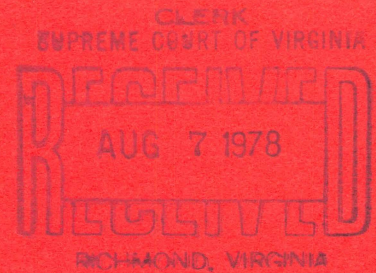


220 VA 749



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 780373

CAROLYN J. COOLEY

.....Appellant,

v.

CYRUS E. COOLEY, JR.

.....Appellee

JOINT APPENDIX

STUART L. CRAIG
126 S. Union St.
Danville, Virginia
24541

JOHN W. CARTER
124 S. Market St.
Danville, Virginia
24541

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MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF SAID COURT:

The plaintiff moves the Court for judgment against the defendant on the grounds and in the amount as hereinafter set forth:

1. The parties hereto, former husband and wife, were divorced by final judgment of absolute divorce entered in the General Court of Justice, District Court Division, state of North Carolina, County of Harnett on December 19, 1972. The defendant now is a resident of Pittsylvania County, Virginia.

2. The parties separated on June 16, 1971, and entered into a separation agreement dated June 16, 1971, a copy of which is attached hereto and made a part hereof as Exhibit "A".

3. On December 15, 1972, the parties entered into a contract which adjusted and altered the terms of the original separation agreement of June 16, 1971. The December 15, 1972, contract provided that the defendant pay the sum of \$550.00 per month to the plaintiff, except in the event he became disabled to work in which case he would pay \$450.00 per month to the plaintiff. In addition, the defendant contracted and agreed to maintain health and hospital insurance as presently provided or, if unavailable, comparable insurance for the use and benefit of the plaintiff. A copy of the contract of December 15, 1972, is attached hereto as Exhibit "B" and made a part hereof.

4. From December 15, 1975, to June 15, 1977, the defendant has failed to comply with his obligations under the original separation agreement of June 16, 1971, as modified by the contract of December 15, 1972. The defendant has made total

payments of only \$800.00 of the \$10,450.00 due for such period, leaving a delinquency in monthly payments due the plaintiff for such period of \$9,650.00, plus interest from the due date of each payment in the amount of \$536.74, a total of \$10,186.74.

5. During the years 1975 and 1976 and through June 15, 1977, the defendant failed in his obligation to provide for and maintain health and hospital insurance for the use and benefit of the plaintiff, and during such period she incurred the sum of \$515.28 for doctor's bills and the sum of \$128.18 for medicines, a total of \$643.46.

6. Attached hereto as Exhibit "C" and made a part hereof is an account of each delinquent payment due and interest due thereon and each doctor's and medicine bill incurred together with the affidavit of the plaintiff stating to the best of her belief the amount of the plaintiff's claim and that such amount is justly due, the time from which the plaintiff claims interest being shown in the aforesaid account of delinquent payments.

WHEREFORE, the plaintiff demands judgment of the defendant in the sum of TEN THOUSAND EIGHT HUNDRED THIRTY AND 20/100 (\$10,830.20) DOLLARS, plus costs.

CAROLYN J. COOLEY

By Counsel

Counsel for Plaintiff:

CARTER, CRAIG & BASS
126 South Union Street
Danville, Virginia 24541

By _____
Stuart L. Craig

EXHIBIT "A"

STATE OF NORTH CAROLINA

COUNTY OF HARNETT

THIS SEPARATION AGREEMENT, made this 16th day of June, 1971, by and between Cyrus E. Cooley, party of the first part, and Carolyn G. Cooley, party of the second part, both of 601 East "G" Street, Erwin, Harnett County, State of North Carolina;

W I T N E S S E T H:

That whereas, the said Cyrus E. Cooley and Carolyn G. Cooley are lawfully married; and whereas, after said marriage the parties hereto lived together as man and wife, and whereas the said parties hereto are very unhappy and in consequence of the circumstances under which they are now living it is reasonably necessary to the health and happiness of both of said parties that they should live separate and apart; and whereas, in consequence of existing conditions it has been decided by the parties hereto that it is to the best interest of all concerned for the parties hereto to make and enter into an agreement of separation and that it is in the best interest of all parties concerned that the contract and agreement hereinafter set forth should be entered into by and between the parties hereto;

Now, therefore, for and in consideration of the sum of Ten (\$10.00) Dollars to each party hereto by the other party paid, the receipt whereof is hereby acknowledged, and in further consideration of the agreements, stipulations, and covenants herein contained the said party of the first part does hereby stipulate, agree, and covenant with the party of the second part, and the party of the second part does hereby stipulate, agree, and covenant with the said party of the first part, as follows:

1. It shall be lawful for the said Carolyn G. Cooley, party of the second part, at all times hereafter to live separate and apart from the said Cyrus E. Cooley, party of the first part, and free from his marital control and authority as if she were sole and unmarried and to reside at such place or places and with such person or persons as she may deem fit, or she may desire, and to conduct, carry on, and engage in any employment, business, trade, or profession she may desire, choose or deem fit, and the same to be for her own sole and separate use and benefit without and free from any and all interference, control or restraint, direct or indirect, on the part of the party of the first part,

the said party of the second part, in regard thereto, to have all the rights and privileges as if she were sole and unmarried.

2. The said party of the first part, in consideration of the mutual stipulations and agreements herein and the further consideration of Ten (\$10.00) Dollars heretofore set forth moving to him from the party of the second part, the receipt of which is hereby acknowledged, does hereby give, grant, bargain, sell, convey, release, set over unto, and quitclaim unto the said Carolyn G. Cooley, her heirs, and assigns forever, all and every right of courtesy and all, each and every right or rights, interest or interests, estate or estates whatsoever which he now has, or may hereafter have, and each and every right, interest, and estate whatsoever which he has heretofore acquired or may hereafter acquire in and to any and all property, whether real or personal, that the said party of the second part now has, owns, or has an interest in, as well as for any rights, interest, title, and estate whatsoever in any and all property, whether real or personal, which the said party of the second part may hereafter acquire or become the owner of or interest in, and the said party of the first part covenants with the party of the second part, for the consideration aforesaid, that he will not at any time in the future make any claim to any interest or estate whatsoever to any property whether real, personal or mixed, which the party of the second part now owns or may hereafter acquire.

3. It shall be lawful for the party of the first part at all times hereafter to live separate and apart from the said party of the second part and free from her and her marital control as if he were single and unmarried, and to reside at such place or places, and with such person or persons as he may desire, choose, or deem fit, without and free from any control, restraint, or interference, direct, or indirect, by the party of the second part in all respects as if he were single and unmarried, and it shall be lawful for the said party of the first part, and he is hereby given and granted the privilege at all times hereafter, to conduct, carry on, and engage in any employment, profession, business or trade which he shall desire, choose or deem fit, the same to be for his own sole and separate use and benefit, without and free from any, every, and all control, restraint, interference, or interest, direct or indirect, on the part of the party of the second part, said party of the first part in regard thereto having each and every right and privilege as if he were single and unmarried.

4. The said party of the second part, for and in consideration of the premises and the stipulations, agreements, and covenants herein and the sum of Ten (\$10.00) Dollars, hereinabove referred to, receipt of which is hereby acknowledged, has and does hereby bargain, sell, convey, release, set over unto, and quitclaim unto him, the said party of the first part, his heirs and assigns, all her right or rights, title, interest, and estate whatsoever, all her claim of dower, and all right of dower, and all estate, title or interest whatsoever which she has heretofore acquired, or which she may hereafter acquire or become in any way entitled to, whatsoever, by reason of her marriage with the said party of the first part, and to any and all real estate that he may now own, or may hereafter acquire and own, and also in and to all personal property that he now owns or may hereafter acquire, to have and to hold the same to him, the said Cyrus E. Cooley, his heirs and assigns, absolutely and in fee simple forever, free and clear from each, every and all claims, demands, titles, estates, or interest, whatsoever, of the said party of the second part, and the said party of the second part covenants to and with the party of the first part for and in consideration of the agreements and stipulations herein, that she will not at any time in the future make any claims for support, maintenance, or alimony or any claims for dower, or right of dower, or to any interest or estate whatsoever, in any property, whether real or personal, which the party of the first part now owns or may hereafter own or acquire, provided this contract is complied with.

5. It is understood and agreed between the parties hereto that the party of the first part shall pay to the party of the second part, so long as party of the second part observes and fulfills the conditions of this contract for the support and maintenance of herself the sum of Three Hundred Fifty (\$350.00) Dollars per month, on or before the 16th day of each and every month hereafter, beginning with the 16th day of July, 1971, so long as the income of the party of the first part shall be equal to his present income, provided, however, that the said payment of Three Hundred Fifty (\$350.00) Dollars per month shall cease in the event the party of the first part becomes disabled from earning an income, then and in that event the party of the first part shall cause his insurance trust fund maintained by Wachovia Bank & Trust Company of Winston Salem, North Carolina, to pay the sum of Three Hundred Fifty (\$350.00) Dollars per month to the party of the second part for and during the remainder of her life, or until such time as she shall remarry.

6. That upon execution of this agreement, the party of the first part shall pay to the party of the second part the sum of Two Thousand Two Hundred (\$2,200.00) Dollars in cash plus any sums remaining in the First Citizens Bank & Trust Company of Dunn, North Carolina, deposited in the name of the party of the second part.

7. The party of the second part shall retain as her sole and exclusive property and party of the first part shall execute the title thereto to the party of the second part of one 1968 La Sabre Buick automobile.

8. In further consideration hereof, the party of the second part shall have the right to remove her jewelry, pictures, crystal, silverware, and personal household and kitchen utensils and other personal effects now in the home occupied by the parties hereto at Erwin, North Carolina.

9. That so long as the parties hereto are married, party of the first part shall maintain in full force and effect for the benefit of the party of the second part ^{the} health and hospital ^{group} insurance policy provided by Burlington Industries for their officers, employees, and dependents.

10. That the party of the first part shall modify his insurance trust with Wachovia Bank & Trust Company of Winston Salem, North Carolina, to provide that in the event the party of the first part is disabled from earning an income that party of the second part shall in that event receive Three Hundred Fifty (\$350.00) Dollars per month from the trust fund for the balance of her life, or until such time as she shall remarry.

11. That the party of the second part agrees to join with party of the first part in filing the 1971 Federal and State Income Tax Returns.

12. It is further mutually agreed that the house and lot owned by the parties hereto located at 246 Magnolia Avenue, Buena Vista, Virginia, being further described as Block 4, Lots 3 and 4 in the Enderly Section, be immediately listed with a real estate agent in that area and be sold immediately; that after the payment of the ad valorem taxes, mortgage, and all costs in connection with the sale, including federal and state income taxes accrued by reason of this sale, the equity or net proceeds shall be equally divided between the parties hereto. That in order to provide for the payment of the federal and state taxes, thirty per cent (30%) of the equity or net proceeds shall be deposited in a bank to be designated by party of the first

part to be held by said bank in escrow until the time for filing the 1971 federal and state income taxes and upon that event shall be released to the party of the first part to be applied on the 1971 federal and state income tax. That in the event there are funds remaining over and above the amount required for income taxes by virtue of the sale, then in that event the said balance shall be at that time equally divided between the parties hereto.

13. It is the understanding, agreement, and covenant on the part of each of the parties hereto that the party of the first part by the terms hereof is released from all support, maintenance, the payment of all and any alimony, whatsoever, and the claims for support, maintenance, and alimony, and is released from all rights of support, maintenance, and the payment of alimony whatsoever, which the said party of the second part, as the wife of the party of the first part, now has or may hereafter have, or in any way be or become entitled to, from the said party of the first part, by reason of her marriage with him; and in consideration of the stipulations, covenants, and agreements herein, and as a part of this contract and agreement, the said party Cyrus E. Cooley, as party of the first part, and Carolyn G. Cooley, as party of the second part, does each hereby for himself and herself, and his and her legal representatives, release and absolutely and forever discharge the other from all claims and demands whatsoever, and from all rights of alimony, support, nurture, and maintenance, and from all actions and causes of actions, of every name, kind, and nature, which either of the parties hereto now has, or may hereafter have by reason of the intermarriage aforesaid, it being expressly understood and agreed, and each of the parties covenants with the other, heirs, assigns, and personal representatives that from and after this date neither of the parties shall have any claim on the other, directly or indirectly, not herein provided for, and that from and after this date, in so far as it is possible for the parties hereto to stipulate, covenant, and agree, the relation of each of said parties shall be to the other in all things as if the intermarriage between them had never taken place, subject to the provisions of this contract.

14. It is the understanding, agreement, and covenant on the part of each of the parties hereto that in the sale, transfer, and conveyance of any property hereafter, whether real, or personal, that it is not necessary in order for the

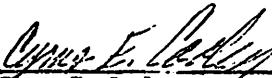
grantee to have a good title, that the other party hereto shall sign and execute the deed of conveyance or bill of sale selling or conveying said property, it being the agreement, understanding, intention, and covenant of the parties hereto that in that respect each of the parties hereto has forever released and discharged the property of the other from all claims, interest, and estates on his or her part, and that each shall be in the same position as if such party were single and unmarried, and as if the intermarriage between the parties had never taken place. However, it is agreed and covenanted between the parties hereto, and each party for himself and herself, covenants and agrees with the other, and with any and all persons interested herein, or who may hereafter become interested herein, that each shall and will at any time or times hereafter, make, execute, and deliver any and all such further and other assurances, as either of the said parties shall reasonably require, for the purpose of giving full effect to these presents and to the covenants, provisions, and agreements hereof.

15. The said party of the second part hereby covenants and agrees that she will not, at any time hereafter, contract any debt or debts, charge, or liability whatsoever, for which the party of the first part, or his property or estate may become personally liable or answerable.

16. It is hereby mutually covenanted and agreed that all the covenants, stipulations, premises, and agreements, assignments, conveyances, and provisions, in this instrument shall apply to and be obligatory upon the heirs, executors, administrators, or assigns of the parties hereto or either of them.

17. It is further mutually agreed and understood that either party hereto shall have the right to compel the performance of this agreement or to sue for the breach thereof in the courts of the State of North Carolina.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals, in duplicate, this 16th day of June, 1971.



Cyrus E. Cooley (SEAL)



Carolyn G. Cooley (SEAL)

STATE OF NORTH CAROLINA

COUNTY OF HARNETT

I, Sandra R. Joseph, a Notary Public of the aforesaid County and State do hereby certify that Cyrus E. Cooley personally appeared before me this day and acknowledged the due execution of the foregoing Separation Agreement for the purposes therein expressed.

Witness my hand and notarial seal this 16th day of June, 1971.

Sandra R. Joseph
Notary Public

My Commission Expires: 12-14-75

STATE OF NORTH CAROLINA

COUNTY OF HARNETT

I, Virginia M. Neighbors, a Magistrate of the State of North Carolina, County of Harnett, do hereby certify that Carolyn G. Cooley personally appeared before me this day and acknowledged the due execution of the foregoing Separation Agreement for the purposes therein expressed; and the said Carolyn G. Cooley, wife of Cyrus E. Cooley, being by me privately examined separate and apart from her said husband or any other person touching her voluntary execution of the same, does state that she signed the same freely and voluntarily without fear or compulsion of her said husband or any other person and that she does still voluntarily assent thereto.

And I do further certify that it has been made to appear to my satisfaction and I do find as a fact, that the said Carolyn G. Cooley executed the said separation agreement freely and consented thereto at the time of her separate examination and that the same is not unreasonable, unjust, or injurious to her.

Witness my hand and seal this 16th day of June, 1971.

Virginia M. Neighbors
Magistrate

EXHIBIT "B"

STATE OF NORTH CAROLINA

COUNTY OF HARNETT

THIS CONTRACT made and entered into this 15th day of December, 1972, by and between CYRUS E. COOLEY, JR. of Erwin, North Carolina, and CAROLYN J. COOLEY, of North Hollywood, California 91602;

W I T N E S S E T H

THAT WHEREAS, on the 16th day of June, 1971, said Cyrus E. Cooley, Jr. and said Carolyn J. Cooley entered into a separation agreement, which provided, among other things, that Carolyn J. Cooley will not make any future claims against Cyrus E. Cooley, Jr.; and,

WHEREAS, on the 27th day of June, 1972, Cyrus E. Cooley instituted a claim against Carolyn J. Cooley for an absolute divorce on the grounds of one-year separation; and,

WHEREAS, Carolyn J. Cooley was duly served with summons and complaint on the 6th day of July, 1972, and said action is now pending in the Harnett County District Court of the General Court of Justice, Case # 72 CVD 0671; and,

WHEREAS, Carolyn J. Cooley hereby agrees that Cyrus E. Cooley, Jr. may secure a divorce without contest by Carolyn J. Cooley, in consideration for the modification of the original separation agreement, as herein provided.

