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ORDER OF REFERENCE TO ASCERTAIN  
ALIMONY.

Filed July 9, 1929.

IN CHANCERY OF NEW JERSEY.

<hr/>	}	<i>On Bill, etc.</i>	10
<i>Between</i>			
DORA ROBINS, <i>Complainant,</i>			
<i>and</i>			
DAVID ROBINS, <i>Defendant.</i>		<i>Order of Reference to Ascertain Alimony.</i>	
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This matter being opened to the Court by Gross and Gross, solicitors of complainant, in the presence of Robert D. Grosman, Esq., solicitor of defendant, upon application to settle the final decree herein, and it appearing necessary to determine the amount to be paid as alimony herein, it is, on this 9th day of July, ORDERED that it be referred to John P. Manning, Esq., one of the masters of this court to settle and determine the amount of alimony to be directed by the final decree herein to be paid by the defendant herein to the complainant for the support and maintenance of the complainant and the children of said marriage, and

It is further ORDERED that all equities be reserved herein until the coming in of the master's report.

E. R. WALKER,  
C.

Respectfully advised,  
JOHN H. BACKES,  
V.-C.

40

**REPORT OF SPECIAL MASTER.**  
**IN CHANCERY OF NEW JERSEY.**

	<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0;">10     DORA ROBINS,</p> <p style="margin: 0; padding-left: 100px;"><i>Complainant,</i></p> <p style="margin: 0; padding-left: 100px;"><i>and</i></p> <p style="margin: 0;">DAVID ROBINS,</p> <p style="margin: 0; padding-left: 100px;"><i>Defendant.</i></p>		<p style="margin: 0;"><i>On Bill, etc.</i></p> <p style="margin: 0;"><i>Report of</i></p> <p style="margin: 0;"><i>Special</i></p> <p style="margin: 0;"><i>Master.</i></p>
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20     In pursuance of an order of this court made in the above matter bearing date the 9th day of July, 1929, whereby it was referred to me, the subscriber, one of the Special Masters, to ascertain and report the amount of alimony to be directed by the final decree herein to be paid by the defendant herein to the complainant for the support and maintenance of the complainant and the children of the marriage, I do respectfully report that I have been attended by Benjamin Gross, of Gross & Gross, solicitors of the complainant, and Robert D. Grosman, solicitor for

30     the defendant, and the defendant appearing personally, and in their presence I have taken the depositions and proofs offered and

40     I do respectfully report that two children were born of the marriage of the parties, to wit, Seymour Robins, who is twenty years of age, and who is employed, and who resides with his mother, the complainant herein, and Ethel Robins, who is twenty-two years of age, and who also resides with her mother. She is unemployed and is not in good physical condition. She is obliged to go

*Report of Special Master.*

to the White Mountains during the hay fever season and she is at the present time under the care of a physician because she suffers from hemorrhages in addition to the hay fever. The complainant and her two children reside at 463 Thirteenth street, Brooklyn, in the State of New York. The defendant is a practicing physician and resides at 94 Hawthorne avenue this city. He has been a resident of New Jersey for about eighteen months. It appears that he went to Mexico and procured a divorce from the complainant herein, and subsequently was married to the woman with whom he resides at 94 Hawthorne avenue.

10

Respecting the income of the defendant I find and report that he is in receipt of an income of over thirty-one hundred dollars a year. He is one of the examining physicians attached to the clinic that is operated by the City of Newark, and receives a salary from the City of Newark of the sum of \$75 a month. This amount he includes in his yearly income heretofore mentioned. He appears to have no other assets or income. He is a well-known physician and no doubt can earn and will earn more monies than has been heretofore mentioned.

20

I therefore respectfully report that in my judgment the defendant is financially able to pay and should pay to the complainant for her support and maintenance and that of the daughter, Ethel, of the marriage of the parties hereto, the sum of \$40 a week, and this is the amount of the alimony that should be inserted in the final decree in this cause.

30

All of which is respectfully submitted this 22nd day of July, 1929.

JOHN P. MANNING,  
Special Master in Chancery of New Jersey.

40

*Report of Special Master.*

## MASTER'S FEES.

	Attendance .....	\$ 6.00
	Depositions.	
	90 fol @ 30c .....	27.00
10	Swearing 4	
	Witnesses .....	1.00
	Marking 3	
	Exhibits .....	.45
	Report .....	10.00
	“ 6 fol	
	@ 40c .....	2.40
20		<hr/>
		\$46.85

30

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**DEPOSITIONS BEFORE SPECIAL MASTER.**

Filed August 8, 1929.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="padding-left: 40px;">DORA ROBINS,</p> <p style="padding-left: 100px;"><i>Complainant,</i></p> <p style="padding-left: 100px;"><i>and</i></p> <p style="padding-left: 40px;">DAVID ROBINS,</p> <p style="padding-left: 100px;"><i>Defendant.</i></p>	}	<p><i>On Bill, etc.</i></p> <p><i>Depositions</i></p> <p><i>Before</i></p> <p><i>Special</i></p> <p><i>Master.</i></p>	10
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Depositions in the above-entitled cause taken before me, John P. Manning, Special Master in Chancery of New Jersey, on the 17th day of July, 1929, at ten o'clock in the forenoon, at my office in Prudential Building, Newark, New Jersey, in pursuance of an order of reference made in this cause bearing date the 9th day of July, 1929, in the presence of Benjamin Gross, appearing for Gross & Gross, solicitors for the complainant, and Robert D. Grosman, solicitor for the defendant.

JOHN P. MANNING,  
Special Master in Chancery of New Jersey.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.

I, RUTH W. GARVIN, do solemnly swear that I will faithfully and truly take stenographically and will reproduce in typewriting the testimony to be given in a certain cause now pending in the Court of Chancery of New Jersey wherein Dora Robins

40

*Dr. David Robins, direct.*

is complainant and David Robins, is defendant,  
so help me God.

RUTH W. GARVIN.

Subscribed and sworn to before me  
this 17th day of July, 1929.

10

JOHN P. MANNING,  
Master in Chancery of New Jersey.

---

DR. DAVID ROBINS, the defendant, being duly  
sworn according to law, upon his oath deposed  
and testified as follows:

*Direct examination by Mr. Grosman.*

20

Q You are the defendant in this suit? A  
Yes.

Q What is your occupation? A Physician.

Q How long have you been practicing in New  
Jersey? A About a year and a half.

Q Where is your office located? A 94 Haw-  
thorne avenue, Newark, New Jersey.

Q Do you own the building there? A No. I  
just rent the bottom floor.

30

Q That is your office and also your home? A  
Yes.

Q How much rent do you pay for it? A \$65  
a month.

Q Who comprises your household? A My  
wife and her two children and myself and an old  
woman relative of my wife.

Q What occasion is there for having this old  
woman? A She helps with the household duties.

40

Q What is her name? A Dora Abramson.

*Dr. David Robins, direct.*

Q Do you pay her anything A Just her keep.

Q You just give her her meals? A Yes.

Q Have you a record of your income during the period you have been in New Jersey? A I have.

Q Is this it? (Indicating.) A Yes.

10

Q What does that show? A That shows all the moneys I have made and deposited in the bank and all the moneys I have borrowed.

Q How much money have you made and borrowed? A \$5,788.20.

*By the Master.*

Q How much of that is money you derived from your practise? A \$3,138 and some odd cents.

20

*By Mr. Grosman.*

Q How much money did you borrow?

Mr. Gross: I object to the question on the ground that it is entirely immaterial for the purpose of this application whether the money was borrowed or not.

30

Mr. Grosman: I am going to produce the bank records showing how much money was deposited and I think we ought to be able to show how much of that was borrowed and how much was earned. A man isn't obliged to contribute money he borrowed for the support of his family.

The Master: It is immaterial the source from which the money came whether he borrowed or earned it.

40

*Dr. David Robins, direct.*

Mr. Grosman: Isn't it your Honor's desire to learn how much this man is able to earn?

The Master: If he is suffering from some disability or defect that prevents him from earning money its up to you to show it.

10 Mr. Grosman: But your Honor won't permit us to show how much of the money that went through the bank account was earned and how much was borrowed?

The Master: Not at this time.

Mr. Grosman: I take an exception.

Q From what source did you derive the \$3,100 that you say you earned? A From private practise and from the position I hold in the city dispensary.

Q How much does the position in the city dispensary pay you? A \$75 a month.

Q Is that included in the figure of \$3,100 you have given us? A Yes.

Q You told us you borrowed some money have you the names of the persons from whom you borrowed the money? A Yes.

Mr. Gross: I object.

30 Q What are the names and the amounts? A Jacob Gold, \$200.

*By the Master.*

Q When was that borrowed? A When I first got to Newark, I haven't got the exact date.

Q About when? A The latter part of 1927.

Q Has any part of that been paid back? A Some part of it.

40 Q How much? A \$50.

*Dr. David Robins, direct.*

*By Mr. Grosman.*

Q There is a balance due Mr. Gold of \$150?

A Yes.

Q Did you give him a note? A No.

Q Just your promise to pay? A Yes. He is a relative of mine.

10

Q Who is the next one? A Simon Rosen, \$500.

Q Who is Simon Rosen? A My father-in-law.

Q When did you borrow that money? A In January, 1928.

Q Have you paid any of that back? A No.

Q Did you give him a note or any other evidence of indebtedness? A No.

Q Who else? A Mr. Abraham Stieglitz, \$200.

20

Q Who is he? A Just a friend.

Q When did you borrow that money? A That was in May, or rather, in June, 1928.

Q Have you paid any of that back? A No, I have not.

