hereby modified.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

FREDERICK A HODGMAN 10
HART S FARLEE

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 23rd day of June, 1924, before me personally appeared Hart S. Farlee, to me known and known to be one of the parties who executed the foregoing agreement, and duly acknowledged that he executed the same. 20

MARCUS M. McCULLOUGH
Notary Public Kings Co
Cert. filed New York Co.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

On this 21st day of June, 1924, before me personally appeared Frederick A. Hodgman, to me known and known to be one of the parties who executed the foregoing agreement, and duly acknowledged that he executed the same. 30

MARCUS M. McCULLOUGH
Notary Public Kings Co
Cert. filed New York Co.

*Exhibit P. 5.***EXHIBIT P. 5.**

\$40,000 Rochester, N. Y., Oct. 20, 1924.

10 On demand after date, I promise to pay to the order of Harriet H. Wiltsie Forty Thousand Dollars (40,000) at Rochester, New York, value received with interest at 5% per annum on unpaid balances, if any, from the date of the termination of the trust under the Will of Henry S. Potter, deceased, on the death either of his daughter, Henryetta Potter, or of his grandson, Henry N. Potter.

HART S FARLEE

20 WHEREAS, I, Hart S. Farlee, a great grandchild of Henry S. Potter, deceased, and sole child, descendant and heir of Marabell H. Farlee, deceased, a grandchild of said Henry S. Potter, deceased, am entitled as remainderman to the undivided one-ninth (1/9) part of all the assets and properties of the Estate of Henry S. Potter, deceased, under the terms and provisions of his last Will and Testament, as now in the possession and administration of the executors and trustees thereof, upon the termination of the trust thereunder;

30 And whereas I am indebted to Harriet H. Wiltsie of Rochester, New York, in the sum of Forty Thousand Dollars (\$40,000) upon a promisory note in said sum dated October 20th, 1924 with interest as in said note provided, and desire to secure her for the payment of the same.

40 Now, therefore, I, said Hart S. Farlee in consideration of One Dollar (\$1) paid and in consideration of a general discharge and release to myself and to my father, Jacob S. Farlee, bearing even date herewith as executor and simul-

Exhibit P. 5.

taneously delivered by said Harriet H. Wiltsie, and for other valuable considerations hereby acknowledged, do hereby sell, assign, and transfer unto said Harriet H. Wiltsie, her executors, administrators, and assigns so much of my remainder and other interest in said Estate of Henry S. Potter as necessary, and a sufficient part thereof, to pay said note and said sum of Forty Thousand Dollars (\$40,000) with interest as in said note provided, or so much thereof as may remain unpaid at the time of the termination of the trust under the said last Will and Testament of said Henry S. Potter, deceased, upon the death either of his daughter, Henryetta Potter, or of his grandson, Henry N. Potter; and I hereby authorize and empower said Harriet H. Wiltsie, her executors, administrators or assigns at such time to receive and collect the same from the executors and trustees of said Estate of said Henry S. Potter, deceased. And I hereby request, authorize, and direct the said trustees and executors of the Estate of said Henry S. Potter, deceased, under the terms of his last Will and Testament to pay to said Harriet H. Wiltsie, her executors, administrators, or assigns upon the termination of said trust, said note and sum of money with interest as therein provided, or so much thereof as at that time shall remain unpaid, and upon such payment to accept the receipt of said Harriet H. Wiltsie, her executors, administrators, or assigns in payment thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of October, 1924.

HART S FARLEE

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Exhibit P. 6.

EXHIBIT P. 6.