NOW, THEREFORE, that in consideration as aforesaid,

(1) Paragraph Five of the original separation agreement is hereby modified to provide that Cyrus E. Cooley, Jr. shall pay Five Hundred Fifty (\$550.00) in lieu of Three Hundred Fifty (\$350.00) per month, to Carolyn J. Cooley, except in the event Cyrus E. Cooley, Jr. becomes disabled to work, then he shall pay or cause to be paid Four Hundred Fifty (\$450.00) per month to Carolyn J. Cooley, said payments to cease upon the death or remarriage of Carolyn J. Cooley.

(2) Paragraph Nine of the original separation agreement is modified to provide that during the remainder of the life of Carolyn J. Cooley or until such time as she shall remarry,

Cyrus E. Cooley, Jr. shall maintain health and hospital insurance coverage presently provided or if said insurance is unavailable he shall provide comparable insurance for the use and benefit of Carolyn J. Cooley.

(3) That Cyrus E. Cooley, Jr. shall pay Twenty Five Hundred (\$2500.00) Dollars in cash to Carolyn J. Cooley and One Thousand (\$1000.00) Dollars in cash to Carolyn J. Cooley and her attorney, Irving Glavin, upon the execution of this Agreement, the receipt of which is hereby acknowledged.

(4) Except as herein specifically modified, the provisions of the original separation agreement are hereby ratified and reaffirmed.

IN TESTIMONY WHEREOF, Cyrus E. Cooley, Jr. and Carolyn J. Cooley have executed this Contract in duplicate originals, one of which is retained by each, the day and year first above written.

_____(Seal)
Cyrus E. Cooley, Jr.
_____(Seal)
Carolyn J. Cooley
Carolyn J. Cooley

* * *

STATE OF NORTH CAROLINA

COUNTY OF HARNETT

I, Shelby F. Johnson, a Notary Public of the aforesaid county and state, do hereby certify that Cyrus E. Cooley, Jr. personally appeared before me this day and acknowledged the due execution of the foregoing Contract modifying the original separation agreement for the purposes herein expressed.

Witness my hand and notarial seal, this 19th day of December, 1972.

My Commission Expires: 10-10-74

Notary Public

GROUND OF DEFENSE AND SET OFF

Now comes the defendant, Cyrus E. Cooley, Jr., and says that he will rely upon the following defenses to the above styled motion for judgment:

1. That the allegations of Paragraphs 1 and 2 of the motion for judgment are admitted; and,

2. That while it is admitted that the parties hereto executed a subsequent agreement dated December 15, 1972, increasing the defendant's obligations of support to the plaintiff, such agreement was supported by no consideration except the promise on the part of the plaintiff not to contest the divorce action then pending in the District Court of Harnett County, North Carolina, and that in essence the plaintiff was selling to the defendant his freedom from the matrimonial bonds at an increased price over and above that provided for in the agreement of June 16, 1971, which consideration was illegal and invalid and rendered the subsequent agreement of December 15, 1972, void or voidable and unenforceable; and,

3. That the allegations of Paragraph 4 of the motion for judgment are neither admitted nor denied, but that the defendant reserves the right to require strict proof of each and every allegation; and,

That the defendant denies the validity of the alleged agreement of December 15, 1972, and contends that any obligations which he may have to the plaintiff are pursuant to the agreement of June 16, 1971; and,

That under the terms of the agreement of June 16, 1971, the defendant obligated himself to pay the sum of \$350.00 per

month to the plaintiff, "so long as the income of the party of the first part (defendant) shall be equal to his present income" (Paragraph 5 of Exhibit A); and,

That shortly after the divorce of the parties hereto the employment of the defendant with Burlington Industries was terminated, but not at the option of the defendant, so that the defendant was out of work and completely without income for a number of months; that ultimately the defendant found employment with Dan River Mills, Inc. at a considerably reduced income; and,

That the defendant prays that the Court absolve him of the duty of support to the plaintiff under the terms of the agreement of June 16, 1971, during the period that he was unemployed, reduce the support payments during the period that his income was less than that which he was earning with Burlington Industries at the time of the agreement of June 16, 1971; and that such reductions be set off against the plaintiff's claim herein; and,

4. That as to Paragraph 5 of the motion for judgment and as stated in Paragraph 2 above, the obligation to provide hospitalization insurance was not supported by valid consideration and was impossible of performance; but,

That the defendant reserves the right to require strict proof of the allegation as to medical bills alleged by the plaintiff; and,

5. That the defendant is at a loss to discern the purpose of Paragraph 6 of the motion for judgment or the validity of the "affidavit" designated Exhibit "C" but that the defendant denies that the ex parte affidavit has any evidencing validity

in this proceeding and demands strict proof of these allegations by competent evidence; and,

SET OFF

6. That the agreement of June 16, 1971, (Exhibit A, Paragraph 11) provided: "That the party of the second part (plaintiff) agrees to join with the party of the first part (defendant) in filing the 1971 Federal and State Income Tax Returns." That these returns were presented to the plaintiff and in breach and contravention of her contractual obligations, she refused to sign the same, which cost the defendant approximately \$1,300.00 in additional taxes and interest, which sum should be set off against any sums owed by the defendant to the plaintiff.

Respectfully,

Cyrus E. Cooley, Jr.,

By Counsel

CARTER AND WILSON, Counsel for the
Defendant

124 South Market Street
Danville, VA 24541

By


John W. Carter

C E R T I F I C A T E

This is to certify that a true and correct copy of the foregoing Grounds of Defense and Set Off was forwarded to Stuart L. Criag, Esquire, of Carter, Craig and Bass, Counsel for the plaintiff, at his offices at 126 South Union Street, Danville, Virginia, upon the 10th day of August, 1977.


John W. Carter

A F F I D A V I T

STATE OF VIRGINIA


CITY OF DANVILLE, to-wit:

This is to certify that Cyrus E. Cooley, Jr., the defendant in the above captioned Motion for Judgment personally appeared before me, a Notary Public in and for the City and State aforesaid, and after having been duly sworn, made oath that the allegations set forth in his pleading, "Grounds of Defense and Set-Off", are true and correct to the best of his knowledge, with the exception of the set-off for \$1,300, which is in error and should be in the amount of \$309; and that he is incapable of stating the liquidated amount which is due to the plaintiff due to the fact that the adjustment of the agreement of June 16, 1971, referred to in the Motion for Judgment and Grounds of Defense, must be made by the Court; and,

That a copy of the Grounds of Defense and Set-Off sworn to by the defendant, Cyrus E. Cooley, Jr., are hereto appended.


Cyrus E. Cooley, Jr.

Sworn and subscribed to before me this 1st day of September
~~August~~, 1977.


Notary Public

My commission expires: July 8, 1979.

C E R T I F I C A T E

This is to certify that a true and correct copy of the foregoing Affidavit was forwarded to Stuart L. Craig, Esquire, of Carter, Craig & Bass, Attorneys, counsel for the plaintiff, at his offices, at 126 South Union Street, Danville, Virginia, upon this the 1st day of ~~August~~ ^{September}, 1977.

John W. Carter

AMENDED GROUNDS OF
DEFENSE

The defendant amends his grounds of defense in the above captioned motion for judgment in the following respects:

1. That as to Paragraph 2. of the motion for judgment, the defendant denies that the parties hereto separated on June 16, 1971, but alleges that the parties continued to live under the same roof until the following day or a day or two later; and that at the time of entering into the agreement of June 16, 1971, the parties were not in fact separated; and that the parties to such agreement did not have the capacity to contract one with the other; and that the consideration for the contract was both illegal and against public policy so as to render the agreement void or unenforceable; and,

2. That as to the allegations of Paragraph 3. of the motion for judgment, the defendant denies the validity of the agreement of June 16, 1971, upon grounds set forth in Paragraph 1. above.

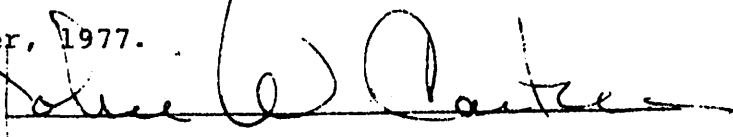
Cyrus E. Cooley, Jr.

by counsel

Carter & Wilson, Counsel for
the Defendant

by 
124 South Market Street
Danville, Virginia

This is to certify that a true and correct copy of the foregoing Amended Grounds of Defense was forwarded to Stuart L. Craig, Esquire, of Carter, Craig & Bass, Counsel for the Plaintiff, at his offices at 126 South Union Street, Danville, Virginia, on the 25th day of September, 1977.

A handwritten signature in cursive script, appearing to read "Stuart L. Craig", is written over a horizontal line.

TWENTY-SECOND JUDICIAL CIRCUIT

CIRCUIT COURT OF DANVILLE

CIRCUIT COURT OF FRANKLIN COUNTY

CIRCUIT COURT OF PITTSYLVANIA COUNTY

B. A. DAVIS, III, JUDGE
ROCKY MOUNT, VIRGINIA 24151

JAMES F. INGRAM, JUDGE
DANVILLE, VIRGINIA 24541

W. CARRINGTON THOMPSON, JUDGE
CHATHAM, VIRGINIA 24531

December 30, 1977

Mr. Stuart L. Craig
Carter, Craig & Bass
126 S. Union Street
Danville, Virginia 24541

Mr. John W. Carter
Carter & Wilson
124 S. Market Street
Danville, Virginia 24541

Re: Carolyn J. Cooley v. Cyrus E. Cooley, Jr.

Gentlemen:

After hearing the evidence on December 16th, and considering the briefs submitted, the Court is of the opinion that both the Separation Agreement, dated June 16, 1971, and the Contract, dated December 15, 1972, are void.

In Phelps, DOMESTIC RELATIONS IN VIRGINIA (Third Edition 1977) at page 468, this is said:

"A contract which facilitates or promotes separation or divorce is void."

In the case of Ryan v. Griffin, 199 Va.891, 894, 103 S.E.2d 40 (1958) the Court said:

"If in fact or in effect the contract facilitated or promoted separation or divorce it was void. 'A contract that is entered into before separation of the parties and which facilitates or promotes separation or divorce is void.' Wallihan v. Hughes, 196 Va. 117, 123, 82 S.E.2d 553, 558. That has been the law in this State at least since Cumming v. Cumming, 127 Va.

Mr. Stuart L. Craig
Mr. John W. Carter
December 30, 1977
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16, 102 S.E. 572, decided in 1920, and has been restated in more recent cases: Shelton v. Stewart, 193 Va. 162, 67 S.E. 2d 841; Anderson v. Anderson, 196 Va. 26, 82 S.E.2d 562; Arrington v. Arrington, 196 Va. 86, 82 S.E.2d 548; Higgins v. McFarland, 196 Va. 889, 86 S.E.2d 168.

As pointed out by Mr. Justice Miller in Shelton v. Stewart, supra (193 Va. at 166, 67 S.E.2d at 843):

'The public policy rendering such agreements void is the policy to foster and protect marriage, to encourage the parties to live together, and to prevent separation, marriage being the foundation of the family and of society, without which there would be neither civilization nor progress.'

We have no disposition to change or relax the established rule."

The Court feels that pursuant to §8.01-270 of the Code of Virginia, as amended, this action at law should not be dismissed but transferred to the equity side of the Court and there proceed as a bill for spousal support with appropriate amendments to the pleadings if necessary.

After the transfer is made the Court would assume that both sides would like to present further evidence which can be done by another ore tenus hearing, or by depositions, since the plaintiff resides in California.

Counsel is directed to prepare the appropriate Order.

With best wishes, I am

Very truly yours

W. Carrington Thompson

WCT:hds

ORDER

The parties hereto having waived trial by jury, this action came on to be heard by the Court on December 16, 1977.

The Court, having considered the pleadings and briefs of counsel, the depositions of the defendant taken on September 8, 1977, all exhibits introduced, the testimony given by the parties on December 16, 1977, and the arguments of counsel, and the Court being of the opinion, as expressed in its letter to counsel of December 30, 1977, that both the Separation Agreement dated June 16, 1971 and the Contract dated December 15, 1972 are void and that the plaintiff is not entitled to recover based upon her Motion for Judgment herein,

WHEREUPON, it is ORDERED that the plaintiff recover nothing herein. The Court directs that the testimony of the defendant taken at his deposition on September 8, 1977 and the transcript of the hearing on December 16, 1977 be made a part of the record herein.

The plaintiff, having indicated her intention to appeal the judgment of this Court, it is ORDERED that the judgment of this Court be suspended until final disposition is made of this case by the Supreme Court of Virginia, and that the plaintiff post an appeal bond to indemnify the defendant against his costs in the amount of \$300.00.

ENTER:

Judge

CARTER & WILSON

Counsel for the Defendant
124 South Market Street
Danville, Virginia 24541

By _____

CARTER, CRAIG & BASS

Counsel for the Plaintiff
126 South Union Street
Danville, Virginia 24541

By _____

ASSIGNMENTS OF ERROR

1. The lower court erred in holding that the separation agreement dated June 16, 1971 was void and unenforceable.

2. The lower court erred in holding that the contract dated December 15, 1972 was void and unenforceable.

3. The lower court erred in refusing to hold that the appellee was estopped to assert the invalidity or unenforceability of the original separation agreement and its contractual modification.

NOTICE OF APPEAL

PLEASE TAKE NOTICE pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, that the plaintiff, by counsel, intends to appeal the judgment of this Court entered herein on February 3, 1978.

The transcript of the hearing held before the Court on December 16, 1977 will be hereafter filed.

CAROLYN J. COOLEY

By 

Counsel

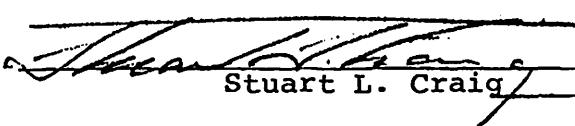
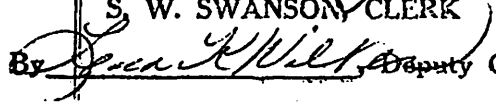
CARTER, CRAIG & BASS
Counsel for Plaintiff
126 South Union Street
Danville, VA 24541

CERTIFICATE

This is to certify that a true and correct copy of the foregoing Notice of Appeal was forwarded to John W. Carter, Attorney at Law, 124 South Market Street, Danville, Virginia, 24541, counsel for the defendant, on this the 13th day of February, 1978.

Filed in the Clerk's Office of the Circuit
Court of Pittsylvania County the 14th
day of February
1978.

S. W. SWANSON, CLERK

By  Stuart L. Craig
 Deputy Clerk

31

CYRUS E. COOLEY, JR.

the witness, being first duly sworn, deposed and stated as follows:

EXAMINATION BY MR. CRAIG:

Q. You are Cyrus E. Cooley?

A. Correct.

Q. How old are you, Sir?

A. Fifty-six.

Q. And your present address?

A. 2057 Woodlake Drive, Danville, Virginia.

Q. That's in Pittsylvania County?

A. Yes, but Danville mailing address.

Q. I believe you were divorced finally from Mrs. Cooley on December 19, 1972 by order of accord in North Carolina?

A. Yes.

Q. What is your present job, Mr. Cooley?

A. I am Division Manager of the denim division of Dan River Mills, Inc.

Q. What is your salary there?

A. Current salary is \$40,000 per year.

Q. How long have you been with Dan River?

A. Almost the second anniversary. Within about a week of my second anniversary. I came to work for them September 15th.

Q. Of 1975?

1 MR. CRAIG: I guess it would be 1975 and 1976.

2 MR. CARTER: He does not mean he wants these things produced
3 today, but simply bring them in, let me make copies and I
4 will get them to Mrs. Gosney and she will append them to the
5 deposition.

6 Q. When did the separation with your first wife take
7 place, Mr. Cooley, do you remember?

8 A. At the time that this original separation agreement
9 was filed, the day the separation took place was June 16, 1971.

10 Q. But as far as you can recall, that's the date you
11 actually separated?

12 A. That is the day we separated.

13 Q. What was the basis of the separation? Did you just
14 agree not to live together or what?

15 MR. CARTER: Again, what is the relevancy of that? We are
16 dealing with a contract.

17 MR. CRAIG: Perhaps it isn't. I will withdraw it if you
18 object to it.

19 Q. When you separated, Mr. Cooley, you were working
20 for Burlington Mills?

21 A. Correct.

22 Q. What was your salary with Burlington?

23 A. \$33,000 a year.

24 Q. Did you have hospitalization insurance through
25 Burlington?

1 I objected to it because I felt it was premature. I feel
2 this is premature too.

3 MR. CRAIG: You are always looking to what is available,
4 assuming . . .

5 MR. CARTER: I think we could almost stipulate Mr. Cooley
6 could respond in damages if the Court can determine what
7 her damages are.

8 MR. CRAIG: I don't know it is so important. I was just
9 trying to get a general idea what it was. It wasn't a great
10 amount, I take it.