Q Did you give him any note or evidence of indebtedness? A No.

Q Did you give notes or evidence of indebtedness to any of these people? A No, except the Hebrew Free Loan Association. I did not mention that before.

30

Q Give us the names of the others? A Harry Bass of Newark, \$400.

Q When did you borrow that money? A One hundred dollars on October 3, 1928, and \$300 on December 17, 1928.

Q What checks have you there? A Money loaned from Harry Bass; direct checks sent to the petitioner.

40

*Dr. David Robins, direct.*

Q Payable to you? A Yes, and endorsed over to the petitioner.

Mr. Grosman: I offer those in evidence.

10 Mr. Gross: I object on the same ground; I don't think they are material to this question of the ability of the defendant to pay the alimony.

The Master: They will be accepted and marked Exhibits C. 1 and C. 2.

Q Continue. A Carl Flink of Newark.

Q How much? A \$200 from Carl Flink.

Q When was that? A \$100 in December of 1928 and \$100 in July of 1927.

20 Q Who else? A The Hebrew Free Loan of Newark, \$200.

Q When was that? A That was in October of 1928.

Q Did you give them any security? A Yes. I gave them notes.

Q No security; just notes? A Just notes.

Q How much have you paid on that loan? A I think it is all paid now.

30 *The Master:*

Q It is all paid? A Yes.

The Master: Strike that loan from the record.

Mr. Grosman: I ask an exception.

(Witness continues.) I borrowed \$100 from the bank on my note endorsed by Emil Ticener; that's been paid.

*Dr. David Robins, direct.*

Q With what bank do you deal? A The Hawthorne Avenue Trust Company. Emil Ticener, \$200.

Q Has any part of that been paid? A \$100.

Q Who else did you borrow from, if anyone?  
A Samuel Weber, \$100.

Q Any part of that been repaid? A No. 10  
Anna Bervis, \$200.

Q All still due? A Yes. Philip Rabinowitz, \$50.

Q Who else? A Sam Stieglitz, \$300.

Q You mentioned him before? A No, that was his brother.

Q All of that still due? A Yes.

Q Who else? A That's all.

Q That makes a total of how much? A \$2,650. 20

Q And you have paid on account of that how much? A About \$150.

Q What occasion was there for you to borrow all this money?

Mr. Gross: I object to that as being immaterial.

The Master: We will accept it.

A I have to pay the alimony to my wife, and I have to make a living. 30

Q Have you any property of any kind? A No.

Q Do you own any automobiles? A No.

Q How do you get around to visit your patients? A By street car or bus and sometimes if a patient knows I have no car they come for me in their own car.

Q Have you any stocks or bonds or securities of any kind? A No. 40

*Dr. David Robins, cross.*

Q How much money have you in the bank at the present time? A Five or six dollars balance.

Q How much money have you on your person? A \$11.

10 Q How long have you been practicing medicine? A Since 1905.

Q Where did you practice before you came to New Jersey? A In the City of New York.

Q And you came to New Jersey about a year and a half ago? A Yes.

Q And commenced to build up a practice here? A Yes.

Q You are entirely dependent upon your income from your practise? A Yes.

Q Have you any connections here? A Except with the city dispensary, that's all.

20 Q Have you told us everything about your income? A Yes, I have told you everything about my income.

*Cross examination by Mr. Gross.*

Q Before you came to New Jersey, you had gone to Mexico, did you not?

30 Mr. Grosman: I object to that as being immaterial. This inquiry is for the purpose of ascertaining his ability to pay.

The Master: Answer the question.

A I did.

Q When did you leave for Mexico? A In September, 1927.

Q You left from the City of New York? A Yes.

40 Q You had then been practising in the City of New York? A I did.

*Dr. David Robins, cross.*

Q You had been practising in New York City for twenty odd years? A Yes.

Q While practising in New York City you had a very lucrative practise, did you not? A At one time I did.

Q And you were well connected in New York City? You were connected with several hospitals? A No. 10

Q Were you connected with any hospital? A No, none whatsoever.

Q You were very frequently called in as a consultant? A Sometimes.

Q Your reputation in New York City was quite high? A I don't know what they thought of me.

Mr. Grosman: I want to enter an objection to this testimony as having no bearing on this inquiry; what happened two years ago in another State. 20

Mr. Gross: We want to show this man's ability to earn.

Q Putting your modesty aside, you had quite a high standing in the City of New York? A Yes.

*By the Master.* 30

Q Did you specialize in any disease? A No; general practise, in associations and lodges.

Q You litigated the question of support for your wife in the City of New York? A Yes.

Q And you resisted her suit? A I did, yes.

Q And that extended over a period of one or two years? A Yes.

Q And it was after the Court in New York State had decided against you you left for 40

*Dr. David Robins, cross.*

Mexico, some one and a half years after the decision was made against you? A Yes.

Q When you practised in New York City you had an automobile and a chauffeur, and kept up quite a nice home? A True.

Q And you had a maid in your home? A  
10 That's right.

Q And you sent your family away for regular vacations? A I did.

Q And you went on vacations yourself? A I did.

Q And your earnings were considerably more than at the present time? A Right; much more.

Q And you had on an average of twenty to twenty-five office visits a day? A I don't remember just how many; but I had a good practise.  
20

Q How much were you directed to pay to your wife and family?

The Master: Have you a copy of the order?

Mr. Gross: Yes, I have an exemplified copy which I want to offer in evidence.

Mr. Grosman: No objection.

(Copy of order is received in evidence and marked Exhibit C. 1.)  
30

Q Your earnings during the past year in Newark, amount to the sum of \$3,800? A For the past year and a half.

Q Is your practice improving here? A Not now, in the summer months.

Q Well, generally speaking, over the past two months, has it improved? A Not very much.

Q You pay a monthly rental of \$65 per month? A Yes.  
40

*Dr. David Robins, cross.*

Q How old are these two children who live with you? A One is ten and one is twelve.

*By the Master.*

Q Are you the father of these children? A No. They are my wife's children. 10

*By Mr. Gross.*

Q You pay for the food used in the household? A I do.

Q There are five people in the household? A Yes.

Q What do you pay a month for food? A I don't know what I pay a month, but I give \$15 a week towards the expenses.

Q You also clothe your present wife and her two children? A I do. 20

Q How much do you pay for their clothes? A I don't know, I haven't any record of it.

Q Approximately? A I don't know how much of that goes with the \$15 a week I give and how much comes out of the \$15 a week the father of the children pays for their maintenance.

Q The children attend public school? A Yes.

Q You pay for the clothing of your present wife? A I do. 30

Q How much do you pay for that? A I just give her the money I make and she buys a dress or a skirt or whatever she needs; I don't know.

Q You don't keep any money for yourself? A Yes, two or three or five dollars a week.

Q And you say that is sufficient spending money? A Well, I don't smoke and I don't drink, and I don't need any more.

Q You pay for your own clothing? A Yes. 40

*Dr. David Robins, cross.*

Q How much do you pay for that a year? A I don't know. I possibly buy about two suits a year.

Q You also carry life insurance? A Yes.

Q How much life insurance do you carry? A \$10,000.

10 Q How much is the premium on that a year? A \$290 or \$280 a year.

Q Payable annually or semi-annually? A Semi-annually.

Q You pay the electric light bills in the home, and the gas bills? A Yes.

Q You pay all the household expenses? A My wife pays all the expenses. I give her \$15 a week and she writes the checks.

20 Q You give her the money and she writes the checks? A Yes.

Q You practically pay through her? A Yes.

Q You pay the expenses with the exception of the \$15 that is contributed by the father of the children? A Yes.

Q That's food, clothing, gas and electric bills, telephone bills and your wife's and your clothing and all other incidentals? A Yes.

30 Q Have you ever sent your present wife and her children on a vacation? A No.

Q In addition, you paid your former wife, \$50 a week in accordance with the order made by Vice-Chancellor Bentley, and on which you are in arrears \$265? A Yes.

40 Q So this year, out of \$5,500 approximately, you have maintained your household and paid about \$3,500 alimony to your former wife; in that year and a half? A I didn't pay the alimony for a year and a half. The order was made a year ago last June.

*Dr. David Robins, cross.*

Q I will modify the question. You paid her \$2,500? A Yes, minus the \$265.

Q But you are one month past the year? A I thought it was just one year.

Q This \$5,500 includes the borrowed money that you speak of? A Yes.

Q You are also physician for certain lodges in this city? A Yes. 10

Q What are their names? A Chechanovitza and Briska.

Q Do you get a salary from these lodges? A No.

Q Do you make charges to the members when you are called? A No.

Q Do you perform the services gratuitously? A No. They pay the organization and the organization pays me. It pays me 25 cents a year quarterly for each member. 20

Q How many members are there? A I haven't a list; I was just appointed the first of this month.

Q Don't you know that this first lodge you mentioned has a membership of 800? A No. When I first entered they told me they had a membership of 200, but I don't know.

Q How much did they tell you the second one has? A 150. Every three months they give me twenty-five cents; that's \$1 a year per member. I don't know how much it will mean to me. 30

Q As a matter of fact these lodges are business getters, are they not? A I don't know what they might be. This 25c means something to me, and so I took it.

Q Did you ask any of these people you borrowed money from to come here today? A No, I didn't think it necessary because they gave affidavits. 40

*Dr. David Robins, re-direct.*

Q You know there were no affidavits submitted by any of these people except Mr. Gold?

A I was under the impression there was a record—

10 Mr. Grosman: Most of these people testified before Vice-Chancellor Backes.

Q Now, doctor, did you know Dr. Rubinstein in New York? A Yes.