THIS INSTRUMENT, dated the 21st day of December, 1926, Between HART S. FARLEE, of the City of Brooklyn, N. Y., of the first part, and MELLICENT BALDWIN FARLEE, of the same place, of the second part, WITNESSETH:

WHEREAS the party of the first part is entitled to a vested remainder in an undivided fractional part of the remaining assets and properties of the estate of Henry S. Potter, late of the City of Rochester, N. Y., deceased, under the terms and conditions of his Last Will and Testament and codicils thereto, admitted to probate by the Surrogate's Court of the County of Monroe, N. Y., on the 13th day of April, 1885, subject to the terms and conditions of said Last Will and Testament and upon the termination of the trust under said Will; and

WHEREAS the party of the first part has heretofore executed and delivered certain collateral assignments of his said remainder interest, as follows:

- 1. To Marie A. Brigham, dated April 6, 1923, to the extent of \$7,250.20
- 2. To Frederick A. Hodgman, dated April 6, 1923, to the extent of 35,243.75
- 3. To Harriet H. Wiltsie, dated December 11, 1922, to the extent of 3,000.00
- 4. To Harriet H. Wiltsie, dated June 29, 1923, to the extent of 2,500.00
- 5. To Harriet H. Wiltsie, dated October 20, 1924, to the extent of 40,000.00

Exhibit P. 6.

Now, THEREFORE, in consideration of the sum of One Dollar (\$1.00) paid to the party of the first part, and of the release and discharge by the party of the second part of all claims for loans and advances heretofore made by the party of the second part to the party of the first part, and of all accounts payable and all existing financial liabilities as agent or otherwise by and of the party of the first part to the party of the second part, and of the release and discharge of all claims of every name and nature, either at law or in equity, and now existing in favor of the party of the second part against the party of the first part, and other good and valuable considerations, the receipt of which is hereby confessed and acknowledged, the party of the first part has sold, granted, assigned, transferred and conveyed, and does hereby sell, grant, assign, transfer and convey to the party of the second part absolutely, and subject only to rights, claims or liens of others arising out of and under the aforesaid assignments at the time of the termination of said trust, all the right, title and interest of the party of the first part as remainderman or otherwise at the time of such termination in and to the principal of the estate of said Henry S. Potter, deceased.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

HART S FARLEE L. S.
MELLICENT BALDWIN FARLEE L. S.

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Exhibit P. 6.

STATE OF NEW YORK }
COUNTY OF KINGS } ss.

10 On this 22nd day of December, 1926, before me, the subscriber, personally appeared HART S. FARLEE, to me known and known to me to be the same person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

F. G. NASH,
Notary Public, Kings Co.
Kings Co. Reg. No. 8011 Clerks No. 11
(L. s.) Commission expires March 30, 1928

20 STATE OF NEW YORK }
COUNTY OF KINGS } ss.

On this 22nd day of December, 1926, before me, the subscriber, personally appeared MELLICENT BALDWIN FARLEE, to me known and known to me to be the same person described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

30 F. G. NASH,
Notary Public, Kings Co.
Kings Co. Reg. No. 8011 Clerks No. 11
(L. s.) Commission expires March 30, 1928

Assignment of Interest in the Estate of
Henry S. Potter, Deceased.

Hart S. Farlee
to
Mellicent Baldwin Farlee

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Memorandum of Opinion.

MEMORANDUM OF OPINION.

Filed May 26, 1927.

IN CHANCERY OF NEW JERSEY.

Between 10
NATALIE WILDEY FARLEE, *Petitioner,*
and *Memorandum*
HART SCUDDER FARLEE, *Defendant.* *of Opinion.*

March 29, 1927.

John L. Ridley, Esq., for the petitioner. 20
William J. Morrison, Jr., Esq., for the defendant.

BENTLEY, V.-C.:

On motion for increased permanent alimony.
In 1917, a decree was entered in this cause, divorcing the petitioner from her husband. At that time a so-called "consent order" was made, whereby the defendant was directed to pay the sum of \$720 annually for the support and maintenance of the petitioner and the child of her marriage with the defendant, who was then a little girl of five years. It would appear that both of the parties were members of well-to-do families at the time of their marriage and also at the time of their divorce; but the petitioner has since been obliged to secure employment so as to eke out an existence for herself and her daughter, who today is a well-grown girl of fifteen. Recently the petitioner's health has be- 40

Memorandum of Opinion.

come such that she is not able to continue her own exertions.