11 A. No, it wasn't a great deal of money and I had only
12 been with Burlington at that time about five years.

13 Q. It wouldn't have been \$5,000?

14 A. It may have been.

15 Q. But somewhere in that range?

16 A. In that range.

17 Q. You were represented by counsel, I guess, and so
18 was your wife at the time of this original separation agreement
19 in 1971?

20 A. I was represented by counsel who drew the separation
21 agreement, yes.

22 Q. And the agreement -- and we have got a copy of
23 it here and I don't think there is any dispute about it --
24 provided you would pay \$350 a month so long as your income
25 equalled your present income, if you were disabled there was

1 better worded if you were unable to pay in the event of your
2 death these policies would take over?

3 A. I can't understand why it was worded that way.

4 Q. It would make more sense if it says "in the event
5 of my death" these would take over?

6 A. Correct, because there was nothing there.

7 Q. As I understand it, you are claiming Mrs. Cooley
8 did not cooperate properly with you in accordance with the
9 original separation agreement in filing the 1971 federal
10 tax return, is that correct?

11 A. Yes.

12 Q. Do you remember who prepared your return?

13 A. Centralized Accounting Service, Salisbury, North
14 Carolina.

15 Q. I have an indication -- you tell me if it is correct --
16 you had wages of approximately \$35,750 for 1971 with interest
17 and dividends which amounted to some \$2,600 or so. Your
18 total income on the return was approximately \$38,460?

19 A. That's the amount shown on the return.

20 Q. That's approximately right then?

21 A. Yes.

22 Q. Who does your tax returns now?

23 A. Harris over here.

24 Q. Harris, Harvey and Neal?

25 A. Yes.

1 head of household I paid an additional \$309 to the federal
2 government. I don't have the figures on the state. It might
3 have been a few dollars there.

4 Q. The divorce that you got, was the basis of the
5 divorce the one year separation?

6 A. That's correct.

7 Q. I take it at that time in North Carolina if you had
8 lived separate and apart for a year you could get a divorce
9 without asserting any other grounds?

10 A. That's correct.

11 Q. Mr. Cooley, do you recall there was an order entered
12 in the court there in North Carolina on the same day as the
13 divorce decree, apparently, which required that you maintain
14 medical or hospital insurance coverage on your wife until
15 her remarriage or death, do you recall that?

16 A. Yes.

17 Q. And I will show you an order dated December 19, 1972
18 and ask you if that is a correct copy of it and if it is,
19 I would like to have it marked as Exhibit A to the deposition.

20 A. Yes.

21 Q. So the Court did include the last part of this
22 modification agreement in its divorce decree?

23 A. Not to my knowledge. That was a separate decree.
24 The reason that decree was entered Burlington had to have that
25 type of decree in order for them to list her as a dependent

1 on my Burlington hospitalization policy. Therefore, we
2 requested the Court to issue that, so Burlington could pay
3 it under the group hospitalization policy, in order to fulfil
4 the original separation agreement.

5 Q. I believe you did agree on December 15, 1972 when
6 there was a modification of that agreement to provide health
7 and hospitalization insurance coverage for Mrs. Cooley?

8 A. Through the Burlington policy was my interpretation
9 of that.

10 Q. I will show you the agreement.

11 A. That's an amendment to the original.

12 Q. It doesn't say anything about Burlington. It just
13 says you will provide it.

14 MR. CARTER: Let the record show we do not recognize the
15 validity of this amendment and modification.

16 MR. CRAIG: I am trying to show part of the modification
17 was incorporated into the court decree. Essentially the
18 court degree does what that decree says.

19 A. Yes. We requested the court issue that separately.
20 I had to present a copy of that to Burlington in order to
21 list her as a dependent.

22 Q. Did you try to do that with Dan River?

23 A. Yes. First I tried to get Burlington when they
24 terminated my employment to allow me to convert the policy
25 with Provident and keep her. I have a letter from the

1 Director of Insurance saying they couldn't do that. I tried
2 to get Dan River to do it, and they wouldn't do it.

3 Q. Have you done anything to try to provide the
4 coverage provided by that court order?

5 A. I discussed it at great length with my insurance
6 agent in Greensboro. After I gave him her medical history
7 he told me he was certain she was not insurable, he would
8 not insure her.

9 Q. Why was she insurable while you were with Burlington?

10 A. Because she was on a group policy and anybody is
11 insurable on a group policy, but on an ordinary hospitalization
12 policy, all the policies we looked at, had exclusions in it
13 that would have excluded everything practically you were
14 paying for in the policy. I made a very conscious effort to
15 obtain insurance for her, but it was impossible.

16 Q. What was the purpose of the modification of this
17 original agreement? You modified it four days before the
18 divorce decree, December 15, 1972, and the divorce was
19 December 19th. Were you represented then?

20 A. Yes.

21 Q. Did your attorney draw up the modification?

22 A. Yes.

23 Q. What was the purpose of it?

24 A. To get her to agree to a divorce.

25 Q. You had actually deserted her?

1 A. No, she deserted me and went to California.

2 Q. Why did she have to agree to anything?

3 A. Subsequent to the difficulties with her living
4 up to the original agreement insofar as the joint return was
5 concerned, I saw I was probably going to have problems, so
6 I decided I would go ahead and get a divorce and get the
7 matter settled once and for all. This was over a year after
8 we separated.

9 Q. You are really saying now you had grounds for divorce
10 because she deserted you, so it wouldn't have been any
11 obstacle for you to get a divorce on the grounds of
12 desertion and had you done so, you would have been able to
13 defeat any alimony.

14 A. When I filed the action against her, her attorney
15 in California wrote to the court and told the court that she
16 was physically unable to travel, and therefore not to try
17 the case. They didn't have counsel in North Carolina. It
18 was Los Angeles counsel. Subsequent to that he entered into
19 a whole series of correspondence with my attorney and over
20 a period of July until December they corresponded and conversed
21 by telephone and finally the agreement was made if I would pay
22 her \$2500 in cash, pay her attorney \$1,000, amend the agreement
23 to \$550 per month, she would grant a divorce. She would not
24 contest the divorce was the sole reason for the modification.

25 Q. And then you got the divorce, as I understand the

1 decree, on the ground you lived constantly separate and
2 apart since June 16, 1971?

3 A. That's correct.

4 Q. That's the only ground stated in the decree?

5 A. That's the only ground.

6 Q. So there was apparently some contest between you
7 about grounds and about money at that time?

8 A. There was never any contest, to my knowledge, about
9 grounds.

10 Q. Mainly about the money she was to get?

11 A. That was the purpose of it. I had given her a cash
12 settlement at the time of the first separation agreement,
13 more than was entered into the agreement in fact.

14 Q. But you actually intended to carry out the modification
15 at the time, didn't you? In other words, you actually changed
16 the Wachovia insurance trust to provide for \$450 instead of
17 \$350, for instance?

18 A. That's correct.

19 Q. And you also agreed to this decree which provided
20 for the medical and hospitalization coverage in accordance
21 with the modification?

22 A. Yes.

23 Q. I take it you felt bound by it at least at that time.

24 MR. CARTER: I think you are asking him questions by law he
25 isn't compelled to answer.

1 MR. CRAIG: I am asking if he felt bound by it, not if he was
2 bound by it.

3 MR. CARTER: How one feels

4 MR. CRAIG: I will withdraw the question.

5 Q. You did perform under it?

6 A. Yes, I paid the \$550.

7 Q. How long did you pay that?

8 A. October, 1975.

9 Q. Apparently you just stopped making any payments at
10 all sometime in 1975, is that right?

11 A. Last summer.

12 Q. I think the suit said just the period December 15,
13 1975.

14 A. That's when I reduced it, from November, 1975. I
15 paid the full amount in November, and I reduced it in December.

16 Q. So you paid the full amount of \$550 in November of
17 1975?

18 A. That's correct.

19 Q. And then you reduced it to what?

20 A. \$100.

21 Q. Why \$100?

22 A. I had been unemployed with absolutely no income
23 during the summer of 1975, then I had gone to work for Dan
24 River at \$28,000 a year, and my money just ran out. In fact,
25 I drew unemployment insurance was the only income I had during

1 CYRUS S. COOLEY, JR., having been first sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CRAIG:

5 Q. Your name is Cyrus S. Cooley, Jr.?

6 A. Yes, sir.

7 Q. And where do you live now, Mr. Cooley?

8 A. 2057 Woodlake Drive, Danville, Virginia.

9 Q. That is in Pittsylvania County?

10 A. It is just outside of the city limits in Pittsylvania
11 County. I pay taxes in Pittsylvania County.

12 Q. Now, Mr. Cooley, when did you and Mrs. Cooley,
13 the former Mrs. Cooley, Carolyn J. Cooley, when did the two
14 of you get married?

15 A. I believe it was in '58.

16 Q. And where were you living at that time?

17 A. In California.

18 Q. Where in California?

19 A. We bought a home out in the valley on Amstore
20 Avenue.

21 Q. In the valley, you are talking about San Fernando Valley
22 near Los Angeles?

23 A. Yes, sir.

24 Q. Now, where were you working at that time?

25 A. Working for Dye Craft, Incorporated.

1 Q. And how long did you live in California, you and
2 the former Mrs. Cooley?

3 A. I moved to Virginia and reported to work at James
4 Lee in Glasgow, Virginia on May 15, 1961.

5 Q. Was that a textile business?

6 A. Yes, sir.

7 Q. And how long were you with them?

8 A. I left them January 1, 1967.

9 Q. Where did you go then?

10 A. Calhoun, Georgia.

11 Q. Where did you go from there?

12 A. Went to Burlington Industries at Coolemee, North
13 Carolina.

14 THE COURT: And when was that?

15 MR. COOLEY: That was February, the first week of
16 February, 1967.

17 THE COURT: Where is that?

18 MR. COOLEY: It is between Mocksville and Salisbury
19 on the South border of the Yadkin River. We lived at Mocksville,
20 but I actually worked at Coolemee.

21 THE COURT: That is just West of Winston-Salem?

22 MR. COOLEY: Yes, sir.

23 BY MR. CRAIG:

24 Q. And you were making a pretty good income, weren't
25 you, at Burlington?

1 A. Eventually, I was, yes.

2 Q. What was your position finally at Burlington?

3 A. At what point and time? At the time I left
4 Burlington in 1975?

5 Q. Well, I think what we need to know is what happened,
6 what was your position with Burlington about the time you
7 and Mrs. Cooley separated somewhere in early 1971. What
8 was your situation with Burlington?

9 A. When we separated in 1971, I was General Manager of
10 the Erwin, North Carolina Plant.

11 THE COURT: Of Burlington?

12 MR. COOLEY: Of Burlington Industries and was also
13 carrying the responsibilities for a plant at Sontewall,
14 Mississippi.

15 Q. What were you making at that time at Burlington?

16 A. At the time we separated I was making \$30,000.00.

17 Q. Now, during the time of your marriage had your wife
18 ever worked?

19 A. She worked part of the first year we were married.

20 Q. After that, she didn't?

21 A. No, sir.

22 Q. Was she physically able to work in '71?

23 A. The question never arose, but I assume so.

24 Q. Was she ever trained for any specific job?

25 A. Not to my knowledge. She had worked at electronics

1 and she had had that type experience.

2 Q. But she had worked for a short period you say the
3 first year and then she had not worked since 1959, had not
4 worked at all?

5 A. No, sir.

6 Q. You had been the sole support for her?

7 A. That is correct.

8 Q. And you had no children?

9 A. That is correct.

10 Q. Now, something happened obviously, Mr. Cooley, to
11 cause the separation. What was it?

12 A. She wanted to live in California more than she
13 did in the Eastern part of the United States.

14 Q. Did it have anything at all to do with your finding
15 another interest in some other person?

16 A. No, sir.

17 Q. Do you deny that?

18 A. Yes, sir.

19 Q. Do you deny that you asked your wife to leave?

20 A. I didn't exactly ask her to leave in our discussions.
21 She wanted to go to California. Let me go back. From the time
22 we left Georgia when we moved to Mocksville and I rented a
23 house, she went to California and stayed four months. She
24 came back, we moved to Coolemee and then when we moved to
25 Greensboro from there she went to California and stayed

1 for another period of time. During that period from 1968-'69
2 up until '71, she spent about fifty percent of her time in
3 California and the other fifty percent with me. It was not
4 uncommon for her to go out there and stay three months at
5 a time, because she had her family out there and left me
6 by myself.

7 Q. She did have some family ties in California?

8 A. Yes, sir.

9 Q. You say you didn't exactly ask her to leave?

10 A. She wanted to make the trip and she insisted on some
11 type of agreement before she left to go to California.

12 Q. You expected her back?

13 A. Frankly, no.

14 Q. Did you want her back?

15 A. I had rather mixed feelings at that time, frankly.
16 To complicate the situation further, at the point she left
17 here she had refused to attend my church and had changed to
18 another church. She would not attend any social events with
19 me. As General Manager of the plant I was responsible for
20 going to a number of meetings. I was Vice-President of the
21 area Chamber of Commerce and other civic responsibilities
22 and/got to the point where they kidded me constantly. Every-
23 time I would appear at some function, they would say, "Well,
24 there he is again without a wife". And I really had reached
25 a state of mind where it was immaterial to me whether she came

1 back or not.

2 Q. As far as this agreement is concerned, you went to
3 see a lawyer, didn't you? She didn't have a lawyer at that
4 time?

5 A. No, sir, not to my knowledge.

6 Q. It was the firm that you went to see that drew
7 up this June separation agreement?

8 A. Yes, sir.

9 Q. And you separated, as I understood your testimony.
10 previously, you separated the day that was signed.

11 A. To the best of my recollection and knowledge we
12 entered into the agreement and the following morning she
13 collected the checks and monies involved and left and went
14 to California is the way I recall it.

15 Q. But you remember testifying in the deposition
16 taken on September 8, 1977 in my office about this matter
17 when you separated and on Page 7 of that deposition, I will
18 just read you the question and answer. "Q. When did the
19 separation with your first wife take place, Mr. Cooley, do
20 you remember?" "A. At the time that this original separation
21 agreement was signed. The day the separation took place was
22 June 16, 1971." "Q. But as far as you can recall that is the
23 date you actually separated?" "A. That is the day we
24 separated." Do you remember that testimony?

25 A. Yes, sir, I had the separation agreement before me

1 at the time.

2 Q. Well, I am asking you, are you changing that
3 testimony now or is that correct? Is what you said on
4 September 8th under oath during your deposition - - -

5 A. Technically, that is the day we separated. Whether
6 she left the house that day or not, in my recollection she
7 had to go to the bank and get some money after appearing
8 before the Magistrate where I took her down there and she
9 appeared before the Magistrate and executed the agreement.
10 To the best of my recollection and knowledge and it confirms
11 with that testimony, technically, at that point I considered
12 us separated. She collected her checks, but she had the right
13 to close out one account at one bank and I gave her a check
14 covering additional monies and she left and went to Roanoke
15 and from there to California.

16 THE COURT: What does the Magistrate have to do
17 with it? Do you mean the Notary Public?

18 MR. CARTER: No, sir, in North Carolina these
19 separation agreements are executed, in brief, "Pomp
20 and Circumstance", and the wife's acknowledgment
21 cannot be taken by a mere Notary, but it must be a
22 Magistrate or a Superior Court Judge or Clerk of the
23 Court or someone like that who testifies that he took
24 her aside and went over the agreement and finds out
25 that she is in agreement with her husband.

1 BY MR. CRAIG:

2 Q. After you signed this, though, you didn't live
3 together as husband and wife, you said you yourself considered,
4 as you say, you were separated?

5 A. I considered we were separated. I seem to recall
6 we did spend that night in the house.

7 Q. Mr. Cooley, I want to show you a verified pleading
8 that was filed when you actually brought suit for divorce
9 in North Carolina. I would ask you to look at this and see
10 if you agree that is the pleading that you filed in the
11 North Carolina Court when you brought suit there for a divorce?

12 A. Yes, sir.

13 Q. You notice that it is verified?

14 A. That I signed it.

15 Q. Taken under oath?

16 A. Yes, sir.

17 Q. And that is your signature?

18 A. That is correct.

19 Q. And it says, "That you were married on or about
20 September, 1958 and thereafter you lived together as husband
21 and wife until on or about June 16, 1971 when they separated."
22 Then the next paragraph says, "Since June 16th plaintiff
23 and defendant have lived continuously separate and apart from
24 each other and at no time have resumed the marital relationship
25 which formerly existed between them." That is correct?

1 A. Yes, sir.

2 MR. CRAIG: We ask that this be marked "Plaintiff's
3 ~~Exhibit D~~". Mr. Carter has asked that the divorce
4 decree filed December 19, 1972 in General Court of
5 Justice, Juvenile Court Division, State of North
6 Carolina, County of Harnett be filed as "~~Exhibit E~~".