Q He was an assistant of yours? A He used to help me out occasionally I would call him in.

*Re-direct by Mr. Grosman.*

20 Q What is your physical condition? A I am a sick man. I am suffering from angina pectoris which may be fatal at any time. I had two attacks last month.

Q Are there any judgments against you in New Jersey? A Yes, I have, amounting to about \$2,000.

*Cross examination by Mr. Gross.*

30 Q Have you a record of those? A I have, yes.

Q Do you know what courts they are in? A One case was in Jersey City; it was a question of a broken lease. I think he got a judgment of \$800 or \$1,000.

Q Remember the name of the Court? A No. It was in Jersey City.

40 Q Do you know the name of the judge? A No, there was no defense at all. There was a judgment of \$500 of Herman Kline in the local district court.

*Dr. David Robins, re-direct.*

*By Mr. Grosman.*

Q That was for what? A Money borrowed in New York.

Q What else? A Then there was a judgment taken in New York for money loaned \$885. by Harry Kipnes. 10

Q For what? A Money loaned to me.

Q Are you able to borrow any more money? A No. I find it very hard; people are getting judgments against me and I am not able to pay.

Q What was the condition of your practise in New York when you left for Mexico? A It dwindled down to very little; \$150 a month approximately.

Q Did you have maids, chauffeurs and automobiles before you left for Mexico? A No, no maids, chauffeurs or automobiles. 20

Q What caused your loss of practise? A Slander and defamation of character by my former wife.

Mr. Gross: I object.

The Master: Strike it out.

Q How many of these men to whom you owe money testified before Vice-Chancellor Backes? 30

A Stieglitz testified; I am trying to remember; there was a few of them.

*By the Master.*

Q How old are you? A I am going to be forty-six next September.

Q And you have been a practising physician for over twenty-four years? A About that.

*Dr. David Robins, re-direct.*

*By Mr. Grosman.*

Q Is this the first time you practised in New Jersey? A Yes.

Q Did you have any connections there? A I didn't know a soul here.

10 Q And your income has been a little over three thousand dollars since you have been here; which has been a year and a half? A Yes.

Q And in addition, you have been appointed the physician for these two lodges? A Yes, since the first of this month, July.

Q How many have you in your family at the present time? A Five.

20 Q You support the five? A Yes, with the exception of the \$15 a week that the children's father gives them.

Q They are the children of your present wife? A Yes.

Q What are their names? A Harold 10 and Lola 12.

Q Both going to public school? A Yes.

30 Q Have you any office other than at your residence? How many offices did you maintain in New York City? A Two. In the latter part I was being made uncomfortable and persecuted and I really maintained the one place and had another office away from home.

Q Did you own the property in which you resided in New York? A No.

Q Did you own the property in which you maintained your office? A No.

Q You paid rent in both places? A Yes.

Q When did you cease practice in New York? A About September, 1927.

40 Q And from there you went to Mexico? A Yes.

*Dr. David Robins, re-direct.*

Q Did you have any practise in Mexico? A No.

Q How long did you remain there? A A little over three months.

Q Who supported you? A I had a few dollars I borrowed.

Q What was your object in going to Mexico? 10  
A My practise had dwindled down to a mere nothing, and I thought I would go away and start over again. I would have remained there longer, but the Revolution broke out while I was there and I had to leave.

Q Were you directed in the decree to pay any support to your wife? A No.

Q You have made the statement that you are now suffering from angina pectoris or heart disease? A Yes. 20

Q When were you last examined? A By Dr. Aaron Parsonnet last week.

*By Mr. Gross.*

Q When did you pass the life insurance test for the \$10,000 policy? A I got that several years ago.

Q When did you get the \$10,000 policy? A Four years ago.

Q And you were then suffering from this disease? A I had attacks from the gall bladder. 30

Q You had attacks of angina pectoris? A No, I only had that lately. I used to go around with the obsession that I had angina pectoris, but it proved to be from the gall bladder.

Q Now that obsession has come true? A I got the evidence only last week.

The solicitor for the complainant offers in evidence exemplified copy of the record of 40

*Mrs. Dora Robins, direct.*

certain proceedings had between the parties herein in New York State.

Q You have two children with your first wife?

A Yes, a son and a daughter.

10 Q The daughter is a sickly girl? A No, I don't think so. She has hay fever and perfectly healthy people have that.

Q She has had several attacks—hemorrhages?

A Not to the best of my personal knowledge.

Q What are the ages of these children? A Twenty-two and twenty.

Mr. Grosman: We are going to object to any support for a twenty-two year old girl and a twenty year old boy.

20 Mr. Gross: The order is for the support and maintenance of the complainant and the children; the daughter we will show is a sickly girl.

Q You have heard of these attacks that your daughter has, have you not? A Through others.

30

MRS. DORA ROBINS, the complainant, being duly sworn according to law, upon her oath, deposed and testified as follows:

*Direct examination by Mr. Gross.*

Q You recall the proceedings you had with your husband in New York? A Yes.

Q They resulted in an order in your favor?

40 A Yes.

*Mrs. Dora Robins, direct.*

Q For how long a time did the doctor pay under that order? A Until September, 1927.

Q That was for a year and a half after the order was made? A I think it was made in May, 1926.

Q What is the condition of your health? A I have been operated on in June, 1927, and I am not feeling very well now. I have been operated on twice. 10

Q Two children were born of your marriage to the defendant? A Yes.

Q How old are they? A Seymour is twenty and Ethel is twenty-two.

Q What does Ethel do? A Nothing.

Q What is her physical condition?

Mr. Grosman: I object; she is not qualified to testify to it. 20

Objection sustained.

Q Is she at home with you? A Yes.

Q Have you seen any exhibitions of her physical condition from time to time? A Yes, she gets hemorrhages frequently and is under the constant care of two physicians, Dr. Hamilton and Dr. Andreson.

Q Does she emit blood? A Yes, from the lower lobe of her left lung. The doctor advised her to go away from the city for two years at least, and every summer she must go to the White Mountains for her hay fever. She goes there August first of every year and remains until October second or third, when the season is over. She has been doing that for the past six or seven years and before that she used to take injections, but they were so painful the doctor advised her to go to the mountains instead. 30 40

*Mrs. Dora Robins, cross.*

Q She made these trips while you were still living with the defendant? A Yes.

Q Have you any income? A None whatsoever.

Q What is your son doing? A He is working now.

10 Q How much does he earn? A \$20.

Q What is he doing? A He is assistant collection manager for Mr. Dobin in the furniture business.

Q Does he contribute anything to your support? A No, he keeps that for himself to go back to school.

Q With whom are you living now? A My father.

20 Q In an apartment house? A No, we have five rooms and bath.

Q How many people live in those five rooms and bath? A There are nine of us. My father, my two sisters, my three brothers, my son, Ethel and myself.

Q You say you have no means of income? A No, and my things are in storage since May, 1926.

30 Q That was the time the doctor left you? A No, I was getting a lease and he told me to move, and after he told me to move out and after I signed the lease for \$75 a month and he got me to move out he got the alimony reduced to \$55, and I had to store my things.

Q Do you pay any rent to your father? A Very little.

*Cross examination by Mr. Grosman.*

40 Q What do you mean by very little? A Well, when I was not getting anything from Dr. Robins

*Mrs. Dora Robins, cross.*

I couldn't pay anything, but now I pay what I can.

Q How much do you pay? A \$10 a week.

Q When do you pay that? A Whenever I get the money from Dr. Robins.

Q Have you a definite arrangement with your father? A Yes. My father is very ill in the hospital and I have that arrangement. 10

Q When you don't pay does your father charge it against you? A Yes.

Q How much do you owe him? A Since I got the \$50 a week I have paid him. I now owe him five weeks; fifty dollars.

Q What kind of a house is it you live in? A A Two-family house.

Q That was one time in the doctor's name? A Yes, it was. My father went into bankruptcy in 1914 and turned it over to my husband and he should have turned it back long before. 20

Q In order to keep it from his creditors? A If you like.

*By the Master.*

Q Do you know? A Yes.

*By Mr. Grosman.*

Q In addition to that did the doctor give your father \$6,000 about the time of the conveyance of that house? A He never gave him one cent. 30

Q How long has your daughter been ill with hemorrhages? A At the time this thing occurred she took very ill.

Q How long have these hemorrhages been going on? A Since the latter part of 1924.

Q Has your daughter any trade or profession? A She went to high school and dramatic school, but her health does not permit her to do 40

*Mrs. Dora Robins, cross.*

anything. I have to get her lunch and do everything for her. She is not able to do anything.

Q You furnish her with clothing? A Yes, out of the \$50 her father gives.

Q She has a fur coat? A Yes, her father bought it for her in 1925.

10 Q Have you any jewelry? A No.

Q Has Ethel? A She wears an onyx ring her father gave her. My son buys his own clothes.

Q How long has your son been working? A From last August until January first and then he was out of a job for about four months and he got this present place.

20 Q He doesn't contribute one penny towards your support? A He wants to go to college and he is saving that money to go back with.

Q You are satisfied for him to retain the money left to enable him to go to college? A Yes.

Q Although you yourself are in want? A I wasn't in want this past year; Dr. Robins paid me \$50 a week.

Q You have no bank account? A No.

Q And you don't do anything for a living? A Nothing at all.

30 Q What is the trouble with you physically? A I have trouble with my kidneys.

Q Do you do your own housework? A As little as I have.

Q You are able to get around all right? A Yes.

Q Did any doctor ever tell you you couldn't work?

40 Mr. Gross: I object; there is no obligation on this woman to work when she has a husband.

The Master: Objection sustained.