10 The defendant presents every indication of a well-educated, intelligent man. He has been a member of a firm of stock-brokers which, he says, has utterly failed, and he is now attempting to pursue a similar business in which he has not scored any brilliant success. He is a beneficiary under the will of his great-grandfather who died in 1884 by succeeding to the right of his mother at her death. If the defendant outlives someone else he will become entitled to, I think, one-ninth of a very substantial estate worth almost \$1,500,000. At present, he receives about \$6,600 annually in income from this estate. He attempts to discount this item, however, by 20 saying that he has made assignments of almost \$85,000 to various individuals to secure debts contracted by the firm mentioned above. It is not without interest to observe that he seems to have undertaken to secure these creditors of the firm, although his father was equally liable.

30 As observed by petitioner's counsel, these assignments are all to individuals bearing such relation to the defendant as to cause them to be of some significance. One assignment is in favor of the wife of the New York counsel who appeared for the defendant in this very motion. Another is an old friend of the defendant's father. The third is to one of the defendant's aunts; and the last assignment runs in favor of the present wife of the defendant and was made after the order to show cause was allowed that is the foundation of this motion.

40 While the petitioner and the defendant's daughter by his first marriage are living upon a pittance paid by him and largely upon the

Memorandum of Opinion.

bounty of others, he is residing in apparent affluence with his second wife and two children that have been born to them. Both of these children are attending private schools and living with their parents in an expensive apartment in Brooklyn. It is true that he has testified that they will be obliged to abandon the apartment and the children will be removed from their private school after this year, and one of their two servants either has been dispensed with or will presently be discharged, in the interest of economy. But the fact remains that this man admits a scale of living that I think it is fair to assume would require an annual expenditure of at least \$25,000 a year. I am sick and tired of listening to parties explain why their condition today is so infinitely worse than it was yesterday, in cases like this, where the misfortune to which this man attributes his alleged straitened circumstances are of several years' standing. 10

It appears to be a condition attached to all of the assignments against the defendant's interest in his great-grandfather's estate that he shall keep his life insured to the extent of \$45,000 and pay the premiums. He is also obliged to pay interest on the moneys secured by the assignments, and thus, he says, his income of 30 \$6,600 from the estate is reduced, as I recall his testimony, to about \$3,000 annually. He also admits that he was able to earn last year about \$2,500. Not only does it seem ridiculous to me that a man of the defendant's apparent ability and position in society should only be able to earn so small a sum by his exertions, but it is significantly pointed out in the brief filed for the petitioner that on this miserable income the de- 40

Memorandum of Opinion.

defendant was able last year to live in the manner just outlined and to enjoy a trip to Europe with his family.

10 Briefly, we have a picture of a man in the very prime of life, residing with his second wife in an apartment for which he pays rent at the rate of \$2,800 a year; in the summer occupying an expensive establishment at one of the resorts on Long Island; with his family requiring the assistance of two servants in his household; sending his children to a private institution; traveling abroad with his family, and only paying to his first wife who has proved him guilty of some matrimonial offense, and a daughter who will soon become a young lady, the sum of \$62.50 a month. He has not explained 20 to my satisfaction why he is making so little, or, in fact, that he is not making a great deal more. And, on the strength of his own admission, he is not paying for the support of his wife and daughter who is his own flesh and blood a fair proportion of which he is willing to admit comes into his hands each year. Nor should a man be allowed to escape a just contribution to those the law declares he must support, by saying as 30 this man says, to all intents and purposes, that he is unable to earn anything. To permit this man to deal with his wife and child on the assumption that he is only able to earn \$2,500 a year would be similar to permitting another man of less intelligence, education, refinement and experience to say that he was not able to earn more than four or five dollars a week. And if that were to be allowed the Legislature might just as well repeal the 25th section of the Divorce Act.

Memorandum of Opinion.