7 THE COURT: All right.

8 Q. Mr. Cooley, I will show you a copy of this decree.
9 Do you recognize that as the decree that divorced you and
10 your wife?

11 A. Yes, sir.

12 Q. And I believe that it says, "That it is an affirmed
13 fact that you were married on or about September 1, 1958
14 and lived continuously separate and apart from each other since
15 June 16, 1971", is that correct?

16 A. That is what it says.

17 Q. That is in accordance with your pleadings to the
18 court?

19 A. Yes, sir.

20 Q. So as I understand you, Mr. Cooley, your wife left
21 right after the separation agreement was signed and you
22 considered yourself separated and she left and went to
23 California?

24 A. That is correct.

25 Q. Was there any understanding about her coming back?

1 A. No, there was no understanding about when she would
2 come back or if she would come back.

3 Q. She didn't understand that she was to come back or
4 you would send for her or communicate with her around Christmas-
5 time and she would return to North Carolina around Christmastime?

6 A. No, sir.

7 Q. Did she ever come back?

8 A. Yes, sir.

9 Q. When was that?

10 A. When I filed the divorce action.

11 THE COURT: We are talking about '71 and '72?

12 MR. COOLEY: Yes, sir, this was June '71, when she
13 left.

14 Q. When did you file the divorce action?

15 A. I believe it was filed in July of '72. She came
16 back when school and college was out. My daughter was in
17 college.

18 Q. Where was your daughter in college?

19 THE COURT: June 27, 1972.

20 A. My daughter was living with me in Erwin and attending
21 college and staying in the dormitory at Methodist College in
22 Fayetteville, North Carolina.

23 Q. So she came back then before you filed the divorce
24 action?

25 A. She came back at the point school was out. I don't

1 recall before or after, immediately.

2 Q. College would have been out before June 27th. It

3 would have been around the end of May, wouldn't it?

4 A. It was almost coincidental with the time.

5 Q. It was almost a month or three weeks anyway before

6 you filed the divorce?

7 A. I don't remember the exact date.

8 Q. But she did come back?

9 A. Yes, and checked into a motel.

10 Q. Didn't she want to come back to your home?

11 A. She came and got certain personal possessions

12 of hers and packed them into her car and took my daughter.

13 Q. Didn't she try to come back and say, "I want to

14 live with you and I want to stay here"?

15 A. That is not the way I recall it, no.

16 Q. You don't recall that?

17 A. No.

18 Q. You don't remember her coming up to your home in

19 a cab and saying, "I am home, I am back"?

20 A. In a cab?

21 Q. In a cab or personal car and saying, "I am back"?

22 A. She called me from the motel and my daughter

23 called me from the motel in Dunn, North Carolina at Howard

24 Johnson's to let me know where my daughter was, because she

25 didn't get home at her normal time.

1 Q. Were you ever given the message, Mr. Cooley, that
2 your wife had come back to live with you, to stay with you?

3 A. I don't think so.

4 MR. CARTER: I don't see what the relevancy of
5 this is.

6 THE COURT: I think it is, Mr. Carter, the
7 circumstances, the action between the agreement and the
8 modification.

9 MR. CRAIG: What we are really trying to show is
10 that Mr. Cooley is getting the divorce, he wanted the
11 divorce. He refused for his wife to come back, he wanted
12 her to stay away and he didn't want her back and every-
13 thing done was done by Mr. Cooley.

14 MR. CARTER: We will stipulate that they are the
15 considerations for the divorce was the . . . for the
16 agreement.

17 MR. CRAIG: That is gracando. (Spelling ?)

18 Q. You say, Mr. Cooley, that nobody ever got the
19 message to you that your wife wanted to come back? Why do
20 you think she came back from California?

21 A. She came back to get Kathy to take her back to
22 California.

23 THE COURT: That is your daughter?

24 MR. COOLEY: Yes, sir.

25 Q. That is your daughter by a former marriage?

1 A. Yes, sir.

2 Q. Did she go with her?

3 A. Yes, sir.

4 Q. And nothing was said about your wife wanting to
5 come back and stay there with you in North Carolina? Is
6 that your testimony?

7 A. I really don't recall that there was any effort
8 on her part to come back and reestablish the home.

9 Q. You didn't want her to anyway?

10 A. Very frankly, based on everything that occurred
11 up to the point at which she left, I didn't see that it was
12 possible to save our marriage.

13 Q. Well, really, you wanted the divorce, didn't you?

14 A. I had no reason to want a divorce at that time.

15 Q. How long was it after the divorce was it that you
16 remarried?

17 A. I remarried in '73.

18 Q. Were you going with somebody else at the time this
19 divorce occurred?

20 A. I was seeing another woman.

21 Q. You had been seeing her for sometime, hadn't you?

22 A. I started seeing her six months after the separation,
23 Christmastime.

24 Q. January of '72, you started seeing her and were going
25 with her then?

1 Q. Mr. Cooley, you are familiar, I take it, you had
2 some obligation to provide some support money for your wife,
3 is that right?
4 A. You mean when we separated in 1971?
5 Q. Yes.
6 A. Yes, I felt an obligation to send her some.
7 Q. And you went and asked your attorneys to draw up
8 this agreement?
9 A. That is correct.
10 Q. Because you knew you were going to separate and
11 you knew, also, you felt you had some obligation to provide
12 some funds for her ~~to live on even though she was in California?~~

13 MR. CARTER: Are we talking about moral or legal
14 obligations.

15 THE COURT: Well, obviously, he felt like he owed
16 something because he sought counsel and had this agree-
17 ment drafted according to the evidence thus far.

18 A. I had the agreement drafted because of the fact
19 she insisted on the agreement. I told her I felt I owed her
20 something and I would send her some money each month.

21 Q. So she wanted it in writing and you sought your
22 attorneys and drew it up and you and your wife signed it
23 and she left for California. That is exactly what happened.

24 A. I reviewed it with the attorney and signed it.
25 She went before the Magistrate and he explained it to her

1 and she signed it.

2 Q. Well, I take it, at the time that you entered
3 into it you felt it was fair and just to both you and your
4 wife and she accepted it as being fair?

5 A. Yes, sir.

6 Q. In other words, you both agreed this was a
7 reasonable amount for you to pay while you were separated?

8 A. That is correct, with the stipulation that it
9 could be reduced.

10 Q. I think that was later, wasn't it? That came
11 later in a separate agreement?

12 MR. CARTER: No, it was in the first agreement.

13 A. My understanding, it was the request of her
14 attorneys to put that in there.

15 Q. There was a provision in there it would cease in
16 the event you became disabled from earning an income. This
17 is the first agreement, but there was a provision there would
18 be a trust fund maintained at Wachovia Bank to take care
19 of that in the event you were disabled. So it was \$350.00
20 a month without any reduction and that was to be forthcoming
21 regardless if you were disabled or not?

22 A. That is the way the agreement is written, but there
23 was no corpus to the trust fund unless I died as you well
24 know in the deposition I gave, therefore, that was really
25 drawn in such a way there was no way to fund that trust in case

1 of becoming disabled and I realized that after the second - - -

2 Q. What you said in the deposition certainly appears
3 to be true in that it was to be funded, it should have been
4 written to read, "In the event of my death"?

5 A. That is correct.

6 Q. The trust fund, really, it was funded with a life
7 insurance policy?

8 A. That is correct.

9 Q. So maybe the lawyer didn't put it in there correct?

10 A. That is correct.

11 THE COURT: It is a formal disability to the draft?

12 MR. COOLEY: That is right.

13 Q. Now, who drew up the second agreement, this one
14 in December of 1972? That was just about the time you got
15 your divorce, wasn't it?

16 A. That agreement was the result of six months'
17 negotiations between her attorneys in California and Wiley
18 Bowman, my attorney, in Dunn.

19 Q. These were negotiations, were they not, Mr. Cooley,
20 having to do with what your support obligation was going to
21 be?

22 A. Those negotiations involved what I had to pay her in
23 order for her to bring a noncontested divorce.

24 Q. Well, you were going to bring a divorce anyway, you
25 had not lived together for a year?

1 A. Her lawyer had written the Court in Harnett County.

2 MR. CARTER: You honor, please, informally, can I
3 explain the difference between the law in North Carolina
4 and Virginia between the one year separation?

5 THE COURT: I would be delighted for you to.

6 MR. CARTER: It is not a no fault type, I don't
7 know how I have gotten myself involved in divorce law
8 in North Carolina on occasions, but I have. It is not
9 a no fault type divorce such as we have in the Common-
10 wealth of Virginia. The wife or either party may con-
11 test the separation and interpose the defense of
12 desertion. If the defense is interposed it keeps the
13 party who is claiming a divorce on the grounds of
14 separation from getting a divorce. The reason for this,
15 the following reason is strange, is what appears to us
16 to be strange law in North Carolina, is the fact that if
17 a wife permits herself to be divorced from her husband
18 she loses all right from alimony and that is this
19 pinch that the North Carolina law has for drawing up these
20 separation agreements and, honestly, I don't think they
21 even consider who is guilty. Instead of getting the
22 parties together and having a separation agreement and
23 have them sign it and that is the reason for all that
24 procedure that seems so peculiar to us here in Virginia,
25 because of the difference in the law.

1 THE COURT: In other words, when he filed his
2 divorce suit I assume she filed a response contesting it?

3 MR. CARTER: I think it was more informal. I
4 think her attorney called the judge direct.

5 MR. COOLEY: I know he wrote a letter to the judge
6 of the Harnett County and told them she was too sick to
7 appear and plead the case. She did not have counsel
8 in North Carolina, but we continued to negotiate
9 because of good faith on the letter he wrote to the
10 judge.

11 MR. CRAIG: I think the evidence is that she actually
12 didn't have North Carolina counsel and no formal pleadings
13 were filed by her in North Carolina.

14 MR. COOLEY: That is correct.

15 MR. CRAIG: What these negotiations were about was
16 to try to see if they could work out something to
17 establish the support obligation without her asking the
18 court to do it. Because if the court entered this decree
19 without her entering anything in opposition to it or
20 asking the court for alimony or support, then she would
21 be forever precluded from it. Correct me if I am wrong,
22 Mr. Carter.

23 MR. CARTER: I think she was already precluded
24 by the agreement she entered into earlier at the time
25 of the separation.

1 THE COURT: All right.

2 MR. CARTER: It goes on for four or five paragraphs
3 and all it says, that she waives all rights of alimony
4 now and what have you and you can go through and they
5 have said the same thing at least six different times
6 in six successive paragraphs. I will say one thing,
7 it was certainly obvious and clear that the intention
8 in the first agreement was to waive the right of any
9 alimony.

10 THE COURT: All right, Mr. Craig.

11 Q. In any event, you and her attorney over six months'
12 negotiations' period really came up with what the support
13 obligation was eventually going to be.

14 A. We came up with all I was willing to pay to get it
15 behind me. It had been dragging on six months at that time.

16 Q. And that agreement increased the amount to \$550.00?

17 A. Yes, sir.

18 Q. And said it would be reduced to \$450.00.

19 A. And paid her \$2,500.00 in cash and - - -

20 Q. And that was paid?

21 A. Yes, sir.

22 Q. And some money - - -

23 A. We sold the house and divided the proceeds from
24 the house between the two of us.

25 Q. That was the first one?

1 A. The first agreement.

2 Q. But the second one also said something about
3 \$10,000.00 to Mrs. Cooley and her attorney and that was
4 paid?

5 A. Yes, sir.

6 Q. And you, in fact, made a number of payments for
7 \$550.00 as long as you were working, is that correct?

8 A. I continued to until after I was out and didn't
9 have any income.

10 Q. And I believe the pleadings are accurate as far as
11 what was paid and what wasn't paid except for the fact that
12 we didn't give you credit for \$200.00 that you had paid
13 through the Juvenile and Domestic Relations Court here
14 and was sent to California. And I might just state for the
15 record that he is entitled to the \$200.00 credit on the affidavit.
16 After Mrs. Cooley signed it we discovered, Mr. Carter told
17 me and we checked in Juvenile Court here and I cleared it
18 with the Los Angeles Court and the money was paid and he is
19 entitled to that credit.

20 THE COURT: All right.

21 A. Yes, sir.

22 Q. Then you wrote her a letter and said you just could
23 not make the payments because you were out of work at Burlington?

24 A. That is correct.

25 Q. And you had not at that time gone back to work?

1 A. Yes, sir.

2 Q. You had?

3 A. Yes, sir.

4 Q. Where were you working then?

5 A. Dan River, Incorporated.

6 THE COURT: Let me get the sequence of events here.

7 Your divorce was in December of '72.

8 Q. How long did you work with Burlington beyond that?

9 A. The divorce was in December of '72.

10 THE COURT: You were then living in Harnett County?

11 MR. COOLEY: Yes, sir.

12 THE COURT: When did you remarry?

13 MR. COOLEY: The summer of '73. In fact, I met
14 my present wife in the spring of '73, a long time after
15 the divorce.

16 THE COURT: How long did you remain there in
17 Harnett County?

18 MR. COOLEY: I moved to Greensboro in September
19 of '72.

20 THE COURT: Wait, this thing is in December of '72?

21 MR. CRAIG: The divorce was in December of '72.

22 Q. And you say you met your present wife in the
23 spring of '73?

24 A. That is correct.

25 Q. That is the next spring after the divorce?

1 A. That is correct.

2 Q. And then was it in September of '73 that you
3 moved to Greensboro?

4 A. '71, I had a heart attack in December of '71 and
5 I was out six months. '72, I moved to Greensboro in the fall
6 of '72.

7 THE COURT: So you were living in Greensboro
8 when the litigation was going on in Harnett County?

9 MR. COOLLY: Yes, sir, I had moved around the end
10 of September or sometime during September, I believe
11 the 15th of the month. During this period of time
12 I had two offices. I had one in Greensboro and one in
13 Harnett County, so I moved to Greensboro and I still
14 maintained the office there and was General Manager
15 of Operations in Erwin, North Carolina.

16 MR. CARTER: I don't think North Carolina has
17 the same rigid . . . statutes that we have until
18 October of this year.

19 MR. CRAIG: That is not jurisdiction.

20 THE COURT: It is filed where he resides, no
21 question about that.

22 Q. Just give us the sequence, were you working for
23 Burlington?

24 A. Yes, sir.

25 Q. And how long did you continue to work for Burlington?

1 A. Until March of '75.

2 Q. And I think you made these payments right, it was
3 December of '75 when you first paid only \$100.00?

4 A. That is correct.

5 Q. So you made the payments of \$550.00 on through
6 '75 until the last month?

7 A. That is correct.

8 Q. And then you paid \$100.00 for about eight months?

9 A. That is correct.

10 Q. And then you stopped altogether?

11 A. That is correct.

12 Q. When did you go to work for Dan River?

13 A. September 16, '75.

14 Q. You were making pretty good money when you went
15 back to work at Dan River?

16 A. Substantially, less.

17 Q. What were you making when you first started at
18 Dan River?

19 A. \$28,800.00.

20 Q. What are you making now?

21 A. \$40,000.00.

22 Q. Why didn't you pick up the payments?

23 A. When I reduced the payments in December of '75,
24 I had paid the payments all through that year without any
25 income and I finally just ran down to the point I had used up

1 what savings I had and used up what assets I felt I had
2 and I reduced the payment. Subsequent to that there was
3 an action filed in Juvenile and Domestic Relations Court.

4 Q. Filed here?

5 A. In California and was carried through this
6 Juvenile and Domestic Court and at that time that court
7 made a ruling when I paid the \$200.00 and later they
8 made a ruling. There were no payments through the
9 Juvenile and Domestic Court because no court order was
10 involved.

11 Q. But the . . . applied?

12 A. That is correct. So at that point I discontinued
13 making payments altogether.

14 Q. You decided to not honor the agreements?

15 A. I stopped making payments altogether.

16 Q. But you were able to financially make these payments?

17 A. Not financially able to make \$550.00 payment a month.

18 Q. You are today?

19 A. No, sir.

20 Q. At \$40,000.00 a year you are not?

21 A. I don't think so.

22 MR. CARTER: We are talking about his capability.

23 Q. Now, Mr. Cooley, as part of your divorce situation
24 the judge of the court that granted the divorce on the same
25 day the divorce was entered, entered another decree which said

1 that you should maintain medical and hospital insurance for
2 the benefit of your wife until her remarriage or death and
3 that if the present provisions for insurance/ I take it that
4 was group insurance with Burlington, that you should provide
5 some other coverage for her benefit and that was entered as
6 a decree of the North Carolina Court, the same court that
7 entered the divorce, is that correct?

8 A. Yes, sir, the reason the decree was entered was
9 that Burlington had to have the decree in order to include
10 her in the hospitalization.