*Mrs. Dora Robins, cross.*

Q Were you ever in the insurance business?

A Never.

Q You never wrote any insurance? A Never.

Q And you haven't made \$1 since you and your husband separated? A I never worked in my life.

Q Do you know anything about a \$3,000 mortgage your daughter is supposed to hold in her name? A No. 10

Q You don't know anything about a mortgage in Ethel's name on the Brooklyn property?

A No.

Q Do you take care of the entire household where you are living? A I don't know what you mean.

Q Do you see that the food is taken care of properly? A My sister does that. 20

Q Does she work? A No, she stays home.

Q How old is she? A She is one year younger than I am.

Q Who else in the household maintained at your father's place works besides your son? A My brother and my sister.

Q What are their names? A Barnard and Thelma.

Q Who buys the food? A My sister Delia get the money from my brother and sister that work and does the cooking and takes care of them. 30

Q What does your brother work at? A Clerical work I guess.

Q What does he do? A He just got the position last week.

Q Before that how long was he out of work? A A few months. He earns \$25 a week.

Q Your sister Thelma what does she do? A Bookkeeper. 40

*Anna Blumenthal, direct.*

Q How much does she earn? A \$29.

Q So out of these two incomes plus the money you get from the doctor, this household is taken care of? A No. The \$50 I get I keep for myself and my daughter. I only pay \$10 a week rent and I get my own food and do my own cooking because my daughter is on a special diet and I have to take care of that myself.

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ANNA BLUMENTHAL, a witness produced on behalf of the complainant, being duly sworn according to law, upon her oath deposed and testified as follows:

*Direct examination by Mr. Gross.*

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Q You live where? A 1614 St. John Place, Brooklyn, New York.

Q You are the niece of the defendant, Dr. Robins? A Yes.

Q You formerly lived with Dr. and Mrs. Robins? A Yes, before I was married, and after that I visited them.

Q That was before any trouble arose between Dr. and Mrs. Robins? A Yes.

30

Q Did you have a conversation with Dr. Robins sometime last November? A It was November or December; it was by phone, the doctor called me.

40

Q Tell us what the doctor said to you? A He asked me how I was and he told me that he was now located in Newark and I asked him how he was doing and he said he expected his business to go up to the same as it was before and he wanted me to have his children call him and he invited me to his home, that's about all.

*Ethel Robins, direct.*

Q Did he tell you where he was living at the time? A Hawthorne avenue, Newark. I know now that the number is 94, but I didn't pay any attention at the time as I did not intend to go over.

Q He said he was doing pretty well? A Yes. 10

Q Do you know the standard of his practise in New York City? A Yes.

Mr. Grosman: I object to that.

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ETHEL ROBINS, being duly sworn according to law, upon her oath deposed and testified as follows: 20

*Examination by Mr. Gross.*

Q You are the daughter of Dr. Robins? A Yes.

Q You live where? A 463 Thirteenth street, Brooklyn, New York.

Q With your mother, the petitioner? A Yes.

Q In the house of your grandfather? A Yes. 30

Q What is your physical condition at this time? A I bring up blood very often.

Q How frequently has that occurred during the past six months? A It only happened last week. I was in bed two days.

Q And prior to that? A It is every two or three weeks, but since I have been under Dr. Andreson's care I feel a little better.

Q You are obliged to go to the White Mountains each year? A Yes. 40

*Ethel Robins, cross.*

Q Do you do any work? A No. I only went to high school one year because I was sick and daddy pampered me and got me a private teacher and sent me to the Adirondacks, and then at my sixteenth birthday party he told me he would send me to dramatic school to make up for the  
10 pains of being unable to finish high school.

Q Do you remember seeing your father in the corridor of the Court of Chancery? A Yes.

Q Did you have any conversation with him? A The first in three years. He kissed me and naturally we both cried and I said, "How could you leave us and go to Mexico? I call you up. I went out to Mt. Sinai Hospital and they washed out my lung and that was very painful and when I called you on the phone you didn't come" and  
20 he said, "I wanted to come but I couldn't, I am in hell." I said, "Why did you go to Mexico?" And he said, "I could give you the \$50, but she won't let me." She wants a name for her children," and I said, "If you do so much for her children, why can't you do something for your own?"

*By Mr. Grosman.*

Q Have you ever done anything at all? A  
30 No.

Q Have you ever tried to do anything? A I didn't try no, Dad didn't want me to.

Q What do you do when you are not sick? A I have been sick so much. When I am not in bed I am recuperating. I do nothing, no social life, nothing. When I am not in bed, I am recuperating.

Q Have you any money or property? A No.

Q Do you know anything about a mortgage in  
40 your name on the Brooklyn property? A No.

*Dr. David Robins, recalled, direct.*

Q Did you ever have such a mortgage in your name? A No.

Q You are entirely dependent upon your mother for support? A Yes, I am.

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DAVID ROBINS, recalled.

*Examination by Mr. Grosman.*

Q Did you tell your daughter Ethel, in the corridor of the Court of Chancery that you were able to pay \$50 a week and that you did not do so because your present wife would not let you, or must not know? A No.

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*By the Master.*

Q Did you discuss with your daughter the payment of any alimony that was in dispute? A No.

Q How long did you talk to her? A We only stood there a few minutes.

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*Certificate of Stenographer.*

## IN CHANCERY OF NEW JERSEY.

	<hr/>		
	<i>Between</i>		
	DORA ROBINS,	} <i>Complainant,</i>	<i>On Bill, etc.</i>
10			
	<i>and</i>		<i>Certificate.</i>
	DAVID ROBINS,	} <i>Defendant.</i>	
	<hr/>		

I hereby certify that the foregoing depositions were taken by Ruth W. Garvin, a stenographer selected by me and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given, and that such

20 depositions were taken in my immediate presence and hearing by said stenographer sworn as above stated, and I believe they accurately state the evidence given.

JOHN P. MANNING,  
Special Master in Chancery of New Jersey.

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## EXCEPTIONS TO MASTER'S REPORT.

Filed August 8, 1929.

IN CHANCERY OF NEW JERSEY.

67-274

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*Between*

DORA ROBINS,

*Complainant,**and*

DAVID ROBINS,

*Defendant.*

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*On Bill, etc.**Exceptions  
to Master's  
Report.*

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The defendant, David Robins, hereby excepts to the report filed in this cause by John P. Manning, Esq., one of the Masters of this Court, bearing date the 22nd day of July, 1929, for the following reasons:

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1. The said Master found that the defendant is in receipt of an income of \$3,100.00 per year when in truth and in fact, the testimony discloses, that the sum of \$3,100.00 was earned by the defendant over a period of one and one-half years.

2. Said Master found that the defendant is a well-known physician and no doubt can earn and will earn more moneys than has heretofore been mentioned without there being any testimony whatever to sustain such a finding.

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3. The Master reported that the defendant is financially able to pay and should pay to the complainant for her support and maintenance and that of her daughter, Ethel, the sum of \$40.00 a week without there being testimony before him to warrant such a finding.

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*Exceptions to Master's Report.*

4. There is no duty on the part of the defendant to support his daughter, Ethel, she having reached her majority.

5. The allowance fixed by the Master is excessive and unwarranted by the testimony given before him.

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GROSMAN & GROSMAN,  
Solicitors of Defendant.

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## NOTICE OF ARGUMENT.

Filed.

IN CHANCERY OF NEW JERSEY.  
67-274.

<p><i>Between</i></p> <p>DORA ROBINS, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>DAVID ROBINS, <i>Defendant.</i></p>	}	<p><i>On Bill, etc.</i></p> <p><i>On Exceptions to Master's Report.</i></p> <p><i>Notice of Argument.</i></p>	<p>10</p>
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TAKE NOTICE that on Tuesday, the 30th day of July, 1929, at the Chancery Chambers, in the City of Newark, at the hour of ten o'clock in the forenoon (D. S. T.) or as soon thereafter as the matter can be heard, I shall move the argument on the exceptions taken by the defendant to the report filed herein by John P. Manning, Esq., one of the Masters of this Court, bearing date the 22nd day of July, 1929.

Dated July 23, 1929.

GROSMAN & GROSMAN,      30  
Solicitors of Defendant.

To Messrs, Gross & Gross, solicitors of complainant, 15 Exchange Place, Jersey City, New Jersey, or Dora Robins, complainant.

## REPORT OF SPECIAL MASTER.

Filed.

## IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>  DORA ROBINS,  <div style="text-align: right; padding-right: 20px;"><i>Complainant,</i></div> <div style="text-align: center; padding: 0 10px;"><i>and</i></div> DAVID ROBINS,  <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>On Bill, etc.</i>  <i>Report of</i> <i>Special</i> <i>Master.</i>
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20 In pursuance of an order of this court made  
 in the above matter bearing date the 9th day of  
 July, 1929, whereby it was referred to me, the  
 subscriber, one of the Special Masters, to ascer-  
 tain and report the amount of alimony to be di-  
 rected by the final decree herein to be paid by  
 the defendant herein to the complainant for the  
 support and maintenance of the complainant and  
 the children of the marriage, I do respectfully  
 report that I have been attended by Benjamin  
 Gross, of Gross & Gross, solicitors for the com-  
 30 plainant, and Robert D. Grosman, solicitor for  
 the defendant, and the defendant appearing per-  
 sonally, and in their presence I have taken the  
 depositions and proofs offered and

I do respectfully report that two children were  
 born of the marriage of the parties, to wit, Sey-  
 mour Robins, who is twenty years of age, and  
 who is employed, and who resides with his  
 mother, the complainant, herein, and Ethel  
 Robins, who is twenty-two years of age, and who  
 also resides with her mother. She is unem-  
 40 ployed, and is not in good physical condition. She

*Report of Special Master.*

is obliged to go to the White Mountains during the hay fever season and she is at the present time under the care of a physician because she suffers from hemorrhages in addition to the hay fever. The complainant and her two children reside at 463 Thirteenth street, in the City of Brooklyn and State of New York. The defendant is a practising physician, and resides at 94 Hawthorne avenue, in the City of Newark, in the County of Essex and State of New Jersey. He has been a resident of New Jersey for about eighteen months. It appears that he went to Mexico and procured a divorce from the complainant herein, and subsequently was married to the woman with whom he resides at 94 Hawthorne avenue. 10

Respecting the income of the defendant I find that according to his testimony that he received in the eighteen months from his practise and the position that he holds in the City of Newark, the sum of \$3,100; he receives from the City of Newark the sum of \$75 a month; he being one of the examining physicians that is attached to the clinic which is operated by said city, this amount that he receives from the city according to his testimony is included in the amount of his income aforementioned. He appears to have no other assets or income. He is a well-known physician and there is no doubt that he can earn and will earn more moneys than has been heretofore mentioned. He is under the expense of paying rent of \$65 a month, besides paying for the food of five people that comprises his household, also has a telephone, and during the eighteen months that he has been practising in New Jersey he has paid to the complainant herein the sum of \$2,500, 20 30

*Report of Special Master.*

this of course was not the total amount that he was required to pay to the complainant by an order made in this cause by one of the Vice-Chancellors of this court.

10 I therefore respectfully report that in my judgment the defendant is financially able to pay and should pay to the complainant for her support and maintenance and that of the daughter Ethel, of the marriage of the parties hereto, the sum of forty dollars a week, and that this is the amount of the alimony that should be inserted in the final decree to be entered in this cause.

All of which is respectfully submitted this 26th day of July, 1929.

20 JOHN P. MANNING,  
Special Master in Chancery of New Jersey.

## MASTER'S FEES.

	Attendance .....	\$ 6.00
	Depositions,	
	90 fol @ 30c .....	27.00
	Swearing 4 witnesses .....	1.00
	Marking 3 Exhibits .....	.45
30	Report .....	10.00
	Report 6 fol A 40c .....	2.40
		<hr/>
		\$46.85

**OPINION.**

re: Robins  
vs. Robins

“I have allowed \$30 per week—the maximum  
the proofs justify. 10

“The defendant will henceforth keep an accurate daily account of his income—the usual physician’s account—and submit a statement to complainant’s counsel semi-annually before January 15th and July 15th, and the cause will be referred to the Master to examine the defendant on these dates, so that it may be determined what alimony should be ordered paid from time to time.

BACKES, *V.-C.*” 20

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## FINAL DECREE.

Filed August 6, 1929.

## IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>DORA ROBINS,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>DAVID ROBINS,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	<p><i>On Bill for</i> <i>Maintenance.</i></p> <p><i>Final Decree.</i></p>
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20 This cause coming on to be heard in the presence of Gross & Gross, solicitors for and of counsel with complainant, and Robert D. Grosman, solicitor for and of counsel with the defendant; whereupon and upon reading the pleadings and proofs herein and upon due consideration thereof, from all of which it now appears to the satisfaction of the Chancellor that the complainant and defendant were lawfully married on or about the 9th day of July, 1905, and that the defendant, without any justifiable cause, abandons the complainant and separates himself from her and re-

30 fuses and neglects to maintain and provide for her and for the children of the said parties hereto; and the defendant having been personally served with process in this state; it is thereupon, on this 2nd day of August, 1929, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey

40 ORDERED, ADJUDGED AND DECREED, that the defendant do pay to the complainant or to her solicitors, the weekly sum of \$30 per week, payable on Friday of each week, commencing on the

*Final Decree.*

2nd day of August, 1929, and until the further order of the Court to the contrary. And it is further

ORDERED, ADJUDGED AND DECREED, that a copy of this decree be served on the defendant within days from the date hereof, which copy may be certified by the solicitors of the complainant to be a true copy. And it is further

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ORDERED, ADJUDGED AND DECREED, that the defendant pay to the complainant the sum of \$1,980.00, which is due to the complainant upon a certain judgment entered in the Supreme Court of the State of New York for Kings County on May 21, 1926, in which said suit complainant therein was plaintiff and the defendant herein was defendant. And it is further

ORDERED, ADJUDGED AND DECREED, that the said defendant do pay to the complainant herein, or her solicitors, the costs of this suit to be taxed and also the sum of \$500 as a counsel fee for the counsel of said complainant; and that the said complainant do have execution for the aforesaid amount so decreed to be due to complainant and also for the said costs and counsel fee, according to the practise of this court. And it is further

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ORDERED, ADJUDGED AND DECREED, that either party be at liberty to apply, upon a future change of circumstances of the parties, for a modification of this decree touching the said alimony and maintenance, as shall be just and equitable.

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E. R. WALKER,

C.

Respectfully advised,

JOHN H. BACKES,

V.-C.

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**NOTICE OF APPEAL.**

Filed August 23, 1929.

IN CHANCERY OF NEW JERSEY.  
67-274.

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*Between*

DORA ROBINS,

*Complainant,**and*

DAVID ROBINS,

*Defendant.*

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*On Bill, etc.  
Notice  
of Appeal.*

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The defendant, David Robins, hereby appeals from so much of the final decree made in the above-entitled cause on the 2nd day of August, 1929, as directed said defendant to pay to the complainant or to her solicitors, the weekly sum of \$30 per week, payable on Friday of each week, commencing on the 2nd day of August, 1929, and until the further order of the Court to the contrary, as well as the costs of this suit to be taxed, and also the sum of \$500 as a counsel fee for the counsel of said complainant, to the Court of

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Errors and Appeals in the last resort in all causes.

Dated August 16, 1929.

GROSMAN &amp; GROSMAN,

Solicitors for and of Counsel with Defendant.

I conceive there is good cause for appeal in the above-entitled cause.

ROBERT D. GROSMAN,

Of Counsel with Defendant.

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*Notice of Appeal.*

Service of a copy of the foregoing notice is hereby acknowledged this 20th day of August, 1929.

GROSS & GROSS,  
Solicitors for and of Counsel with Complainant.

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**AMENDED NOTICE OF APPEAL.**

Filed.

IN CHANCERY OF NEW JERSEY.

67-274.

10	<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0; padding-left: 40px;">DORA ROBINS,</p> <p style="margin: 0; padding-left: 100px;"><i>Complainant,</i></p> <p style="margin: 0; padding-left: 100px;"><i>and</i></p> <p style="margin: 0; padding-left: 40px;">DAVID ROBINS,</p> <p style="margin: 0; padding-left: 100px;"><i>Defendant.</i></p>	}	<p style="margin: 0;"><i>On Bill, etc.</i></p> <p style="margin: 0;"><i>Amended</i></p> <p style="margin: 0;"><i>Notice of</i></p> <p style="margin: 0;"><i>Appeal.</i></p>
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20     The defendant, David Robins, hereby appeals from so much of the final decree made in the above-entitled cause on the 2nd day of August, 1929, as directed said defendant to pay to the complainant or to her solicitors, the weekly sum of \$30 per week, payable on Friday of each week, commencing on the 2nd day of August, 1929, and until the further order of the Court to the contrary, as well as the costs of this suit to be taxed, and also the sum of \$500 as a counsel fee for the

30     Errors and Appeals in the last resort in all causes.

The decree appealed from hereby was made by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable John H. Backes, one of the Vice-Chancellors of our said court.

Dated August 26, 1929.

GROSMAN & GROSMAN,  
Solicitors for and of Counsel with Defendant.

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*Amended Notice of Appeal.*

I conceive there is good cause for appeal in the above-entitled cause.

ROBERT T. GROSMAN,  
Of Counsel with Defendant.

Due and legal service acknowledged this 28th day of August, 1929. 10

GROSS & GROSS,  
Solicitors of Respondent.

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**PETITION OF APPEAL.**

Filed August 22, 1929.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	<p>DORA ROBINS, Complainant-Appellee,  vs.  DAVID ROBINS, Defendant-Appellant.</p>	<p><i>On Appeal from the Court of Chancery.</i></p> <p><i>Petition of Appeal.</i></p>
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*To the Honorable the Court of Errors and Appeals in the last resort in all causes.*

20 The petition of David Robins, the appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date August 2, 1929, in a certain cause in said Court of Chancery, wherein the said Dora Robins was complainant and the said David Robins was defendant, in this respect, to wit:

30 1. It is ORDERED, ADJUDGED and DECREED, that the defendant do pay to the complainant or to her solicitors, the weekly sum of \$30 per week, payable on Friday of each week, commencing on the 2nd day of August, 1929, and until the further order of the Court to the contrary.

40 2. It is ORDERED, ADJUDGED and DECREED, that the said defendant do pay to the complainant herein, or to her solicitors, the costs of this suit

*Petition of Appeal.*

to be taxed, and also the sum of \$500 as a counsel fee for the counsel of said complainant.

And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid upon the ground that the same is erroneous, in that it appears by the testimony taken in this case upon a reference made to one of the Special Master of our Court of Chancery, for the purpose, that the defendant's total income amounts to approximately \$40 per week and he is required by this decree to pay \$30 thereof to the complainant, and a counsel fee of \$500 besides the costs of suit to be taxed; that the allowance so made for alimony and counsel fees is out of all proportion to the defendant's ability to pay and does not leave him enough money out of his earnings to sustain himself.