I think, as nearly as it is possible for anyone to assess the amount which the defendant should pay for the care and maintenance of his first wife and oldest daughter, would be to assume that, at the very least, he could secure a position that would pay him at least \$6,000 per year. If 10 there then be added to that the amount he receives from the estate of his great-grandfather, over and above the expenses entailed upon him by his assignments, he would have an annual income of \$9,000 a year. Out of that he should pay for the support and maintenance of his first wife, \$3,000, and for his daughter by that wife \$1,000. I wish that I could assume the reasoning the petitioner's counsel urges upon me and make an allowance based upon a belief that the 20 defendant is in the annual receipt of approximately \$25,000; but this I cannot safely do. It is very probable that he has married a woman of some financial means and that she is assisting him in meeting the family expenses, and if that is true it would then be most unjust to enter an order that would be beyond the realm of possibility for him to obey.

Nothing is decided as to the validity of the above-mentioned assignments, for the reason so clearly expressed by counsel for the defendant. 30 My suspicions do not amount to that belief which should always be the basis of judgment.

Under all the circumstances I think that an allowance of \$1,500 should be made counsel.

New Jersey Court of Errors and Appeals

Between

NATALIE WILDEY FARLEE,
Petitioner-Respondent,

and

HART SCUDDER FARLEE,
Defendant-Appellant.

On Appeal
from Order
in Chancery.

RESPONDENT'S BRIEF.

On March 23, 1917, the respondent herein obtained a final decree of divorce on the grounds of desertion. Thereafter, the order was made requiring the appellant to pay the annual sum of \$720 for the support and maintenance of the respondent and the daughter of the marriage. This order was entered by consent and at a time when the appellant was earning \$25.00 a week (Case, p. 45). Since the entering of this order and up until the time that the order appealed from herein was entered, the appellant continued to pay the respondent that sum of money and no more. The respondent being unable to live and support her daughter on the allowance made, obtained employment where she earned from \$25.00 to \$30.00 a week (Case, p. 11), and educated her daughter by obtaining assistance from her sister (Case, p. 12). This condition existed until shortly prior to the application which resulted in the order appealed from. At the time the application was made, the

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respondent had been forced to give up her work due to a nervous collapse (Case, pp. 11-16) and the assistance given to respondent by her sister was cut off due to the illness of respondent's sister's husband.

The application for increase of alimony was made by petition supported by affidavits on which an order to show cause was entered. The order to show cause having been served in accordance with the directions contained therein, the appellant presented himself in court and submitted to examination as to his resources. The findings of Court of Chancery were based on the affidavits submitted by the respondent and the testimony and exhibits of appellant.

The allowance of \$4,000 annually to the respondent and her infant child is reasonable.

Some point is made by the appellant of the fact that the only oral testimony was that of the appellant. To quote the brief on this point "the only evidence in the case is the uncontradicted testimony of the appellant. * * * It is to be observed that there is no testimony in the case at bar on the part of the wife. The findings made by the Vice-Chancellor are based upon the affidavits annexed to the petition, and the notice for increased alimony, so that the only evidence in the cause is the cross examination of the appellant." This statement is so contrary to the settled practice in the Court of Chancery that it seems almost inconceivable to find it in appellant's brief. The usual and customary practice is to hear these matters on affidavits. By leave of court, the husband may be examined as to his resources on the application of the wife, or may come forward himself of his own initiative and be thus examined.

Of course, affidavits on which an order to show cause is obtained at law (on certiorari for example) are not useable on the return day; but they are in equity.

The appellant did not submit any affidavit in contradiction of the wife's necessities or her inability to work and support the child of the marriage. The evidence submitted by the wife on this point, therefore, stands uncontradicted. The evidence on this point is as follows:

Since the award of alimony, the expense necessary to support and maintain my daughter have largely increased due to the fact that she is now fifteen years of age, whereas she was only six years old when the award was made. For the past year my daughter has been at St. Catherine's School, a boarding school located at Westhampton, Virginia. The expense of maintaining her there has been borne by my sister. The school expense amounts to about \$1,000 per annum with clothing, spending money, doctor's and dentist's bills extra. These other expenses amount to approximately \$300 a year. Inasmuch as the school is only in session from September to June, I have the additional expense of paying board for my daughter from June to September, which amounts approximately to \$600. My own living expense amounts to approximately \$50 a week (Case, p. 12).