11 Q. But in any event it was entered?

12 A. Yes, sir.

13 MR. CRAIG: I would ask that this be marked as
14 "Plaintiff's Exhibit E".

15 Q. Now, actually, after you left Burlington you were
16 unable to do anything about getting group insurance?

17 A. That is right. I had a letter from the director
18 of insurance advising me that it was no way they could continue
19 with her even on a conversion of my term insurance. They
20 could continue her as a dependent. That is a special
21 provision they have.

22 Q. And Dan River has no such arrangement?

23 A. No.

24 Q. And you can't now?

25 A. No, also, I contacted my New York Life agent in

1 Greensboro and he advised me that they could not write
2 insurance on her.

3 Q. And at no time during any of these negotiations
4 and agreements have you ever been disabled or not paid when
5 out of work or not paid by any reason of disability?

6 A. No, I was paid at the time I was disabled for six
7 months. I was paid my salary during that time.

8 Q. The only disablement was the fact you lost your
9 job there at Burlington and for a period of time you were
10 out of work before you went back?

11 A. Yes, sir.

12 THE COURT: Why did you lose your job at
13 Burlington?

14 MR. COOLEY: Part of the economic adjustment
15 that went on during 1974 and early 1975.

16 Q. Of course, Mr. Cooley, throughout all this you
17 realized, I take it, that the court could have set some
18 obligation for you to pay your wife. In other words, the
19 court had that authority and if the two of you could not
20 agree among yourselves that the monthly support could be
21 set by the court?

22 A. I don't know that that could be done.

23 THE COURT: I don't think he knows that.

24 Q. Did you talk this over with your lawyer?

25 A. No, we never talked about having any court's ruling
on that.

1 Q. But throughout all this, from the beginning of the
2 first agreement in June of 1971 and through the divorce,
3 you were represented by the same firm were you not?
4 A. Same lawyer.
5 Q. And he was advising you about what to do throughout
6 this time?
7 A. He would always ask me what I wanted to do.
8 Q. And the agreement reflected what you wanted to do,
9 I take it?
0 A. It didn't reflect where I felt like I had to.
1 Q. But you entered into them free and voluntarily?
2 A. Yes, sir.
3 Q. You signed and you took advantage of the provisions
4 of them. In other words, you got some benefits as well?
5 A. I don't think so. I got a divorce.
6 Q. You got a limitation on the amount you were going
7 to pay each month, you knew that it was fixed and settled,
8 didn't you?
9 A. Well, yes, it could not be escalated.
0 Q. You knew you had an agreement about the property
1 and the division of it?
2 A. Yes, sir.
3 Q. So there were some benefits to you?
4 A. The main benefit was getting this thing behind me
5 once and for all.

1 Q. And having it over with and settled?
2 A. Right.
3 Q. That is why they call them settlement agreements.
4 Now, Mr. Cooley, you did have this life insurance trust
5 agreement and it was entered into, I believe it was in
6 December of 1971. Mr. Cooley, I would ask you to look at
7 the life insurance trust agreement, just primarily look
8 at the last page and see if the attached list of what it
9 was funded with is correct. I think that is probably a copy
10 of it. I believe that will verify what you were saying
11 about the type of insurance.

12 MR. CARTER: I will stipulate that this was the
13 insurance and it was either term or accidental death
14 with no cash render value.

15 THE COURT: All right.

16 Q. Is that correct?

17 A. Yes, sir.

18 MR. CRAIG: We desire that this be marked as
19 "Plaintiff's Exhibit G".

20 THE COURT: All right.

21 Q. Now, Mr. Cooley, in December of '72 when you and
22 your wife entered into this revision of the original
23 separation agreement, at least the revision was affecting
24 monthly payments which called for \$550.00, but \$450.00 if
25 you were disabled. I believe there was an amendment to this

1 trust agreement?

2 A. Yes, sir.

3 Q. I ask you if that represents the agreement?

4 THE COURT: I believe that is "Exhibit H" already.

5 MR. CRAIG: This is the amount under the life
6 insurance policy under one of the paragraphs of
7 June, '71 and this is an amendment of that and in
8 accordance with the second agreement. It is a
9 different document. I would like to have this marked
10 as "Exhibit H". We are just introducing it to show that
11 he did carry through with the second agreement and with
12 the changes in the agreement.

13 MR. COOLEY: I think it was all done the same day.

14 MR. CRAIG: It was dated the same day, though I
15 believe you executed the second agreement the day the
16 divorce was final.

17 MR. COOLEY: The second agreement was executed - - -
18 I think it was in the record.

19 MR. CRAIG: The record shows it was signed by you.

20 MR. COOLEY: It was signed by me on December 19th.

21 MR. CRAIG: That is the day the divorce was granted,
22 the 19th.

23 MR. COOLEY: I am not certain.

24 MR. CARTER: We can stipulate it is substantially
25 the same time.

1 THE COURT: The 19th of December, 1972?

2 MR. CRAIG: Yes, sir.

3 BY MR. CRAIG:

4 Q. The divorce was entered the 19th day of December,
5 1972 and your signature was notarized on the second agreement
6 on the same day. That is correct?

7 A. Apparently so.

8 Q. You will accept what the record shows and that is
9 your recollection too, I assume?

10 A. Yes, sir.

11 Q. Mr. Cooley, just one or two other things. In
12 June of 1971 when this first agreement was executed, do you
13 recall anyone telling your wife or did you tell your wife that
14 she could have these papers and that she was to take them in
15 a sealed envelope and not to open them until you instructed
16 her to? Do you recall anything like that?

17 A. No.

18 Q. You never told her that she couldn't open them and
19 read the terms of the separation agreement until she got to
20 California or anything of that nature?

21 A. No, I took her myself down to the Magistrate and he
22 read every page to her under North Carolina law and she
23 accepted it before she signed it and as far as sealing
24 anything in an envelope, I don't know anything about it.

25 Q. Now, Mr. Cooley, one other thing to clarify this.

1 I don't believe there is any dispute about it, but you have
2 seen the affidavit Mrs. Cooley filed about the payments she
3 has gotten and those she hasn't gotten. I believe there
4 were eight checks of \$100.00.

5 A. I saw the statement and with the exception of the
6 \$200.00 through Juvenile and Domestic Court - - -

7 Q. Is that accurate?

8 A. That is correct to what I paid her.

9 Q. As I understand you, there was never really any
10 contest about this divorce, the contest was over the money?

11 A. The contest involved the fact that she would come
12 to North Carolina and fight the divorce tooth and toenail
13 if I didn't pay the money.

14 Q. Well, Mr. Cooley, just let me read you on Page 18
15 your response during the depositions, your response on Page 18
16 starting at the bottom of Page 17. "Q. And then you got
17 the divorce, as I understood the decree, on the grounds that
18 you lived continuously separate and apart since June 16, 1971?"

19 "A. That is correct." "Q. That is the only grounds
20 stated in the decree?" "A. That is the only ground."

21 "Q. So there was apparently some contest between you about
22 grounds and about money at that time?" "A. There was never
23 any contest to my knowledge about grounds."

24 ~~MR. CARTER: Where are you reading?~~

25 ~~MR. CRAIG: On Page 13 starting at the bottom of~~

1 of 17 in the deposition.

2 "Q. Mainly, about money she was to get?" "A. That was
3 the purpose of it. I had given her a cash settlement at the
4 time of the first separation agreement for more than was
5 entered into the agreement. In fact, and so forth - - -"
6 So, really, the negotiations, the six months' negotiations
7 you had was between your attorney in North Carolina and this
8 man in California were about the support money?

9 A. They were about, they implied the implications
10 in all correspondence and all the discussions by telephone
11 were always that she would come to North Carolina and contest
12 the divorce unless I paid the money and that is the basis
13 my thinking was going on all during that six months time.

14 Q. You were anxious to get the divorce and you were
15 worried that she might contest it, is that what you are saying?

16 A. At that point and time I did desire to get a
17 divorce and get the issue behind me and completed because of
18 things that had transpired over a period from December of
19 '71 until June of '72 and I wanted to get the divorce.

20 Q. And now that you have gotten it, you say the agreement
21 entered into for the purpose of getting it without contest is
22 valid as against public policy?

23 MR. CARTER: I object. I think that he is asking
24 him a legal question and he came to me and asked my advice.

25 MR. CRAIG: The record will show that is the posture

1 of it.

2 MR. CARTER: He is a layman and that is what we
3 are here to determine right now. That is the issue
4 that is before his Honor.

5 THE COURT: Mr. Carter, do you want to examine him
6 now or wait until the plaintiff has rested?

7 MR. CARTER: I would reserve the right after the
8 plaintiff has rested to examine him.

9 CROSS EXAMINATION

10 BY MR. CARTER:

11 Q. Let me ask you this. At the time that you testified
12 at the time of the execution or drafting of the first separation
13 agreement, Mrs. Cooley had spent about half of her time in
14 California and desired to go back to California and insisted
15 that you enter into some sort of an agreement before she
16 left, is that correct?

17 A. Yes, sir.

18 Q. Did she indicate whether she would leave if you
19 did not have such an agreement made?

20 A. I think, basically, she - - - the implication was
21 that she wouldn't leave until she got some kind of agreement.

22 Q. She would not leave until she had gotten a separation
23 agreement from you. Over what period of time did you all
24 negotiate over this separation agreement?

25 A. I really don't know how long we talked about it.

1 Probably, I don't think it was a great length of time. It
2 might have been four or five days or something like that. I
3 came up with the figure in the agreement and it seemed
4 acceptable to her and she wanted some cash money. It was
5 over a period of days, not months.

6 THE COURT: This Magistrate that filled out this
7 acknowledgment or whatever you called it, privied
8 the acknowledgment, I believe that you called it,
9 on the 16th day of June. Everything is the 16th of
10 June. After you left the Magistrate, where did you go?

11 MR. COOLEY: Went back to the house.

12 THE COURT: Both of you?

13 MR. COOLEY: It is my recollection, yes, sir.

14 THE COURT: Were you traveling together?

15 MR. COOLEY: In the same car.

16 THE COURT: Was your lawyer with you?

17 MR. COOLEY: I don't believe he was. I am not
18 certain whether it was a lawyer, I remember sitting out-
19 side of the Dunn Municipal Building while she went in.

20 THE COURT: You mean she went in to be examined
21 by - - -

22 MR. COOLEY: I don't know whether somebody was with
23 her or whether my attorney, Wiley, or - - -

24 THE COURT: But you took her home that day?

25 MR. COOLEY: That is correct.

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THE COURT: Where did you stay that night?

MR. COOLEY: In the house.

THE COURT: Where did she stay?

MR. COOLEY: To the best of my recollection she collected the checks the next day and left.

THE COURT: The 17th of June?

MR. COOLEY: Yes, sir.

THE COURT: Where did she stay the night of the 16th?

MR..COOLEY: My recollection is she stayed at Erwin in her room.

THE COURT: In your house?

MR. COOLEY: Yes, sir, in our house.

THE COURT: How long had she been there before the 16th of June?

MR. COOLEY: Oh, she had been there for a long time.

I don't remember how long.

THE COURT: When did you buy the house?

MR. COOLEY: We didn't own the house. It was a company house. We were renting it and we had lived down there since - - - We moved so much, let me get my dates together. We moved to Greensboro in '69 and moved to Erwin in September of '70 and we lived in that house from September of '70 until that time.

THE COURT: About nine months.

MR. COOLEY: Yes, sir.

1 BY MR. CARTER:

2 Q. So let me ask you, who, if you recall, initiated
3 the idea of some sort of an agreement being made and her
4 going to California?

5 A. She did.

6 Q. Can you tell us about how long this was before the
7 agreement was actually drafted or executed?

8 A. I can't give you an exact time. I think it was
9 a matter of days or during that month prior to the time
10 she left.

11 Q. And she indicated this was a prerequisite to her
12 going to California?

13 A. She didn't want to leave and go to California
14 without a written agreement.

15 Q. Then there was this second agreement, which was
16 executed in December of 1972?

17 A. Yes, sir.

18 Q. And you said her attorney had called your attorney
19 in Dunn or rather had written a letter to the judge after
20 you had filed the complaint for a divorce and stated to the
21 judge that she was ill and unable to be in court and what
22 was the idea, he wanted the case continued?

23 A. Yes, sir.

24 THE COURT: Wait a minute. After this agreement
25 of June 16, 1972, she left?

1 MR. COOLEY: ~~Yes, sir~~

2 THE COURT: When did you see her again?

3 MR. COOLEY: June of '72.

4 THE COURT: She came back for the graduation
5 of your daughter?

6 MR. COOLEY: No, my daughter was just getting out
7 of school.

8 THE COURT: She moved in with you?

9 MR. COOLEY: No, sir.

10 THE COURT: Did she try to?

11 MR. COOLEY: No, sir.

12 THE COURT: How did you know she was there?

13 MR. COOLEY: She was in a motel and my daughter
14 called me from the motel to tell me why she had not
15 gotten home.

16 THE COURT: Did you see her on this occasion?

17 MR. COOLEY: Yes, sir, I saw her the next day.

18 THE COURT: Where?

19 MR. COOLEY: At the house. She came to the house
20 and got some furniture and loaded it in the trunk of the
21 car and personal belongings that she wanted out of the
22 house and took my daughter and left and went to California.

23 THE COURT: Immediately, thereafter, you instituted
24 the suit for divorce?

25 MR. COOLEY: Yes, sir.

1 THE COURT: And that is when you began to hear from
2 California?

3 MR. COOLEY: Yes, sir.

4 BY MR. CARTER:

5 Q. And the negotiations continued between your attorney
6 at Dunn and the attorney in Los Angeles and the threat was
7 that she was going to come to North Carolina and contest the
8 divorce unless you came up with more money?

9 A. Yes, sir.

10 Q. Was there any purpose other than getting this
11 divorce motivated that you entered into this amendment to
12 the original agreement?

13 A. . No, sir.

14 MR. CRAIG: Your Honor, please, I object to that.
15 The agreement speaks for itself. Obviously, he had
16 reasons that he has already stated.

17 THE COURT: I will overrule your objection.

18 Q. Then subsequent to that I believe you told us that
19 this additional judgment or order, which was entered by the
20 court on the same day as your final divorce judgment was
21 entered, was for the purpose of keeping her under the group
22 hospitalization plan at Burlington Mills, is that correct?

23 A. Yes, sir.

24 Q. Without such an order Burlington would not have
25 been able to continue her under your group policy?

1 A. That is correct.

2 Q. And so you did, in fact, put her on that group
3 policy?

4 A. Yes, sir.

5 Q. Now, was this termination of your employment with
6 Burlington Mills something that you did or was this
7 involuntary?

8 A. It was involuntary.

9 Q. And, thereafter, did you make any efforts to find some
10 additional type of insurance, hospitalization insurance for
11 your former wife?

12 A. Yes, sir, I tried to get a conversion of the term
13 policy Burlington has without reexamination again. You can
14 convert it to term and pay more for it and the director of
15 insurance finally wrote me a letter and told me he could
16 not do it under the circumstances.

17 Q. Who did that?

18 A. Mr. Cardy, the director of insurance with Burlington,
19 wrote me a letter saying he could not convert that type of
20 insurance.

21 THE COURT: The termination of your employment
22 ended anything that she could do with Burlington?

23 MR. COOLEY: Yes, sir.

24 THE COURT: Now, there is some obligation in this
25 decree that you would get comparable insurance?

1 MR. COOLEY: I then went to my agent, New York
2 Life, and reviewed her age.

3 Q. This was in Greensboro?

4 A. Yes, sir.

5 Q. And reviewed her age?

6 A. Yes, sir, and reviewed her age and her - - - I
7 told him something of her medical history based upon what
8 had transpired prior to the time of the divorce and what
9 had transpired with claims that came through the Burlington
10 insurance and he advised me that she would not be insurable
11 under the policy with New York Life and his advice was I
12 would have a very difficult time obtaining insurance on
13 her.

14 THE COURT: Did you ever let her try to get it
15 herself and you would pay the bill?

16 MR. COOLEY: No, sir, she did send some policy
17 applications that she had seen in California, which
18 resulted in a payment of \$500.00 a month. The
19 exclusions in them were so great that I could not see
20 that she would really collect much of anything off of
21 them. They were just applications.

22 Q. Did you get any advice about whether any hospitali-
23 zation carrier would make exclusions for previous illnesses
24 and diseases she had experienced?

25 A. Well, that is what my agent advised me. Any policy

1 prepared by another company, in his opinion, would have so
2 many exclusions it would not be worth the money you would
3 pay for it.

4 Q. It would exclude any type illnesses or diseases
5 she would have had prior to the date of the policy?

6 A. That is correct.

7 Q. But you did try to find additional hospitalization
8 insurance for her?

9 A. Yes, sir.

10 Q. Now, prior to the issuance of a reciprocal non-support
11 form in the State of California, which came to the Juvenile
12 and Domestic Relations Court of Pittsylvania County, did you
13 consult or seek any legal advice about the legality of this
14 agreement?