2. That said allowance of \$30 per week, erroneously includes an award for the support and maintenance of the daughter of the parties hereto, who is twenty-two years of age.

Petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, or that in the alternative, an allowance by way of alimony and counsel fees to the complainant-appellee be fixed by this court commensurate with the defendant-appellant's income and earnings and that the petitioner may have such other relief in the premises as to this Court shall seem proper.

GROSMAN & GROSMAN,  
Solicitors for and of Counsel  
with Defendant-Appellant.

ROBERT D. GROSMAN,  
Of Counsel.

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*Petition of Appeal.*

Service of a copy of the foregoing notice is hereby acknowledged this 20th day of August, 1929.

GROSS & GROSS,  
Solicitors for and of Counsel with Respondent.

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## ANSWER TO PETITION OF APPEAL.

Filed.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p>DORA ROBINS, Complainant-Respondent,</p> <p style="text-align: center;">vs.</p> <p>DAVID ROBINS, Defendant-Appellant.</p>	}	<p><i>On Appeal from the Court of Chancery.</i></p> <p><i>Answer to Petition of Appeal.</i></p>	<p>10</p>
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The answer of the above-named respondent to the petition of appeals of the above-named appellant. 20

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 2nd day of August, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent. 30

GROSS & GROSS,  
Solicitors and of Counsel with Respondent.

*Answer to Petition of Appeal.*

Service of copy of the within answer to petition of appeal acknowledged this 22nd day of August, 1929.

GROSMAN & GROSMAN,  
Solicitors of Defendant-Appellant.

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## EXHIBIT C. 1.

At Special Term Part III of the Supreme Court, Kings County, held at the Courthouse, in the Borough of Brooklyn, City of New York, on the 20 day of May, 1926.

Present:

Honorable WILLIAM B. CARSWELL,  
Justice.

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DORA ROBINS

*Plaintiff*

*against*

DAVID ROBINS

*Defendant*

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This action having been commenced by the due personal service of the summons and complaint herein on the defendant within the State of New York, on the 21st day of October, 1925; and the defendant having appeared and answered herein by his attorney, and this case having duly come on for trial before this Court, and this Court having heard all the evidence adduced by the plaintiff and defendant herein, and having duly made and filed its decision herein, wherein and whereby it appears that all of the material allegations of the complaint herein have been established and that the plaintiff herein is entitled to judgment as prayed for in the complaint,

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Now, after hearing ISRAEL H. ZINOVY, Esq., attorney for the defendant, and HENRY H. KLEIN, Esq., of counsel, in opposition thereto, and on motion of S. EARL LEVENE, Esq., attorney for the defendant, it is hereby

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*Exhibit C. 1.*

ORDERED AND ADJUDGED: That the defendant and she hereby is separated from the bed and board of the defendant forever; and it is hereby further

10 ORDERED AND ADJUEGED: That the defendant pay to the plaintiff, for the support and maintenance of the plaintiff and the two infant children, ETHEL ROBINS and SEYMOUR ROBINS, the sum of Fifty-five (\$55) Dollars per week, which said sum is to be paid on the Monday of each week, by mail, addressed to the home of the plaintiff herein, commencing with the week of May 10th, 1926; and it is further

20 ORDERED that either party may move at any time to increase or decrease the said allowance so made for the support and maintenance of the plaintiff and the two infant children, ETHEL ROBINS and SEYMOUR ROBINS, upon proper proof

ORDERED AND ADJUDGED That the Plaintiff shall have the care, custody and control of the children of the parties hereto.

FURTHER ORDERED AND ADJUDGED That Plaintiff have and recover from the defendant her costs and disbursements in this action to be taxed at \$136 45/100.

ENTER

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WM B CARSWELL

J S C

WILLIAM E. KELLY

Clerk

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GRANTED

May 21 1926

WILLIAM E. KELLY

Clerk

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**ABSTRACT OF EXHIBIT C. 2.**

Referred to on page 21 of the record, folio 40, contains the following:

Summons, tested October 21, 1925, complaint, answer, verification of complaint and answer, finding of facts and conclusions of law, and explanation according to Act of Congress of United States, all such papers and proceedings as aforesaid; filed and had in the suit which eventuated in the order marked Exhibit C-1 herein.

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A. B. HENRY TO GEORGE

Dear George,

I have just received your letter of the 10th and am glad to hear from you. I am well and hope these few lines will find you the same. I have not much news to write at present. I am still in the same place and doing the same work. I have not much time to spare for anything else at present. I have not much news to write at present. I am still in the same place and doing the same work. I have not much time to spare for anything else at present.

Yours,

A. B. Henry

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## New Jersey Court of Errors and Appeals

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Between

DORA ROBINS,  
Complainant-Appellee,

and

DAVID ROBINS,  
Defendant-Appellant.

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}

On Bill, etc.

}

On Appeal  
from the  
Court of  
Chancery.

### BRIEF ON BEHALF OF APPELLANT.

#### Statement of Facts.

This is an appeal from a final decree entered in our Court of Chancery on the second day of August, 1929, in the above entitled cause, advised by Backes, V. C., wherein it was, among other things, adjudged that the appellant pay to the respondent for the support of herself and her daughter, Ethel, twenty-two years of age, the sum of \$30 per week and a counsel fee of \$500.

The appellant claims that the decree is erroneous insofar as it requires him to pay to the respondent, said weekly allowance of \$30 per week, because upon the undisputed testimony his total earnings average but \$40 per week, and furthermore, he should not be required to contribute to the support of his daughter, Ethel, who is of full age.

The appellant and respondent are husband and wife. They co-habited together for a great many years, their residence being in the City of New York, in the State of New York. Two children were born of the marriage, to wit, Ethel, now twen-

ty-two years of age, and Seymour, twenty years of age. The latter is employed as an Assistant Collection Manager for a furniture company and earns \$20 per week (S. C., p. 24, l. 10). The appellant is a physician and practiced his profession in the City of New York, and for the last twenty months or so, in the City of Newark, in this State. Litigation developed between the parties hereto in the State of New York. This resulted in the institution of a suit for separate maintenance in the New York Supreme Court and on or about the 21st day of May, 1926, a decree was entered in favor of the respondent and against the appellant, whereby she was allowed the sum of \$55 per week for the support and maintenance of herself and "the two infant children, Ethel Robins and Seymour Robins" (Ex. C-1, S. C., p. 52, l. 10). It is contended that prior to the entry of the New York decree against the appellant and in favor of the respondent (S. C., p. 51), the appellant was a prominent physician in the City of Brooklyn, New York, earning an income somewhere in the neighborhood of \$40,000 per year and living accordingly. Subsequently, the appellant left the State of New York, went to the Republic of Mexico, secured a decree of divorce in the State of Morellos, Mexico, and has since remarried his present wife. He established himself in the City of Newark, in this State. Respondent followed him to this State, instituted the present suit by issuing a writ of *ne exeat* against him and the instant decree from which this appeal is taken (S. C., p. 40) is the result.

The Court below found that the Mexican decree of divorce was not an obstacle to granting the relief to the respondent in our Courts because it had been obtained by fraud. The non-residence of the parties at the time of the entry of the Mexican decree was disregarded.

The question of alimony was held in abeyance after the final hearing. A reference was made to a Master to ascertain the amount of alimony to be directed by the final decree herein to be paid by the appellant for the support and maintenance of the respondent and the children of said marriage. The order of reference will be found at S. C., p. 1.

The Master proceeded to take testimony in the cause, which will be found at S. C., p. 6, *et seq.* The uncontradicted proof is that the defendant, during a period of eighteen months covering his residence in this State, (S. C., p. 6, l. 20; S. C., p. 7, l. 20; S. C., p. 8, l. 20) earned approximately \$3100 from the practice of his profession. He incurred obligations which resulted in the taking of judgments against him in the sum of approximately \$2,000 (S. C., p. 18, l. 20) and he borrowed from various relatives and acquaintances about \$2600, (S. C., p. 7, l. 20). He states that he was compelled to incur these obligations and borrow this money in order to meet a preliminary decree of our Court of Chancery which had awarded the respondent, the sum of \$50 per week alimony *pendente lite* and \$350 counsel fees.

The Master made two reports. In the first (S. C., 2 at p. 3, l. 20) he found that

“Respecting the income of the defendant, I find and report that he is in receipt of an income of over \$3100 *a year* \* \* \* that he is a well-known physician and no doubt can earn and will earn more moneys than has been heretofore mentioned.

I therefore respectfully report that in my judgment, the defendant is financially able to pay and should pay to the complainant for her support and maintenance and that of her daughter, Ethel, of the marriage of the parties hereto, the sum of \$40 a week, and this is the amount of the alimony that

should be inserted in the final decree in this cause."

The fact of the matter is that the defendant was not earning \$3100 a year, but had earned this sum in a *year and a half* (S. C., p. 14, l. 30). There is no dispute about this. It therefore follows that upon the basis of the Master's findings, in the first instance, the appellant's income was fixed at \$60 per week, and he was ordered to pay \$40 thereof for the support of the respondent and her grown-up daughter. This fact was called to the attention of the Master, who thereupon filed a second report (S. C., p. 36, l. 20) wherein he corrects this finding in this language:

"Respecting the income of the defendant, I find that according to his testimony, that he received in the *eighteen months* from his practice and the position that he holds in the City of Newark, the sum of \$3100."

It follows that the appellant's income, upon the basis of this last report of the Master, is approximately \$40 a week, nevertheless, the Master seemed to think that even though the defendant's income was \$40 per week instead of \$60, he should be ordered to pay to the respondent, the sum of \$40 per week and he so recommended, thereby taking the appellant's entire income away from him.