The only attempt made by the husband to contradict in any way the evidence submitted by the wife was on the question of his facilities. The wife's affidavit detailed the manner and style of living to which the parties were accustomed prior to their marriage, subsequent thereto and up to the time of the divorce, the manner and style of living in which the husband had continued. This evidence was submitted following the rule in "*Diet-*

rick v. Dietrick, 88 Equity 560" (Court of Errors and Appeals):

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 a right to expect as support, if living with her husband.

The evidence by the wife on this point is:

During the time of our married life, which existed for about four years, my husband and I lived in Plainfield, New Jersey. For the first two years we lived right in the City of Plainfield, occupying a nine-room house in the best residential section of the city. We had three servants at that time and a coachman, the ground having stables thereon. We maintained at that time four horses. For the last two years of our married life we lived on a thirty-acre farm in Netherwood or Fanwood, New Jersey. We maintained the same number of servants on the farm and the same number of horses. During the four years of our married life we were living at the rate of approximately \$18,000 a year at that time, which at the present purchasing price of a dollar would be approximately \$25,000 a year. During the last three years of our married life we had a Fiat automobile.

My husband, Hart S. Farlee, has always been accustomed to a life of luxury. He was

educated by private tutors and matriculated at Princeton University, where he spent some time.

I had always been accustomed to good living. My father's home was in Plainfield, New Jersey, where we lived in a large house with a number of servants. During my girlhood my father was the owner of the Herald Square and Cosmopolitan Hotels. He died in 1913 and left no estate, having lost all his money. I was educated at the Merrill and Vanleer School, the predecessor of the present Chapin School, and at the Dana School at Morristown.

Since the divorce, the defendant has remarried and is now living at the Livingston Court Apartments in the Brooklyn Heights Section, which is the fashionable section of Brooklyn. I am informed that the rent of his apartment is at least \$2,800 a year. I am also informed and believe that he maintains a country home at Huntington, Long Island. As a matter of fact, The Social Register of New York lists him at having such a home. I am informed and believe that he is living at the present time at the rate of at least \$25,000 a year (Case, pp. 12, 13 and 14).

The appellant quotes *Rigney v. Rigney* case, 62 Equity 8, at page 13, and urges that the wife must show new facts and circumstances in order to justify a variation in the amount of alimony already allowed. It might be borne in mind that in the *Rigney* case the application was made on behalf of the husband, and seeks modification of the decree for alimony of which he resisted payment for a number of years, but assuming the rule is applicable in its fullest extent to the case at bar, we submit that the evidence herein shows "such new facts and circumstances as will justify and require a variation in the amount of alimony. * * *

The order for alimony first made, and by which

the wife procured the munificent sum of \$720 a year from her husband was based on:

1. An earning capacity by the husband of \$25 a week which constituted his entire income at that time (Case, p. 45).
2. The tender years of the child of the marriage, she then being only six years old (Case, p. 12).
3. The then purchasing price of the dollar. The facts and circumstances necessitating a change in the amount of alimony are:

1. The inability of the wife to continue to work (Case, pp. 11-16).
2. The inability of the wife's sister to continue to support and educate the daughter (Case, p. 16).
3. The defendant's receipt of the income from a trust estate which income amounts to approximately \$6,600 a year annually (Case, p. 15).
4. The increased earnings of the husband and the decreased purchasing power of the dollar.
5. The increased age of the daughter.

The appellant quotes *Walling v. Walling*, 16 New Jersey, equity 389, as laying down the rule that the case must be taken most strongly against petitioner. The *Walling* case is not applicable to the case at bar as in that case the application was for alimony *pendente lite*. Chancellor WALKER said in *Suydam v. Suydam*, 79 Equity 144, at page 149:

"Still I do not think that what Chancellor GREEN said in *Walling v. Walling*, 16 N. J. Eq.

(1 C. E. Gr.) 389, that on application for alimony *pendente lite* the case must be taken most strongly against the petitioner and that the burden of proof is upon her, was intended to have been laid down by him as a universal rule applicable alike to all cases of this character, *but that it was intended, as a perusal of the case will disclose, to be applicable only to the case then before the court*, which was one in which the application for temporary allowance was submitted upon the facts contained in the petition alone, and which were meagre and unsatisfactory." (Italics ours.)