15 A. Yes, sir, I did.

16 Q. You came to me?

17 A. Yes, sir.

18 Q. This was prior to the issuance of the paper out
19 in California?

20 A. Yes, sir.

21 Q. And I gave you my advice about what I thought about
22 this agreement?

23 A. Yes, sir.

24 MR. CARTER: I have no further questions.

25

REDIRECT EXAMINATION

1
2 BY MR. CRAIG:

3 Q. When you got the advice, Mr. Carter told you he
4 thought the first agreement was enforceable, didn't he?

5 THE COURT: I don't know whether we need what
6 his lawyer told him.

7 MR. CRAIG: Your Honor, I want to point out/the in
8 original pleadings he admitted the validity of the
9 June 16th agreement and so I assume Mr. Carter's
10 advice was, he was bound by that.

11 THE COURT: I still don't think Mr. Carter's
12 advice is permissible here and the only thing is
13 dealing in good faith and this man's actions there-
14 after.

15 MR. CRAIG: Well, I was going to ask him if, after
16 he got the advice, did he rely upon stopping payments
17 or had he stopped the payments before he ever saw
18 Mr. Carter.

19 Q. Had you stopped the payments before you ever saw
20 Mr. Carter?

21 A. I had reduced them to \$100.00.

22 Q. Had you stopped them entirely before you saw him?

23 A. No, sir.

24 Q. You stopped them entirely after talking to him?

25 A. No, sir, I stopped them entirely after going through

1 the trial in Juvenile and Domestic Court.

2 Q. Was that after you had seen Mr. Carter?

3 A. It was a long time. It might be helpful, Your
4 Honor, the question was raised earlier. One factor in my
5 decision to file for the divorce in June had to do with the
6 fact that under the terms of the original agreement she
7 was going to sign a joint income tax return with me for the
8 prior year, the year of the separation. At the end of the
9 year when I filed the front copy of the income to California
10 she refused to sign it. I had been sick with a heart attack
11 and I had requested a postponement and I had gotten a ninety
12 day postponement and when I got ready to file, she wouldn't
13 sign it and so I had to go back to my CPA and have it done
14 all over again, and so I think that was a factor
15 in my decision to go ahead and to file for a divorce, to
16 get it all behind me so it would be clear as far as my
17 personal - - -

18 THE COURT: That is set up.

19 Q. You don't dispute the medical bills and drug bills
20 your wife said she had?

21 A. I have no knowledge of them.

22 Q. You don't deny that she - - -

23 MR. CARTER: I think that would have to be proved.

24 How on earth would he know.

25 THE COURT: In any event, he doesn't know.

1 Q. Now, you say that your impression is, although you
2 are not sure, Mr. Cooley, that after this agreement was signed,
3 you may have stayed in the same house before she actually
4 left for California, the date the agreement was signed, is
5 that what you are saying?

6 A. The day.

7 Q. But you didn't sleep together or stay in the same
8 room in the same house, did you?

9 A. If we stayed in the house, we stayed in the same
10 room.

11 Q. And you assumed that the moment she went in and
12 signed that thing, that you were separated?

13 A. Yes, sir, I assumed that she was going to
14 California.

15 Q. Your relationship was over at that point?

16 MR. CARTER: When you say "separated", are we
17 putting lay commentation on it or are we asking him
18 for a legal opinion in the matter?

19 THE COURT: I don't think we should ask him what
20 he assumed. He has already told us in response to my
21 questions what he did.

22 MR. CRAIG: Well, I think he has said he was already
23 separated in his own mind.

24 MR. CARTER: That is only an opinion, not a - - -

25 MR. CRAIG: That is his impression and his opinion

1 what the relationship was between the parties. They
2 stayed in separate bedrooms.

3 MR. CARTER: I don't think he said separate
4 bedrooms.

5 MR. CRAIG: He just said it.

6 MR. COOLLY: I didn't say it.

7 MR. CRAIG: Didn't you say, ^{if} you stayed in the
8 house, you stayed in separate bedrooms?

9 MR. COOLEY: I said, if we stayed in the house,
10 it would have been in the same room, because I tried
11 to sleep in a separate bedroom one time and it didn't
12 work.

13 MR. CRAIG: I am sorry, I misunderstood you.
14 You mean to say that after you signed, is this your
15 sworn testimony today - - -

16 MR. COOLEY: This is my best recollection, that we
17 went back to the house that day and she went to the
18 bank the next day.

19 MR. CRAIG: See, you have sworn pleadings before
20 the Court in North Carolina, you testified under oath
21 in the depositions, you filed a verified pleading in
22 North Carolina that you two separated on June 16th.

23 MR. CARTER: If Your Honor, please, I will say
24 again. If he is asking for a legal opinion from this man,
25 I don't think he is competent to give the court a legal

1 opinion. This is a layman's opinion that he walked
2 in and put his signature, he has explained from the
3 document that that constitutes the separation

4 MR. CRAIG: If the Court, please, he has filed
5 pleadings and asserted a fact, the fact being that
6 they separated on a certain day and I think I have a
7 right to ask him about it.

8 THE COURT: He has a perfect right to be mis-
9 taken about the date. You have the right to ask
10 him about it. He isn't bound iron and clad on the fact
11 that he missed the date.

12 MR. CRAIG: Well, it seems to me that he cannot
13 testify under oath one way one time and another way
14 another time without subjecting himself to perjury.

15 MR. CARTER: Your Honor, please, if it is willful
16 and as to the material fact and that it is very obvious
17 that this man is not here for the purpose of trying to
18 fabricate testimony. He is trying to give the court his
19 best opinion. If he was in error at some other time,
20 it certainly is not a willful misstatement of his
21 testimony. I think any such implication is entirely
22 improper.

23 Q. You are really not sure about whether you spent
24 the night in the house after the agreement was signed?

25 A. My recollection is, that we did, that she got

1 her things all ready and got the money and she left to go
2 to California in the morning rather than in the later afternoon.

3 Q. Well, why did you answer different under oath
4 when I took your deposition?

5 A. When everything, everything is based on the 16th,
6 the day we signed everything, the date I went to my attorney
7 and she went to the Magistrate and was examined and so I
8 have always considered in my mind that, legally, that is the
9 date. Because that is the date that is on everything. The
10 fact that she left the next morning after we had executed
11 these agreements, to me, if you asked me, when were you
12 separated, I would go back and look at the legal documents
13 signed and say, on June 16th. That is the way I am thinking.

14 Q. But now, you are saying, physically, you may not
15 have separated that date?

16 A. That is correct.

17 Q. But you are not certain?

18 A. I said, I cannot be one hundred percent positive.

19 THE COURT: He said, according to his best recollection.
20 Anything further of this witness?

21 MR. CARTER: I think not at this time.

22 THE COURT: Court will recess for fifteen minutes.

23 (The witness stands aside.)

24 * * * * *

1 CAROLYN J. COOLEY, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CRAIG:

5 Q. You are Mrs. Carolyn J. Cooley, is that correct?

6 A. Yes, I am.

7 Q. Mrs. Cooley, you will have to speak up so the
8 Court, Mr. Carter and Mr. Cooley can hear you. Now, you
9 have heard Mr. Cooley's testimony about when you got married
10 and where you lived. Is that essentially correct as far
11 as your recollection and places he worked and that you two
12 lived together, is that correct?

13 A. Yes.

14 Q. Now, Mrs. Cooley, there has been some evidence
15 that between February of '68 and June of '71 when you
16 separated and left for California that you spent a good deal
17 of time in California. I wonder if you would just tell the
18 court what the situation was and what your family ties were
19 in California and how much time you spent there from, say,
20 the beginning of 1968 until June of 1971.

21 A. Well, he says that I spent four months there at
22 a time, but I didn't. The longest time I ever spent there
23 was a month and a half out there and my daughter had a real
24 serious operation, so I spent the time taking care of her.

25 ~~THE COURT: Is this your daughter by him?~~

1 MRS. COOLEY: No.

2 THE COURT: He is not the father of your

3 daughter?

4 MRS. COOLEY: No.

5 Q. We have had testimony of a daughter of Mr. Cooley's

6 by a prior marriage, but this daughter you are talking about

7 is a daughter of yours by a prior marriage and not the same

8 daughter?

9 A. No.

10 THE COURT: So both of you have been married

11 before?

12 MRS. COOLEY: Yes.

13 Q. And both daughters live in California?

14 A. Yes.

15 THE COURT: His and yours?

16 MRS. COOLEY: Yes.

17 Q. Do you have family ties out there in California?

18 A. I have two children out there and I also have his

19 daughter out there.

20 MR. CARTER: Have what?

21 THE COURT: Two children and his daughter. You

22 didn't have any children by him?

23 MRS. COOLEY: No.

24 Q. Now, Mrs. Cooley, how much time did you spend in

25 California? Say, on a percentage of a year basis from

1 January of 1968 and June of 1971. How much time, just tell
2 us again how much total time that you think you spent out
3 there?

4 A. Well, I cannot remember the exact time, but I
5 don't think I spent over three months the whole time that we
6 were married. He went one time with us on a vacation.

7 Q. How did you go back and forth? Did you fly or drive?

8 A. I drove.

9 Q. Have you ever worked, Mrs. Cooley?

10 A. Yes.

11 Q. Are you able to work, now?

12 A. No, I am not.

13 Q. What is your situation, now?

14 A. I have a bad back. I fell where I worked and hurt
15 my back and if I do any lifting or anything like that it
16 goes out.

17 THE COURT: Where were you working?

18 MRS. COOLEY: I was working at Litton in California.

19 THE COURT: How long ago was that and when did you
20 have the fall?

21 MRS. COOLEY: It was '69, the latter part of '59
22 and we left in November. We left in '60, it was the
23 latter part of '59. We left California in '60 to come
24 Virginia.

25 THE COURT: He says you came to Glasgow up in the

1 valley near Buena Vista?

2 MRS. COOLEY: Yes.

3 THE COURT: That was before that?

4 MRS. COOLEY: Yes.

5 Q. And you haven't worked since that time?

6 A. No.

7 Q. Are you able to do any work?

8 A. No, I cannot.

9 THE COURT: How much education do you have?

10 MRS. COOLEY: Tenth grade.

11 THE COURT: Where.

12 MRS. COOLEY: In Oklahoma.

13 Q. How old are you, now, Mrs. Cooley?

14 A. I am 64.

15 Q. What really happened to cause this separation between
16 you and Mr. Cooley? What were the circumstances?

17 A. Well, he had been going out on the weekends and so
18 he had been - - - he would go and I would stay home and I
19 thought he was a real Christian man. I had the faith that
20 he was a Christian man, because I was a Christian woman and
21 he went out on weekends and he traveled all the time, so I
22 taken care of his daughter and we were together, so - - -

23 Q. Mrs. Cooley, do you think you can tell it all
24 right? Let me ask you this. Did you have occasion to think
25 he was seeing somebody else?

1 A. ~~No, he wasn't here.~~

2 Q. What was the occasion of your leaving in June of
3 1971?

4 A. Because he told me he wanted me to go to California.

5 Q. Why?

6 A. He said he wanted me to go to California to see
7 if he missed me and he would have me back on Christmas and I
8 called him on Thanksgiving and I called and I asked if he
9 was ready for me to come back home.

10 Q. This was Christmas?

11 A. Before Christmas.

12 Q. When was this?

13 A. It must have been a couple of weeks or so before
14 Christmas.

15 Q. Let's go back a minute. You separated in June and
16 you went to California after the separation, is that right?

17 A. Yes.

18 Q. And what was your understanding when you left for
19 California about when, if anytime, you were coming back?

20 A. My understanding was he would have me back.

21 Q. Did he tell you that?

22 MR. CARTER: Objection, I think we are entitled
23 to get all the circumstances.

24 THE COURT: You heard what he said about the circum-
25 stances surrounding the execution of the agreement.

1 You heard what Mr. Cooley testified to a few minutes
2 ago?

3 MRS. COOLEY: I couldn't hear him.

4 THE COURT: Can you hear me?

5 MRS. COOLEY: Yes.

6 THE COURT: It is in evidence that you went before
7 a Magistrate, Virginia Neighbors, over in North Carolina
8 where the agreement was explained to you and you signed
9 it.

10 MRS. COOLEY: I don't remember a thing about it.

11 THE COURT: You do not?

12 MRS. COOLEY: No.

13 THE COURT: Do you remember signing it?

14 MRS. COOLEY: I signed something, but I don't know
15 what it was. I thought it was for the car being made
16 over to me.

17 THE COURT: You mean this North Carolina official
18 didn't explain it to you?

19 MRS. COOLEY: If he did, I didn't hear it.

20 THE COURT: Apparently, it was a female.

21 MRS. COOLEY: I was just like now. I was tore all
22 two pieces.

23 THE COURT: Do you remember leaving your home in
24 North Carolina to go to California after June 16th or
25 on June 16th?

1 MRS. COOLEY: Yes, I left June 16th.
2 THE COURT: Did you leave on that day?
3 MRS. COOLEY: Yes.
4 THE COURT: How are you able to remember that
5 and you don't remember the agreement?
6 MRS. COOLEY: I just didn't remember, because I
7 was nervous.
8 THE COURT: What time did you leave North Carolina?
9 MRS. COOLEY: Around 2:00 o'clock.
10 THE COURT: In the afternoon?
11 MRS. COOLEY: Yes.
12 THE COURT: You drove where?
13 MRS. COOLEY: I drove to, I can't remember the name
14 of that town. I can't remember whether it was
15 Meredith, North Carolina. I stayed in the Howard Johnson's,
16 Statesville.
17 THE COURT: Statesville?
18 MRS. COOLEY: Yes.
19 THE COURT: West of Greensboro, I mean West of
20 Winston-Salem?
21 MRS. COOLEY: Yes.
22 THE COURT: In any event, were you alone?
23 MRS. COOLEY: No, his daughter was with me.
24 THE COURT: And you continued on until you got to
25 California?

1 MRS. COOLEY: Yes.

2 Q. Mrs. Cooley, why did you leave for California?

3 A. Because my husband told me that he wanted me to
4 leave for California and that he wanted to see if he would
5 miss me and he would have me back Christmas. I was crying
6 and he said he would have me back by Christmas. So I
7 called him at Christmas and asked him if he was ready for
8 me to come back and he said, "No, wait until January and I
9 will know for sure if I want you to come back".

10 THE COURT: This was Christmas of '71?

11 MRS. COOLEY: Yes.

12 THE COURT: Is that the time he had the heart
13 attack or did you know that?

14 MRS. COOLEY: They said he was sick. I didn't know
15 he had a heart attack.

16 THE COURT: Well, you called him on the phone
17 and did he tell you that he had a heart attack?

18 MRS. COOLEY: That is what he said.

19 Q. What did he say about you coming back?

20 A. Well, he said that - - -

21 THE COURT: She said, "Wait until January".

22 He said, "Wait until January and then he would know if he
23 wanted me to come back.

24 Q. Did you call again in January?

25 A. No, I drove back.

1 Q. When?

2 A. In March.

3 THE COURT: March of '72?

4 MRS. COOLEY: Yes.

5 Q. Mrs. Cooley, you heard him when he said you came
6 back at the time his daughter finished school. Did you
7 come back at that time or earlier or at both times?

8 A. The daughter finished school in May, but - - -

9 Q. Did you come back then?

10 A. No, I came back before then.

11 THE COURT: You said it was in March?

12 MRS. COOLEY: Yes.

13 THE COURT: Where did you stay?

14 MRS. COOLEY: I stayed in Howard Johnson's Motel.

15 THE COURT: In the same town with him?

16 MRS. COOLEY: Yes, it was in the same town, but
17 not the same room.

18 THE COURT: You didn't go back to your former
19 residence?

20 MRS. COOLEY: No.

21 Q. Did you ever go back there?

22 A. When I drove into Erwin, I drove straight to his
23 house. He was out in the yard cutting bushes. When I got
24 out, he didn't even speak to me.

25 Q. What did you say to him when you got to the house?

1 A. I told him I had come back to resume my duties
2 there and so we went in the house and his daughter came and
3 we went in the house and his daughter had a date and when the
4 daughter left to go on the date, he said, "You leave", so
5 I left.

6 THE COURT: This was in March?

7 MRS. COOLEY: Yes.

8 Q. Did you come back again in May when his daughter
9 was getting out of school?

10 A. Well, his daughter got out of school before I left
11 and she went back with me. I came expecting to stay.

12 THE COURT: Did you stay there from March until
13 May back in Erwin or Dunn or wherever. it was? You
14 came there and he was in the yard and he ignored you?

15 MRS. COOLEY: Yes, he ignored me.

16 THE COURT: Did you stay there in North Carolina
17 until May and go back to California and then come back?

18 MRS. COOLEY: No, I stayed there until the daughter
19 could go with me.

20 Q. But, Mrs. Cooley, it was my understanding that you
21 came back only once?

22 A. Yes, that is right.

23 Q. After you left in June of '71?

24 A. Yes, that is right.

25 Q. The time you came back it was right at the time that

1 his daughter was getting out of school?