Exceptions to this report were taken by the appellant (S. C., p. 33) and the Court below, in a very brief opinion (S. C., p. 39) fixed the amount that the appellant should pay to his wife, the respondent, for her support and that of her grown-up daughter Ethel, at \$30 per week, "the maximum the proofs justify," thereby awarding to the respondent, three-fourths of the appellant's ascertained income. From this finding, the appellant appeals.

### POINT I.

**Alimony to a wife should approximate, as nearly as possible, one-third of her husband's income.**

The uncontradicted testimony of the appellant is that over a period of eighteen months that he resided in this State, he earned approximately \$3100 from the practice of his profession. This sum included a salary of \$75 per month which he received from the City of Newark, because of professional services which he renders as an examining physician (S. C., p. 37, l. 20). The master found that

“He appears to have no other assets or income.” (S. C., p. 3, l. 20).

Therefore, his established earnings are but \$40 per week. One-third of this sum, namely, \$13 or \$14 per week should have been the award made.

In the case of *Moran vs. Moran*, 2 Atl. 777, it was held:

“When the husband's income can be determined, the wife will have one-third thereof on a decree of divorce for cruelty.”

In *Dietrick vs. Dietrick*, 88 N. J. Eq. 560, 103 Atl. 242, it was held:

“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.”

In this case, the husband's net income from his dental practice was about \$45.00 per week. He had no other property or income. The wife had an income of about \$5 a week. The Court there-

fore concluded that \$10 weekly should be paid as alimony.

In *Andreas vs. Andreas*, 102 Atl. 259 at p. 260, it was held:

“Although there is no matter of course rule, the allowance for permanent alimony is usually about one-third of the husband’s income for the wife’s own support. \* \* \*”

On the basis of these adjudications, it is evident that an allowance of \$30 per week for the support of the wife and daughter, where the established income of the appellant husband is approximately \$40 per week, is excessive. The Court intended the allowance to be for the support of both the respondent wife and her daughter, who is of age. This, I think, is improper and reference will be made to the allowance on behalf of the daughter later on. In any event, it is respectfully submitted that the uncontradicted testimony of the appellant as to his income, cannot be disregarded and an arbitrary sum fixed for payment. As it is, the Court has ordered the appellant to contribute to the respondent for her support and that of their grown daughter, 75% of his weekly income.

“As a general rule, however, income is the precise fact regarded. If the income is largely or exclusively derived from the husband’s personal labor, the amount allowed will be less proportionately than if he was the owner of income producing property.”  
19 *Corpus Juris* 255.

## POINT 2.

### **When children are grown up, it is not proper to make an allowance on their account.**

In the instant case, the children of the parties are grown up. The daughter Ethel is twenty-two years of age, and the son Seymour, who is employed as an Assistant Collection Manager is twenty years of age, and earns \$20 a week, which he is permitted to keep by the respondent. The order of reference made by the Court below, (S. C., p. 1, l. 30) directed the Master to ascertain:

“The amount of alimony to be directed by the final decree herein to be paid by the defendant herein to the complainant, for the support and maintenance of the complainant and the children of said marriage.”

It will be observed that what the Court had in mind was an allowance on account of both children. The Master's report (S. C., p. 38, l. 10) recommends that the allowance made be for the support of the respondent and of her daughter Ethel. Ethel is twenty-two years of age (S. C., p. 23, l. 10).

It is contended that she is entitled to special consideration in this case because she is ill and in the summer time suffers from hay fever and is obliged to go to the White Mountains each year and that at times she has hemorrhages.

The appellant contends that the award should not include any allowance for the support of the children because they are full grown.

In *Amos vs. Amos*, 4 N. J. Eq. 171, it was held:

“Where children are grown up, it is not proper to make an allowance on their account.”

In 19 Corpus Juris 356, the rule is stated to be as follows:

“An order cannot be made for the support of a child who is of age at the time that the divorce is granted, (Amos vs. Amos, supra cited) although such a child is incapable of providing for its own support; and if a child has attained such an age, that it is incapable of supporting itself, the Court *will not require* the father to contribute to its maintenance.”

The daughter Ethel, as well as her brother, Seymour, are residents of the State of New York. It may be contended by the respondent that unless these children are provided for by an order of the lower Court, they may become public charges. If so, it is a matter for the New York Courts to concern themselves with. There must be some point at which the legal responsibility of the father to support his offsprings ceases. It may be that the vicissitudes of life so situate a child, that it cannot take care of itself and of necessity depend upon the charity of the public, but this is a daily tragedy.

“When the child approaches majority, the allowance may be modified and on attaining full age, is stopped.” (Biddles Divorce Practice, second edition, p. 156 and cases therein cited.)

Furthermore, even if the daughter's condition of health was to entitle her to some consideration, her physical condition has not been established by competent proof. There is nothing more to substantiate her ill health than merely her own word and that of her mother's. No physician was called to verify these facts. In any event, taking into consideration the appellant's modest income, it

would be unjust to require him to pay for his daughter's yearly trips to the White Mountains. I presume there are probably thousands of people living within the metropolitan area who suffer from hay fever. Undoubtedly a trip to the White Mountains during the hay fever season would be beneficial to them. They forego such a vacation because their means do not permit it and still manage to get along.

Insofar as the son Seymour is concerned, I certainly do not think that any allowance should be made to him. He is twenty years of age and is self-supporting. He is ambitious to go to college and become a physician. He contributes nothing towards his mother's support though he lives with her. She permits him to retain all of his earnings so that he may save enough to pay his tuition. This is laudable.

The case of *Streitwolf vs. Streitwolf*, 58 N. J. Eq. 563, holds in substance that:

"A father cannot be forced to gratify a twenty year old son's ambition for a liberal education."

### POINT 3.

#### **An allowance of alimony should not be punitive in its nature.**

Much has been said about the apparent dereliction of the appellant. It is inferable from the argument of counsel for the respondent that the appellant should be dealt with severely in the matter of alimony because after the entry of a maintenance decree against him in the State of New York, he went to Mexico and sought to escape it by securing a divorce and has since remarried. In the

case of Hall vs. Hall, Ch. Dkt 31 p. 703, it was held:

“Excessive alimony cannot be awarded by way of punitive damages, to penalize the defendant for his extreme cruelty to his wife.”

#### POINT 4.

**The appellant should not be required to borrow money for the payment of alimony but the amount payable should be fixed on the basis of his income.**

The respondent contended in the Court below and will undoubtedly contend here, that the defendant's testimony as to his income of approximately \$40 per week should be disregarded because he complied with the terms of the order for alimony *pendente lite* which required him to pay \$50 per week to the respondent.

The appellant's testimony is that he incurred obligations since reduced to judgment amounting to approximately \$2,000 (S. C., p. 18, l. 20) and that he was compelled to borrow from various sources about \$2600 (S. C., p. 7, l. 20) in order to meet the terms of the order for alimony and counsel fees *pendente lite* and other expenses. He states that he can borrow no more because he has exhausted his credit.

It is respectfully submitted that the borrowing capacity of a person should not be the criterion by which the amount of his alimony is fixed. It is said that he is a well-known physician. It is rather hard for me to conceive how well-known a physician, who is nothing more than a general practitioner can become in a strange community, in eighteen months. There is no evidence of this

fact adduced anywhere. It is a gratuitous statement inserted in his report by the Master and should be disregarded.

The respondent contended below and will undoubtedly contend here that the appellant's income in New York was about \$40,000 per year. This, the appellant denies. There is no proof offered by the respondent in substantiation of this assertion, nor is any period of time fixed when this large income is supposed to have been enjoyed by the appellant. The respondent argues that because in New York, under different circumstances and perhaps at a time long gone by, the appellant earned \$40,000 per year, the allowance to her at present should be based upon this income. This contention, of course, is without merit. It is common knowledge that men's income vary from year to year. One may earn \$100,000 in one year and be bankrupt the next year. Undoubtedly the most reliable method available by which we may ascertain the condition of the appellant's income in the State of New York is the decree of the New York Supreme Court. (Ex. C-1, S. C., p. 51).

New York was the domicile of the parties. It was within the power of the respondent to develop before the Supreme Court of that State, the truth of her contention and I presume that she made every effort to do so. The New York Supreme Court, after hearing all the testimony about the defendant's large income, fixed the amount of his alimony at \$55 per week.

Taking the converse of the respondent's contention, if a man whose income is \$40,000 per year is required to pay \$55 per week alimony for the support of a wife and two minor children, what ought a man be required to pay whose income is \$2,000 per year for the support of his wife. I think the answer is self-evident.

The opinion of the Court below (S. C., p. 39) provides that

“The defendant will henceforth keep an accurate daily account of his income—the usual physician’s account—and submit a statement to complainant’s counsel semi-annually before January 15 and July 15, and the cause will be referred to a master to examine the defendant on these dates, so that it may be determined what alimony should be ordered paid from time to time.”

Under this mandate of the Court, as the defendant’s income increases, if it should, the respondent will receive the benefit of an increased allowance. At present, the established and undisputed testimony is that the appellant has an income of approximately \$40 per week. One-third of this sum, namely, \$13 to \$14 should be allowed to the respondent for her support and maintenance and no allowance should be made on behalf of the grown-up children.

**It is respectfully contended that the present allowance of \$30 per week out of an income of approximately \$40 is excessive and should be modified.**

Respectfully submitted,

GROSMAN & GROSMAN,  
Solicitors for Appellant.

ROBERT D. GROSMAN,  
Of Counsel.