Boyce v. Boyce, 27 Equity, page 433, lays down the rule that the wife is entitled to so much alimony as would provide for her support and maintenance equal to what she would have had a right to expect if living with her husband.

Andrias v. Andrias, 88 Equity, page 130, page 133:

"Although there is no matter-of-course rule, the allowance for permanent ~~allowance~~ ^{alimony} is usually about one-third of the husband's income for the wife's support but this one-third should not include the amount fixed for the offspring."

The evidence in the case with respect to the income of the husband is that he is now receiving an income of \$6,600 a year which he gets as a beneficiary from a trust estate, created by the will of Henry L. Potter who died in 1884. Henry L. Potter left five children. His will provided for the disposition of the income equally among them. One of his children was Mary E. Hart, who received the income until her death. When Mrs. Mary E. Hart died she left three children, one of whom was Mary E. Farlee, the mother of Hart S. Farlee, the appellant herein. The life of the trust

under which the appellant receives \$6,600 per annum is measured by the lives of two grandchildren of Henry S. Potter, but under the terms of the will, if Henrietta Potter the sole surviving child of the testator, predeceases the two grandchildren, then the trust ends and the corpus of the estate is to be divided among the grandchildren or their children.

The appellant Hart Scudder Farlee has an expectancy of one-ninth of the corpus of the estate. The value of the Potter estate in February 11th, 1924, when it was taken over by the present trustee was \$1,432,120.91 (Case, pp. 14-15).

In addition to this unearned income received by the appellant, he said that, in the year prior to the time when he testified, he earned from his own exertions the sum of \$2,500 a year (Case, p. 34), although at the time of his testifying he was making nothing. It should be observed in passing that although when the former order was made, the appellant was receiving only \$25 a week salary, within some time, thereafter (the appellant was unable to say how long), he had a drawing account of \$100 a week (Case, p. 45).

On the income hereinbefore set forth the appellant testified that he maintained an apartment at the Livingston Court Apartments in Brooklyn, for which he paid \$2,800 a year rent (Case, p. 30). Up until approximately a year prior to his testifying he maintained a summer place at Huntington, Long Island, where there were employed two maids and a gardener (Case, p. 31), and that the two children by his second wife (he having remarried within two or three months after his first wife divorced him) are in private school (p. 31), and that, while at the time the appellant was testifying only one servant was employed at his home in the Livingston Court Apartments, to wit, a cook whose wages

were \$16 a week, yet that at the time the petition and order to show cause herein was served, he was employing two servants, the other receiving \$17 a week. This servant was discharged between the time of the service of the papers and the time of his testifying. In the year prior to the time of his testimony, the appellant and his family made a trip to Europe (Case, p. 37) and had a camp in Maine.

The appellant since the time of the divorce has not seen his daughter by his first wife, he has never made any effort to see her, has never written or sent her Christmas or birthday presents (Case, p. 38). The only inquiries he has made respecting his daughter's welfare have been:

Q. During the period of time since you last saw the daughter by your first marriage have you made any inquiries or received any reports as to how she was being supported? A. In a roundabout way; yes, sir.

Q. Are you satisfied to have your daughter brought up on the funds of others? A. I didn't know that it was being so brought up (Case, p. 41).

The appellant attempts to discount the amount of income received by him by introducing in evidence certain assignments of his interest in the *corpus* of the Potter estate from which he receives at present time \$6,600 per annum. Two of these assignments were made April 6, 1923, by Farlee and his mother (Marybelle), one to Marie Brigham (the wife of the New York attorney who appeared for the defendant), for the sum of \$7,250.20 and the other to Frederick Hodgman in the sum of \$33,243.75. Both of these assignments recited a release by the parties of the second part of an indebtedness to Jacob S. Farlee. What the defendant has apparently done is to assign over

\$42,000.00 of his expectancy in the Potter estate for a supposed indebtedness of his father (Case, pp. 47-51).