2 A. That was right.

3 Q. And that you came to the house only ^{on} one occasion,
4 is that right?

5 A. Yes.

6 Q. And you were there only a few minutes, ten or
7 fifteen minutes?

8 A. Yes.

9 Q. And you told him you were there to stay and he told
10 you to leave?

11 A. Yes, when his daughter left he told me to leave.

12 MR. CARTER: A little leading is not too bad when
13 you have a confused situation, but I think counsel for
14 plaintiff is testifying.

15 THE COURT: Well, just try to get us by this time.

16 MR. CRAIG: She has already said he told her to leave.
17 I wouldn't try to add any words to that.

18 THE COURT: He is just summarizing that.

19 Q. Were you in Erwin or Dunn or wherever the home was,
20 more than just that one day?

21 A. No, well, I stayed that night and left the next
22 day.

23 Q. Stayed in the motel?

24 A. Yes.

25 Q. And his daughter left and went to California with you?

1 A. Yes, she did.

2 Q. You were driving?

3 A. Yes.

4 Q. Now, when was this agreement in June of '71, when
5 was that signed?

6 A. June 16th.

7 Q. Do you remember the occasion? Do you remember what
8 happened at that time? What did you do that morning?

9 A. That morning?

10 Q. We are talking about the day that you went to the
11 Magistrate and signed that agreement.

12 A. He called me and told me that the papers were
13 already made out and for me to, we would go and sign the
14 papers for me to leave.

15 Q. Where was he when he called you?

16 A. At the office.

17 Q. Did he call you in the morning or the afternoon?

18 A. He called me in the morning and said the papers
19 would be ready to be signed.

20 Q. Where did you go then?

21 A. Well, we went down and signed the papers.

22 Q. Did you go together?

23 A. No, I drove my car and he drove his car.

24 Q. And where did you go? Do you remember the first
25 place you went?

1 A. Well, I guess we went to the courthouse.

2 Q. Did you both sign together?

3 A. Yes, I suppose so. I don't know, I don't
4 remember.

5 Q. What else did you do that day besides signing the
6 papers?

7 A. He went and got a check from someplace and gave
8 it to me and I went down there, all the money he gave me, he
9 gave me was \$199.99 a month to run the house on. So I went
10 down there and got what little money was in there and when
11 I got to California I cashed the check.

12 Q. Do you remember what time of day you did that?

13 A. Cashed the check?

14 Q. No, got the money out of the bank.

15 A. Well, it was before the bank closed.

16 Q. When did you pack?

17 A. I just run in and packed a few clothes. I can
18 pack in fifteen minutes if I want to go someplace.

19 Q. Do you remember what time you left?

20 A. It was about 2:00 o'clock.

21 Q. 2:00 in the afternoon?

22 A. Yes.

23 Q. You heard Mr. Cooley say that he thought you and
24 he had spent the night in the house that night?

25 A. That isn't true.

1 Q. Are you certain?

2 A. Yes, I am certain.

3 Q. Where did you spend the night?

4 A. I spent the night in Statesville in Holiday Inn.

5 Q. You said the Holiday Inn one time and then Howard
6 Johnson's?

7 A. No, the Howard Johnson's. I get the two mixed
8 up.

9 Q. Do you remember how many hours you were on the
10 road?

11 A. No, I drove to, I don't know. No, I spent the
12 night in Memphis, Tennessee.

13 MR. CARTER: In Memphis, you say?

14 MRS. COOLEY: Yes.

15 THE COURT: You mean the first night or second night?

16 MRS. COOLEY: The second night.

17 Q. What we are interested in is the first night, the
18 night of the day that you signed this agreement. I am
19 asking you again, you say you left at 2:00 o'clock. Where
20 did you go? You left at 2:00 in the afternoon you said.

21 A. Well, I spent the night, I told you, I am not sure
22 that is the name of the town. I think it is Statesville.
23 Maybe, it is Hickory.

24 THE COURT: You have lived in North Carolina. You
25 know those towns.

1 MRS. COOLEY: No, I don't.
2 THE COURT: You lived in Mocksville?
3 MRS. COOLEY: Yes.
4 THE COURT: Did you go through Mocksville?
5 MRS. COOLEY: No - - - yes, I did, too. I did
6 go through Mocksville.
7 Q. Tell us about how long you were on the road driving.
8 What time did you stop driving if you started at 2:00? What
9 time did you stop?
10 A. Well, I am not sure what the name of the town is.
11 I am pretty sure it is Hickory. It is where the big Penney's
12 is.
13 Q. But you said you did not spend that night in the
14 house with Mr. Cooley?
15 A. No.
16 THE COURT: Well, what preceded your leaving
17 there, that is what I am trying to find out. You said
18 he called you that morning from the office and told you
19 the papers were ready. What had happened the night
20 before?
21 MRS. COOLEY: The night before he had told me he
22 wanted me to go to California. So I was upset and then
23 we talked about it and talked about it and he said, "No,
24 he didn't want me to leave". And the next morning he
25 said, "When are you going to California?" And I said,

1 "I am not going to California without any papers or
2 any agreement between us". And so when he went to
3 work he called me from the office around noon and he
4 told me that the papers were ready for me to sign. The
5 guy could not have drawn the papers in that quick a
6 time, so he must have had them made out before.

7 THE COURT: In any event, you said you were not
8 going to go until these papers were signed?

9 MRS. COOLEY: No.

10 Q.. You wanted to make sure there was something in
11 writing about your support if you were going to go that far
12 away?

13 A. Yes.

14 Q. Were you under the impression this was going to be
15 a permanent separation?

16 A. No, I thought I was coming back by Christmas. That
17 was my understanding.

18 THE COURT: This was a trial basis to see if he
19 was going to miss you?

20 MRS. COOLEY: Yes.

21 THE COURT: He told you in December he didn't know,
22 he wanted you to wait until January to make up his mind?

23 MRS. COOLEY: Yes.

24 Q. Did you ever come back here after that time in '72
25 when his daughter was getting out of school?

1 A. I had not come back to get his daughter to take
2 her back. I came back thinking he would be willing to take
3 me back, because I wanted to come back home.

4 Q. Did you ever come back after that?

5 A. No.

6 Q. Did you come back at the time or prior to the time
7 this divorce decree was entered in December?

8 A. No.

9 Q. Do you remember signing the second agreement which
10 upped the amount of the monthly payments?

11 A. Yes.

12 Q. Do you remember how long there were negotiations
13 about how much he was going to pay you? How long were you
14 involved in that, do you remember?

15 A. I don't remember.

16 Q. Do you remember when you first saw a lawyer in
17 California?

18 A. I can't pinpoint the date when I saw a lawyer.

19 Q. Let me ask you this. Did you see him before
20 Christmas of 1971? You left in June of '71 and went out
21 there, you say, as I understand it, to California?

22 A. Right.

23 Q. That was the first separation agreement in June of
24 '71 and you drove out to California with the understanding,
25 you say, that he would have you back at Christmas?

1 A. Yes, and his daughter went with me then.
2 Q. Did you see a lawyer between that time and Christmas?
3 A. No.
4 Q. Did you see one between Christmas and the time you
5 came back when his daughter was going to get out of school?
6 A. Yes, I went and talked to a lawyer.
7 Q. Mrs. Cooley, I think you indicated in an affidavit
8 that between December of 1975 and July of 1976, the total
9 amount that your husband paid you was \$300.00?
10 A. Yes.
11 Q. Is that right?
12 A. Yes.
13 Q. And you were not including, when you said that,
14 this \$200.00 that came through the Court?
15 A. I didn't know where that came from.
16 Q. You would have to add that and give him the proper
17 credit?
18 A. Yes.
19 Q. Since the \$100.00 he sent you in July of '76,
20 have you received any money at all?
21 A. Have I received any money?
22 Q. Any money from Mr. Cooley?
23 A. No.
24 THE COURT: Where are you living, now?
25 MRS. COOLEY: I am living at Van Nuy.

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THE COURT: Van Nuys?

MRS. COOLEY: Yes.

THE COURT: Alone or with someone?

MRS. COOLEY: Alone.

THE COURT: Van Nuys is the suburb of Los Angeles?

MRS. COOLEY: Yes.

THE COURT: Who is supporting you since your husband stopped making these payments?

MRS. COOLEY: I finally got a supplement from the state to help me take care of myself.

THE COURT: From California?

MRS. COOLEY: Yes.

Q. What kind of supplement is that?

A. My supplement from Social Security.

THE COURT: You get Social Security from your prior employment?

MRS. COOLEY: Yes.

THE COURT: The eligibility is at 62?

MRS. COOLEY: Yes.

THE COURT: You have been getting that ever since you were 62?

MRS. COOLEY: Yes.

THE COURT: How much do you get?

MRS. COOLEY: \$133.00.

THE COURT: How much is your supplement?

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MRS. COOLLY: It is \$300.00 per month.

MR. CARTER: How much?

THE COURT: \$133.00, plus \$167.00, grand total
of \$300.00 per month?

MRS. COOLLY: Yes.

Q. Mrs. Cooley, have you incurred any medical bills
since 1975?

A. Yes.

MR. CARTER: Does she have the bills here?

MR. CRAIG: I think she has some.

MRS. COOLEY: That is all I have had is doctor bills.

Q. Does that help you? Can you read that?

A. No, I can't read this.

Q. It is \$515.28 and medicine was \$128.00 and something.
Are those actually correct, Mrs. Cooley?

A. Yes.

Q. Did you incur those and, actually, have to pay
those medical expenses?

A. Yes.

Q. What you have listed in your affidavit is doctors'
bills \$488.28 in 1975 and \$27.00 in 1976?

MR. CARTER: Your Honor, please, I don't think
the affidavit is testimony or evidence.

THE COURT: I think he is trying to save us time.

MR. CRAIG: She said they are correct.

CROSS EXAMINATION

BY MR. CARTER:

Q. Mrs. Cooley, you said that your husband called you and told you that the papers were ready. I presume that you all had discussed what was going into these papers?

A. We had discussed what was going into these papers?

Q. You mean, you had not discussed any of the terms of the agreement?

A. No.

Q. But you did say you were not going to California until you had gotten something in writing?

A. Yes, because I didn't want to go to California.

Q. Well, what was it that you anticipated you were going to get in writing then?

A. I didn't know and I still don't know.

Q. So you just went down and blindly signed the papers?

A. That is the truth.

Q. Without any knowledge of what they contained?

A. The only thing, I trusted him and he said he would have me back Christmas and I thought he would have me back Christmas. He said he wanted to see if he missed me. I didn't have any idea of anything that was going on.

Q. Mrs. Cooley, why was it that you required him to prepare some papers before you left if you trusted him?

A. Wouldn't you require somebody to sign some papers if

1 they were sending you off for a year or until Christmas?

2 Q. If I was sending my wife off until Christmas, I
3 wouldn't expect to have to go to a lawyer's office and draw
4 up a formal agreement about it, if you are asking me a
5 question.

6 A. He was wanting me to leave.

7 Q. You trusted him, but you were still requiring him
8 to draw up some papers, because you were going to leave in
9 June and stay in California until Christmas and you wanted
10 to have a clear and concise understanding of what your
11 status was?

12 A. No, because he wanted me to go.

13 Q. But you trusted him and besides you were coming
14 back at Christmastime, so why did you feel like you needed
15 these papers?

16 A. I just felt like I needed some security.

17 Q. Some security?

18 A. Yes.

19 Q. You had been to California before, hadn't you?

20 A. I had not stayed that long.

21 Q. He sent you money, didn't he?

22 A. No, you know what I went to California with, \$50.00!
23 When I went on those trips that is what I went with.

24 ~~Q. He provided for you pretty well, didn't he, when he~~
25 ~~sent you back?~~

1 A. No, not when he sent me back. When I went back
2 on vacation or something like that he would send me back with
3 \$50.00.

4 Q. What did you leave with?

5 A. \$50.00!

6 Q. That is all?

7 A. Yes. that is all.

8 Q. Did you write and ask him to send you money?

9 A. No.

10 Q. Did you have credit cards?

11 A. Yes.

12 Q. Did he pay the credit card bills?

13 A. Yes, that is what I had, was \$50.00.

14 Q. And so he called you from his office and said the
15 papers were ready?

16 A. Yes.

17 Q. What did you do then?

18 A. I didn't know what else to do.

19 Q. What papers did you think they were?

20 A. Well, I just thought it was an agreement that I
21 would be gone until Christmas.

22 Q. You went down to the courthouse, is that right?

23 A. Yes, I guess it was the courthouse.

24 Q. The Magistrate read this document to you?

25 A. I don't remember anything that was read.

1 Q. You don't remember that?
2 A. No.
3 Q. You mean you signed something without knowing what
4 was in it?
5 A. Yes.
6 Q. You didn't read it?
7 A. I didn't read it. He sealed it and told me not to
8 open it until later.
9 Q. Certainly, it was unsealed when you put your signature
10 on it?
11 A. He sealed it and handed it to me and said for me to
12 put mine in the bank and he would put his in the bank and I
13 didn't look at it until this girl that is here, she can vouch
14 for that.
15 THE COURT: Of course, you had already signed it
16 then?
17 MRS. COOLEY: Yes, I had already signed it and
18 he told me not to look at the papers.
19 THE COURT: When you went before the Magistrate,
20 didn't the Magistrate read it to you?
21 MRS. COOLEY: That is what he said, but I don't
22 remember anything that was read.
23 THE COURT: Do you remember seeing the Magistrate?
24 What did she look like?
25 MRS. COOLEY: I don't even remember her.

1 Q. Do you rely rather heavily on tranquillizers?
2 A. No.
3 Q. Were you tranquillized on this occasion?
4 A. No.
5 Q. Are you today?
6 A. No, I am just nervous, that is all. And he knows
7 I am nervous.

8 Q. Didn't you previously testify when you went to the
9 courthouse you thought you were transferring the title to an
10 automobile?

11 A. Yes.

12 Q. And you thought this was the title papers to an
13 automobile?

14 A. I didn't know what it was. I had only been to one
15 place.

16 Q. You went to the bank, didn't you?

17 A. Yes, we went there before we went up there.

18 Q. And you thought you were transferring the title
19 to the automobile?

20 A. Yes.

21 Q. And you thought all these papers in duplicate
22 was the title to an automobile?

23 A. Yes, I don't remember any of this stuff.

24 Q. Let me ask you this. When you all were living
25 together, who handled the getting of licenses for automobiles?

1 A. He did.

2 Q. You never went to a motor vehicles department?

3 A. No, I did not.

4 Q. Were you ever with him when he bought an automobile?

5 A. Yes.

6 Q. Did you see what took place when he purchased an
7 automobile?

8 A. Yes, I seen what took place.

9 Q. You saw the agency transfer the title to him?

10 A. No, he transferred the title to him after I left.

11 Q. I am talking about on these occasions when you
12 went with him to buy an automobile.

13 A. Yes.

14 Q. You saw the agency transfer the title to him when
15 he bought the car?

16 A. Yes.

17 Q. Well, you knew what the title looked like?

18 A. Well, it is a pink sheet of paper, is all I know.

19 Q. Pink sheet of paper. It was not this kind of
20 paper?

21 ~~A. No.~~

22 Q. Well, you said you wouldn't leave until you had
23 gotten an agreement. What did you think you were signing
24 then?

25 A. I just didn't want him to - - -

1 Q. I want to know what you thought you were signing:
2 that day?
3 A. I wanted some security. I couldn't figure out why
4 he was wanting me to leave.
5 Q. What I am saying is, that you stated prerequisite
6 to your leaving was that he had to give you a written agree-
7 ment.
8 A. Yes, I said I was not leaving without any papers.
9 Q. Without written papers. What did you think you were
10 signing that day?
11 A. I didn't know. He just said he would have me back
12 by Christmas, that is the only thing I know.
13 Q. Speaking of getting back by Christmas, are you
14 sure you talked with him in December on the telephone?
15 A. I certainly am sure.
16 Q. Didn't you know he was in the Cardiac Care Unit
17 in the hospital and was not permitted to have telephone calls?
18 A. I did talk to him.
19 Q. Where was he?
20 A. He said he was in the hospital, is all I know.
21 Q. But you didn't believe him?
22 A. Well, no, I didn't say that I didn't believe him.
23 Q. The first time you went to a lawyer in Los Angeles,
24 what is your lawyer's name in Los Angeles?
25 A. I went to two or three lawyers.

1 Q. Which one did you take the Federal Income Tax
2 Return to that he had asked you to sign in compliance with
3 the agreement?

4 A. The first income tax I got to sign was blank.

5 Q. So you refused to sign it?

6 A. Yes.

7 Q. What difference did it make to you whether it was
8 blank or completed?

9 A. I went to the Internal Revenue and asked him if I
10 should sign it and they said no.

11 Q. You took it to a lawyer, did you not?

12 A. No, I didn't.

13 Q. Did your husband's attorneys have correspondence
14 with a lawyer in Los Angeles whom you had contacted about
15 this matter?