## New Jersey Court of Errors and Appeals

Between

DORA ROBINS,  
*Complainant-Respondent,*

and

DAVID ROBINS,  
*Defendant-Appellant.*

On Appeal from  
the Court of  
Chancery.

### BRIEF ON BEHALF OF RESPONDENT.

#### Statement of Facts.

This is an appeal from the final decree upon bill filed for separate maintenance, in which it was ordered that the defendant pay to the complainant for her support and maintenance and for the maintenance of a daughter, Ethel, the sum of \$30.00 per week.

Originally, on a preliminary application, the complainant was awarded the sum of \$50.00 per week. After the final hearing, Vice-Chancellor BACKES referred the matter to a Master to determine what amount should be awarded by the final decree. The Master reported that the sum of \$40.00 per week should be awarded. Upon exceptions to the Master's report, the Vice-Chancellor reduced this to \$30.00 per week, which sum was inserted in the final decree.

The defendant, at the time of the making of the decree, and at the present time, is in arrears under both the preliminary order and the final decree.

The defendant was formerly a very prominent physician in the City of New York, and his earnings, at one time, were about \$40,000.00 per year. Litigation ensued between the parties on a complaint filed in the New York Supreme Court, and that Court awarded the complainant the sum of \$55.00 per week. This was a considerable time after the defendant had permitted his practice to run to rack and ruin, it being fair to assume that he did it for the purpose of avoiding the effect of the judgment of the New York court. After paying this amount for about a year and a half, he went to Mexico, where he procured a decree of divorce, then returned to New Jersey, where he married his present wife, with whom he is now living in Newark.

The report of the Master recommended that allowance be made for the complainant and her invalid daughter Ethel, who is entirely unable to support herself, and no provision whatever was made for the son, who is self-supporting.

The defendant contends that the amount awarded is excessive because his earnings are not nearly sufficient to meet such required payments, and insists that the Court ought to adopt the rule that a wife should be allowed no more than one-third of the husband's income. He attempted further to show that he had incurred considerable indebtedness in meeting the payments provided for by the preliminary order, viz., \$50.00 weekly. He met these payments promptly for a period of almost fifteen months, and was in arrears for only about \$250.00 or \$300.00 at the time that the final decree was made. He offered evidence that his total earnings for a period of approximately eighteen months were only about \$3,100.00.

It is the respondent's contention that the rule of one-third of income is not a hard and fast rule,

but that this rule applies only to alimony for the wife, and that additional maintenance may be allowed for children. Beyond this, respondent contends that not only should actual earnings be taken into consideration, but that *the ability of the defendant to earn* is an important factor in determining the amount to be fixed, and the Master and the Vice-Chancellor both having seen and heard the defendant, and having had an opportunity to judge, were justified in reporting and advising respectively what he should be decreed to pay, and that the amount so awarded is fair and reasonable and not excessive.

## ARGUMENT.

### POINT ONE.

**The defendant's ability to earn considerably more than he testified he presently earns is undisputed, and a decree made upon consideration of such factor is discretionary and should not be disturbed.**

The defendant's ability to earn considerably more than he states he earns is evident from his own testimony (State of Case, pp. 13 and 14). He lived in very fine style in New York City, when he practiced there, having an automobile, chauffeur, maids, etc. He had a very high reputation in the medical profession while practicing in New York City. He testifies that he now, out of his present earnings, supports his present household, which consists of his second wife, her two children and himself, and pays all expenses of the household, including the services of a maid, and towards this he receives the sum of \$15.00 per week which is

paid for the maintenance of the two children by their father, who is the first husband of his present wife. It is fair to assume that this sum is quite considerable.

In the eyes of the law (the Vice-Chancellor having held that the Mexican decree was not efficacious) he is still married to the complainant, and his duty to support and maintain lies first in that direction. His statement that his total earnings were but \$3,100.00 in eighteen months is not consistent with the fact that he has been able to pay alimony and maintenance under the preliminary order at the rate of \$50.00 per week for a period of fifteen months and at the same time support his present household. And this, notwithstanding the fact that he testified that he borrowed some moneys with which to meet these obligations. The total borrowed and earned would be far short, we contend, to meet these obligations. So that the Vice-Chancellor was entirely justified in disregarding this testimony of the defendant. He testified that he borrowed certain sums of money, but produced none of the people by whom these loans were made.

In view of the serious contradictions in the testimony of the defendant, and considering his capacity to earn, the Court of Chancery was entirely justified in making the order which it did.

That the defendant's capacity to earn is an important factor in these cases is decided in the case of

*Holmes v. Holmes*, 29 N. J. Equity 9,

in which the Court said that the Master committed no error in taking into account "the income which the defendant *could derive* from his personal services in attention to business." (Italics ours.)

The rule is thus stated in

19 *Corpus Juris*, 255, Par. 290:

“While there is some authority to the effect that only property is to be considered in granting permanent alimony, the better rule is that the Court may take into consideration the husband’s earnings or his capacity to earn money, especially if he has no estate or other means, and a mere disinclination to work does not affect the rule.”

(Citing among other cases, *Holmes v. Holmes*.)

The rule is similarly stated by Vice-Chancellor GREY in

*Furth v. Furth*, 39 Atl. 138.

The rule is thus stated in

6 *A. L. R.* 202,

citing *Furth v. Furth*:

“If the husband has no other property or other income, the court in determining the amount of alimony to be awarded will consider his earning capacity or prospective earnings as a basis therefor.”

See also:

*Horwath v. Horwath*, 110 Atl. 576.

Appellant, in citing from

*Dietrick v. Dietrick*, 88 N. J. Equity 560,

on page 5 of his brief, set forth a portion of the opinion of Mr. Justice TRENCHARD in this case, but did not conclude the quotation. The quotation which is cited continues as follows:

“The amount is not fixed solely with regard on the one hand, to the actual needs of the wife, nor on the other hand, 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." (Italics ours.)

See also:

*Hobble v. Hobble*, 132 Atl. 113.

It is clear that the one-third rule which the appellant desires to have adopted as a hard and fast, fixed rule does not apply to the amount to be allowed in the maintenance of children. In the case of

*Andreas v. Andreas*, 102 Atl. 259,

the Court said:

"This one-third should not include the amount which may be fixed for the support of the offspring."

The case of

*Streitwolf v. Streitwolf*, 58 N. J. Equity 563,

which the appellant cites on page 9 of his brief, is not applicable. In the case involved, no allowance was made for the support of the son, Seymour, and the Court did not at all consider this in fixing the amount in question. The allowance was for the complainant and her invalid daughter, Ethel.

It is argued by the appellant that the fact that the daughter has reached her majority precluded the Court from making any allowance for her maintenance, and the argument further proceeds that because the daughter is a resident of the State of New York, she should become a public charge by reason of her illness and consequent inability to support herself, and that no provision could be

made in a decree of the kind here in question to provide for her. This, to say the least, would be a most unconscionable and oppressive rule, which would leave an invalid child, for whose support the burden rests primarily upon a parent, without means of redress. The defendant could not be reached by process in the State of New York, and the child would, therefore, be without remedy. Certainly this cannot be the rule. Our statutes provide for the support of grandparents and grandchildren who are not in a position to support themselves where some of their kin are in a position to accomplish this. Surely, if the policy of our State is to impose such obligation upon remote kin, how much more forceful would such an obligation rest upon the father by the salutary effect of such policy?

*Amos v. Amos,*

cited by the appellant on page 7 of his brief, does not support the rule there contended for. A reading of the case would indicate that what the Chancellor had in mind as the rule, was that the children had grown up and were able to support themselves. The fact that they had reached their majority is not in itself a determinative factor. A child may not be fully emancipated and yet be able to support itself. On the other hand, a child may reach the age of majority but may be a weakling and unable to support itself, and under such circumstances, the obligation for its support rests primarily upon the parent who brought it into being and who is able to support it.

In any event, it is the respondent's contention that the sum awarded, to wit, \$30.00 weekly, may be sustained, if upon no other ground, as an allowance to her alone. We do not contend that the award of alimony and maintenance should be punitive. But we do contend that considering the

social standing of the parties, their previous mode of life when they were living happily together and the fact that the defendant was a man of means and affluence, and has the ability to earn large sums should be taken into consideration. And if so taken into consideration, the sum of \$30.00 per week for the complainant alone would not be excessive.

The defendant, in Point 4 of his brief, states that he should not be obliged to borrow money with which to pay alimony. The respondent concedes that this should be so. The defendant should "neither a borrower nor a lender be." But on the other hand, he should diligently apply his talents in the practice of his profession instead of attempting to shirk the legal and moral obligations which rest upon him. His primary obligation is to the complainant, who legally is still his wife; to her and to their invalid daughter, and not to the woman with whom he presently lives and whom he supports. If he will apply such talents which he possesses, he will be able to discharge his legal and moral obligations without the necessity of imposing upon the generosity of others (as he says) and consequently will not be in debt either to the complainant or to those others.

## POINT TWO.

**Defendant is not in a position to complain of the provisions of the final decree, because he has not complied in full with the preliminary order, and such final decree.**

Chancellor WALKER, in the case of  
*Cooper v. Cooper*, 143 Atl. 559,  
states the rule as follows:

“It is a principle of law that a party will not be relieved of his duty under an order unless that order is first obeyed.”

It affirmatively appears in this case that the defendant is still in arrears in the payment of his alimony, and he should not now be heard to complain of the hardships imposed upon him by the provisions of the decree until he makes himself whole with the provisions thereof.

**It is respectfully submitted that the decree appealed from is not erroneous, and should be affirmed, with costs.**

GROSS & GROSS,  
Solicitors of Complainant-Respondent.

BENJAMIN GROSS,  
Of Counsel.