On June 21, 1924, apparently after the death of Marybelle Hart Farlee, new assignments were made by Farlee to Marie Brigham and to Frederick Hodgman respectively of his interest in the *corpus* of the estate. These two assignments recite an indebtedness of Hart S. Farlee, although the prior assignments spoke of the indebtedness as being that of Jacob Farlee, the defendant's father. These two latter assignments recite that the said Hart S. Farlee has insured his life for \$45,000.00 and assigned the policy of insurance to said Marie Brigham and to Frederick Hogman and recites an agreement by Hart S. Farlee to pay the premiums on the policy of insurance, but it authorizes the executors of the Potter estate to make payment of the insurance premiums on Farlee's failure to do so. It gives a further option that in the event of Farlee's failure to pay the premiums that said Marie Brigham and Frederick Hodgman may pay the premiums and such sum or sums so paid shall be considered in addition to the respective sums recited to be due to the said Marie Brigham and Frederick Hodgman by said instruments (Case, pp. 54-58). By a later assignment, dated October 20, 1924, the defendant recites an indebtedness to Harriet S. Wiltsie in the sum of \$40,000.00 and recites a general discharge and release to himself and his father Jacob S. Farlee of the indebtedness. This instrument assigns to said Harriet S. Wiltsie, his interest in *corpus* of the estate (Case, p. 62). By another instrument, dated December 21, 1926, and *subsequent to the service on the defendant of the petition and the rule to show cause herein, Hart*

Scudder Farlee assigned to his present wife, Millicent Baldwin Farlee, all the rest of his interest in the corpus of the Potter estate. This instrument recites loans and advances purporting heretofore made by his present wife to the defendant but does not give their dates or amounts (Case, p. 64).

It should be observed in passing that all these assignments are to close friends and relatives. The first were not made for any indebtedness of the defendant himself but for the indebtedness of his father, as the instruments themselves recite, although the defendant testified that it was a firm indebtedness.

The Marie A. Brigham to whom the assignment ran, as heretofore set forth, is the wife of the New York lawyer who appeared in court for the defendant. Frederick Hodgman is an old friend of the father of Hart S. Farlee. Harriet S. Wiltsie, who is the defendant's aunt, is the wife of Charles Wiltsie, a lawyer of many years' practice and standing at the Bar, and the author of a standard text book on mortgage foreclosure.

The last assignment is to his present wife and was made after the hearing on the rule to show cause had been adjourned, at the defendant's request for the ostensible purpose of negotiations for a lump sum settlement.

In view of the fact that the assignments do not affect the income received by Farlee from the Potter estate, no attempt will be made herein to quote any authorities on the question of the validity of the assignments, although from the reading of the cases in New York, there seems to be considerable doubt as to whether or not the assignments are good.

We have discussed the assignments at some length, however, for the purpose of showing the

studied attempt on Farlee's part to deprive his first wife and his child by his first marriage of any share in the Potter estate. The will provides that in the event of Farlee's death prior to the termination of the trust ~~that~~ the corpus would go to his children. In this situation Natalie Potter Farlee would share equally with Farlee's children by his second wife, but to avoid this, Farlee has assigned all his interest in the estate to his second wife, his aunt and to close friends. He has apparently no interest in his daughter Natalie Potter Farlee as he testified that he had not seen her for thirteen years and that he has never made any attempt to communicate with her.

The brief of the appellant lays stress on the fact that the assignments (except that to his second wife) were made to square indebtedness of the firm of J. S. Farlee & Co. in which the appellant testified he was a partner, but the evidence in the assignments made April 6, 1923, by Farlee to Marie Brigham and Frederick Hodgman is that the indebtedness was that of Jacob Farlee, the appellant's father, although the assignments drawn June 21, 1924, to these two persons attempt to cover up this by making it an indebtedness of the appellant. The strong suspicion is that the indebtedness in all of the assignments to Brigham, Hodgman and Wiltsie, was that of the father and not of the firm or the son. The appellant testified that it was a firm indebtedness but none of the assignments set thus forth.

Vice-Chancellor BENTLEY^E before whom the appellant testified and who was in a position to judge him by his appearance and demeanor on the stand said:

"The defendant presents every indication of a well educated intelligent man (Case, p. 68).
"Briefly, we have a picture of a man in the

very prime of life, residing with his second wife in an apartment for which he pays rent at the rate of \$2,800 a year; in the summer occupying an expensive establishment at one of the resorts on Long Island; with his family requiring the assistance of two servants in his household; sending his children to a private institution; traveling abroad with his family, and only paying to his first wife who has proved him guilty of some matrimonial offense, and a daughter who will soon become a young lady, the sum of \$62.50 a month. He has not explained to my satisfaction why he is making so little, or, in fact, that he is not making a great deal more. And, on the strength of his own admission, he is not paying for the support of his wife and daughter who is his own flesh and blood a fair proportion of which he is willing to admit comes into his hands each year. Nor should a man be allowed to escape a just contribution to those the law declares he must support, by saying as this man says, to all intents and purposes, that he is unable to earn anything. To permit this man to deal with his wife and child on the assumption that he is only able to earn \$2,500 a year would be similar to permitting another man of less intelligence, education, refinement and experience to say that he was not able to earn more than four or five dollars a week. And if that were to be allowed the Legislature might just as well repeal the 25th section of the Divorce Act" (Case, p. 70).

Farlee's testimony that he was not at the present time earning any money should not be taken into consideration. He is a man of education and should not be allowed to sit supinely by and allow his first wife and child to suffer through his lack of energy.

Holmes v. Holmes, 29 Equity, page 9:

"Under the allowance of permanent ali-

mony for the wife after divorce, the business capability of the husband may be taken into account."

19 C. J., p. 255:

"If the income is largely or exclusively derived from the husband's personal labor the amount allowed will be less proportionally than if he was the owner of income producing property."

19 C. J., page 254:

"But the court is not restricted to the income of the husband, as such a principle, in many instances would deprive the wife of alimony." (Quoting *Richmond v. Richmond*, 2 Equity, page 90.)

The appellant attacks the amount allowed counsel and says that the amount is so large that it ought to shock the "conscience of the appellate court," and then baldly states that "the only services performed by the solicitor for the respondent was the preparation for the petition and affidavits for the increase of alimony." This statement is based on nothing but the imagination of the attorneys for the appellant who by the way were not the attorneys who represented him in the Court below, and hence are not in any position to judge as to what services were performed. The solicitor for the respondent, procured in Rochester, New York, the information with reference to the income received by appellant for the Potter estate, held conferences with her and her New York attorney with respect to the mode of living she and her husband had been accustomed to prior to marriage, their mode of living during marriage and subsequent thereto, made exhaustive examinations of the law on the questions of assignments, alimony in general and on another question of law

which was raised in the court below, and which has now been abandoned, prepared the petition and affidavits, had them served not only on the defendant, but on his former solicitor, held conferences with the attorneys representing the appellant for the purpose of attempting to arrive at a lump sum settlement which was never consummated because of the infinitesimal amount offered by the appellant, attended a hearing in court, prepared a brief which was submitted to the court below, and thereafter, attended court with the then solicitor of the appellant on argument as to the form of order, and prepared the order herein.

The allowance of alimony and counsel fee is a matter of discretion (*Marker v. Marker* 11 Equity, 256) and should not be disturbed on appeal unless it is shown that there has been abuse of discretion or that the order is the result of mistake or imposition practiced on the Court of Chancery (*Sanford v. Wellborn*, 85 Equity 577; 19 C. J. 329).

It is respectfully submitted: That there was no abuse of discretion or no mistake or imposition practiced on the Court of Chancery.

The evidence submitted as to the changed circumstances of the parties and of the income of the husband and the manner and style in which he is now living, justified the Court below in making the order appealed from.

The order herein should be affirmed.

JOHN L. RIDLEY,
Solicitor for and of Counsel
with the Respondent.

JAMES A. FARRELL,
(Of the New York Bar)
On the Brief.

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