16 A. I don't remember anything about that.

17 Q. You haven't signed the return?

18 A. No.

19 Q. And you haven't signed it today?

20 A. I couldn't sign his things, now.

21 Q. And was this the same lawyer you contacted after
22 you found out he had filed a divorce complaint down in
23 Harnett County?

24 MR. CRAIG: The divorce complaint was filed by
25 Mr. Cooley.

1 THE COURT: That is right. You are talking about
2 point and time?

3 MR. CARTER: Yes.

4 Is this the same lawyer that you consulted when you had these
5 divorce papers served on you?

6 THE COURT: Do you remember the divorce papers being
7 served on you in California?

8 MRS. COOLEY: Yes.

9 THE COURT: What did you do with them? Did you
10 go to a lawyer, was this the same lawyer you consulted
11 about the Federal Income Tax Return?

12 MRS. COOLEY: No, I didn't go to a lawyer at all
13 about the income tax.

14 THE COURT: You just went to the Internal Revenue
15 and didn't contact a lawyer and they said not to sign it
16 and that was the end of it?

17 MRS. COOLEY: Yes.

18 Q. Are you sure of that?

19 A. Yes, I am sure.

20 Q. Mrs. Cooley, thereafter, who was the attorney you
21 consulted about the divorce?

22 A. Mr. Globin.

23 Q. And didn't he then call your husband's attorneys
24 and make a demand that he pay \$2,500.00 a month, \$10,000.00
25 settlement and \$5,000.00 attorney fee for himself?

1 A. I don't know anything about that.

2 Q. You were going to come back and contest unless you
3 got some more money out of this deal, is that correct?

4 A. I didn't say any such think that I was going to
5 come back and contest if I didn't get more money.

6 Q. Just what was your attorney doing during these six
7 months' negotiations if you hadno intentions to come back and
8 contest this divorce?

9 A. Well, I wanted money to live on. I can't live on
10 no \$350.00 a month and couldn't work.

11 Q. In short,, you were not going to let him have any
12 divorce until you got more money out of it?

13 A. No, I didn't say I wasn't going to give him a
14 divorce.

15 Q. Until you got what you wanted?

16 A. No, it wasn't what I wanted. I wanted him, was what
17 I wanted.

18 Q. That is better than \$550.00 a month, but in the
19 alternative you were not going to turn him loose until he
20 paid you some more money?

21 A. Well - - -

22 Q. Huh?

23 A. No, I don't reglect that.

24 Q. Well, if you were willing to give him a divorce,
25 what was all this negotiation between your attorney in

1 Los Angeles and his attorneys in Dunn?

2 A. Well, his attorneys in Dunn and he must have been
3 making the decisions, because I didn't.

4 Q. How many times did you talk with the attorney in
5 Los Angeles about this thing before you finally executed the
6 second agreement?

7 A. I cannot say, I don't know.

8 Q. Did he call you in periodically and say, they are
9 willing to do this back in North Carolina?

10 A. Yes, he would call me when he heard from the lawyer.

11 Q. Well, what were he and the lawyers discussing, Mrs. Cooley,
12 discussing between themselves?

13 A. I don't know what they were discussing.

14 Q. Didn't he call you in and say, they will not pay
15 more than this?

16 A. He sent the letter the lawyer would send from here
17 to me.

18 ~~MR. CARTER: I can't understand her.~~

19 THE COURT: He would send her a copy of the letter,
20 a photostat, I assume, saying what they were willing to
21 do in North Carolina.

22 Q. Saying what they were willing to do?

23 A. Yes.

24 Q. Now, until they got until where they were willing
25 to do something that you were willing to accept you all were

1 not going to do anything?

2 A. I don't understand.

3 Q. In other words, you ~~were not~~ going to let him have
4 the divorce until the people in North Carolina came up with
5 a figure that suited you?

6 A. No, I thought that I should have enough to be
7 able to live on, because I was not able to work and he did not
8 want me to come back.

9 Q. That is not the question I asked you. The question
10 is a very simple question which can be answered with a
11 very simple answer and the question is, that you were not
12 going to let him get a divorce until he came up with more
13 money?

14 A. No.

15 MR. CRAIG: What do you mean, "No"?

16 MRS. COOLEY: "What do I mean, no?"

17 THE COURT: Why was all the negotiating going
18 on, what was the end result you were trying to reach?
19 You were out there, you were suing here in North Carolina,
20 what was your attorney supposed to be doing?

21 MRS. COOLEY: He was supposed to be getting a
22 divorce settlement where I would have money to take
23 care of me.

24 ~~THE COURT:~~ All right, that is what he asked you.

25 ~~MRS. COOLEY:~~ Well, it didn't sound that way to me.

1 THE COURT: I believe you did say, you didn't
2 want a divorce?
3 MRS. COOLEY: No.
4 THE COURT: But you wanted him?
5 MRS. COOLEY: Yes.
6 THE COURT: And if you couldn't have him you wanted
7 the highest figure you could get?
8 MRS. COOLEY: Well, I wanted money to take care of
9 me, yes. I figured I had it coming.
10 THE COURT: You figured he owed it to you?
11 MRS. COOLEY: I certainly did.
12 Q. You say you don't remember where you spent the
13 night on the 16th of June?
14 A. Yes, I know it was on the road to California.
15 I don't know if it was Hickory on 40 or if it was Statesville.
16 I don't know which two towns that is in there.
17 Q. What towns did you go through to get there?
18 A. I went on 40, if you know which way 40 went.
19 Q. Yes, but what are some of the towns on 40? I know
20 some of them, but I want you to tell me some of them.
21 A. Well, I think it is Hickory. I would not be
22 positive about that and Statesville and Asheville.
23 Q. What would be the first big town you got to after
24 you had left - - -
25 A. First big town I went through after I went through

1 Asheville would be Knoxville.

2 Q. I mean before you left North Carolina, after you
3 left Dunn.

4 THE COURT: In other words, how did you get to
5 Highway 40? That doesn't go through Dunn, Erwin or
6 Raleigh. You were leaving from Dunn or Erwin. Where
7 did you go? Did you go from Raleigh? You were going
8 West, of course.

9 MRS. COOLEY: Well, I must have went from Erwin
10 back to Greensboro and took 40 out of there.

11 Q. That would have been toward Winston-Salem. Winston-
12 Salem would have been the most impressive town along the way.

13 A. No, I didn't go through Winston-Salem.

14 Q. If you went on 40, you went through Winston-Salem.

15 A. I didn't go on 40. I left and went to Greensboro,
16 North Carolina which was - - -

17 Q. Well, how would you get from Greensboro to 40?

18 A. I believe it was 120.

19 Q. 40 runs from Greensboro to Winston, you would have
20 hit it when you came off 29.

21 A. I am mistaken about it then. 40 was not finished
22 all the way. I went off on two lanes.

23 Q. You said that morning you got the call from your
24 husband and what did you do then? What time was it?

25 A. It was before twelve.

1 Q. All right, what did you do then?

2 A. Then we went to sign these papers or whatever it
3 was.

4 Q. I thought you said you went to the bank?

5 A. Well, yes, we did go to the bank first and he had
6 this check made out for me and then we went to wherever
7 we went up there and he had the car made out to me, which he
8 had taken my name off the car.

9 Q. You mean, he put your name on it?

10 A. He had put my name on it. It was Cyrus Eugene
11 Cooley and Carolyn Cooley.

12 Q. So you executed the title papers then, did you not?
13 You signed the title papers on the automobile then? This
14 was at the bank?

15 THE COURT: I think what she is saying, she took
16 one car and he took the other.

17 MR. CARTER: I know what happened, but I am trying
18 to find out when and where it happened.

19 Q. Was this at the bank?

20 A. I don't know where it was. We had to go someplace
21 and he made the pink slip out to me.

22 Q. If you executed a pink slip, you knew full well what
23 you executed in the courthouse was not the title paper of an
24 automobile.

25 A. Well, I said I did not hear anything and he knows I

1 am very nervous and easy to get upset.

2 Q. I am just trying to get the sequence of events.
3 Your memory is so clear in some areas and so very hazy in
4 others. All right, about what time was it that you executed
5 this agreement?

6 A. I don't know. It must have been about 1:00 or
7 something like that. 12:30 or something.

8 Q. You went home and did what then?

9 A. I went home and got ready and left.

10 Q. How much did you pack?

11 A. I just packed my clothes.

12 Q. How many suitcases?

13 A. I only had three.

14 Q. Huh?

15 A. Three.

16 Q. Three suitcases?

17 A. Yes.

18 Q. So you executed this agreement about 1:00 and went
19 home and packed three suitcases. How far was your home from
20 the Municipal Building in Dunn?

21 A. I don't know. About a mile, I guess.

22 Q. And you packed three suitcases and left by 2:00?
back of the

23 A. I put stuff in the/car that belonged to me and in
24 the back seat.

25 Q. In addition to packing the suitcases?

1 A. Yes.
2 Q. What did you put in the back seat?
3 A. Just clothes and some things like that.
4 Q. What do you mean, "some things like that"?
5 A. Well, my clothes, shoes and coats and what have you.
6 I didn't take any cooking utensils. I had him send them to
7 me.
8 Q. When did he send them to you?
9 A. I don't know, I can't remember the exact date.
10 Q. Approximately?
11 THE COURT: How long after you had gone, the next
12 week, next month or next year?
13 MRS. COOLEY: No, after we got the divorce.
14 THE COURT: After you got the divorce?
15 MRS. COOLEY: Yes.
16 THE COURT: That was a year and half later, at
17 least?
18 MRS. COOLEY: Yes.
19 MR. CARTER: I think that is all.

20 REDIRECT EXAMINATION

21 BY MR. CRAIG:

22 Q. One or two other things, Mrs. Cooley. I will show
23 you a letter from a lawyer formerly in Dunn, North Carolina,
24 apparently advising you that Mr. Cooley had instituted a
25 divorce action against you. Do you remember getting that?

1 A. I don't think I received that. I think my lawyer
2 showed me that when I went over there.

3 THE COURT: Well, how did he get it?

4 Q. You must have given it to him, didn't you?

5 A. Maybe, I did. I can't say, I can't remember.

6 Q. Well, how did you find out that your husband had
7 started a divorce action against you? Who told you?

8 A. Well, he sent me the papers.

9 Q. Are you sure his lawyer didn't write you a note
10 or a letter and enclose the papers or tell you something
11 about it?

12 A. I tell you I can't remember a thing. I had to go
13 to the post office and pick up the papers.

14 MR. CRAIG: I would say that this shows that this
15 is at least the day that she received notice, June 30,
16 1972.

17 THE COURT: Which was three days after it was
18 filed.

19 Q. That was addressed to you, not any lawyer.

20 A. No - - - yes, that is right.

21 THE COURT: You had to have something to make
22 contact with the lawyer.

23 MRS. COOLEY: Yes, that was right.

24 Q. It was after that that you saw a lawyer or before
25 that?

1 A. Yes, it was when I got these papers I went to see
2 a lawyer.

3 Q. Was that the first time you went to see a lawyer?

4 A. To the best of my recollection, that is the only
5 time. I had gone to lawyers and they had told me this
6 paper I had was a divorce.

7 THE COURT: What paper did you have?

8 MRS. COOLEY: The separation agreement.

9 THE COURT: But you didn't remember it.

10 Q. They said the separation agreement was a divorce?

11 A. That is what they said, these two lawyers.

12 Q. Now, Mrs. Cooley, Mr. Carter asked you at some
13 length about this agreement and you wanted something, I take
14 it, in writing before you left for California. Something
15 other than you husband's word that he would send you some
16 money every month, is that right?

17 A. Yes.

18 Q. Did you know the amount that he was going to send
19 you? Did you know that it was going to be \$350.00?

20 A. I knew after I got the check.

21 THE COURT: You knew when you got the check. You
22 didn't remember it being in the agreement?

23 MRS. COOLEY: No.

24 Q. You mean you left for Claifornia not knowing whether
25 you would get one dollar or ten dollars or two hundred or three

1 hundred dollars a month?

2 A. No, when I got the check is when I knew what I was
3 going to get.

4 Q. How were you going to exist out in California
5 without some money?

6 A. Well, I figured he would take care of me.

7 Q. You trusted him as to the amount?

8 A. Yes.

9 Q. You didn't discuss it with him?

10 A. No.

11 Q. Well, when you said - - - I think you told us you
12 wanted something in writing. What kind of something did you
13 want?

14 A. Just that he would, I wanted to know why he was
15 sending me to California when I didn't want to go.

16 THE COURT: You thought it was a paid vacation?

17 MRS. COOLEY: No, well, yes, I would think it was
18 a paid vacation. That is right.

19 Q. What did you expect this writing that you wanted him
20 to give you to contain?

21 A. Well, I wanted something in there to assure me
22 that I was going to be taken care of, because I had no way
23 of taking care of myself.

24 Q. You mean, financially?

25 A. Yes, financially.

1 Q. Well, weren't you inquisitive or concerned about
2 how much you were going to get each month? Wasn't that
3 discussed with Mr. Cooley?

4 A. No, it was not discussed. He made up his own
5 discussion.

6 THE COURT: And you just did what he said?

7 MRS. COOLEY: Yes, I did what he said.

8 THE COURT: You got out there in '71 and as far as
9 we can tell was the next contact when you called about
10 coming home for Christmas and he said, "Don't come until
11 January". You mean, there was no contact between June
12 of '71 and December? You didn't write to each other?
13 He didn't write to you?

14 MRS. COOLEY: Yes, I wrote to him and he wrote to
15 me and he called me. He even called me after he was
16 married to this woman he is living with now.

17 THE COURT: You thought you were going to be back
18 for Christmas?

19 MRS. COOLEY: Yes.

20 THE COURT: And you thought you were still his
21 wife?

22 MRS. COOLEY: Yes.

23 THE COURT: What were you doing out there, just
24 visiting? Were you staying where you are now?

25 MRS. COOLEY: No.

1 THE COURT: Where were you living?
2 MRS. COOLEY: I stayed with my daughter.
3 THE COURT: Did he come out there?
4 MRS. COOLEY: No, one time he came, but he didn't
5 stop.
6 THE COURT: What do you mean, "He didn't stop"?
7 MRS. COOLEY: He went to San Francisco.
8 THE COURT: On a business trip?
9 MRS. COOLEY: Yes.
10 THE COURT: Anything further of this witness?

11 RE CROSS EXAMINATION

12 BY MR. CARTER:

13 Q. I have just one other question. In short, in June
14 of 1971, you were not going to California until you had this
15 agreement, is that correct?

16 A. Yes, that is right.

17 MR. CARTER: I think that is all.

18 REDIRECT EXAMINATION

19 BY MR. CRAIG:

20 Q. And who asked you to go to California?

21 A. He did, Mr. Cooley did.

22 MR. CRAIG: I have no further questions.

23 THE COURT: You may stand aside.

24 * * * * *

25

1 MR. CRAIG: That is all I care to ask her.

2 CROSS EXAMINATION

3 BY MR. CARTER:

4 Q. So, Mrs. Peck, she was so shocked she immediately
5 dashed down to see the family lawyer to see what she had
6 signed?

7 A. No, I don't think so.

8 MR. CARTER: That is all I have.

9 REDIRECT EXAMINATION

10 BY MR. CRAIG:

11 Q. You have not talked to Mr. Cooley at all?

12 A. No.

13 Q. And anything else you may know is what Mrs. Cooley
14 may have told you or discussed with you?

15 A. Yes.

16 MR. CRAIG: No further questions.

17 (The witness stands aside.)

18 * * * * *

19 MR. CRAIG: The plaintiff rests.

20 * * * * *

21 CYRUS EUGENE COOLEY, having been previously sworn,

22 was recalled to the stand and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. CARTER:

25 Q. Mr. Cooley, is there anything in this testimony

1 that you have heard from your wife that you don't agree
2 with? But number one, I think we ought to clarify whether
3 any negotiations between you and your wife prior to the
4 execution of the agreement on June 16th took place and whether
5 or not she had any knowledge of what she was signing?

6 A. As I said, during the days, I don't know how many,
7 I remember it was very clear that night, the day we reached
8 the understanding on the figure, which was the \$350.00. She
9 was to get the car and she was to get what was left in the
10 checking account in the little branch bank there in the
11 shopping center and I was to pay her other monies and we
12 were to divide the proceeds in the house.

13 Q. The house was located in Virginia?

14 A. Yes, it was located at Buena Vista, Virginia. It
15 was being leased at the time.

16 Q. So what you were going to do was to sell the house
17 and divide the proceeds?

18 A. That is correct.

19 Q. Then this was the agreement you all arrived at?
20 Was there any question in your mind that she understood this
21 clearly?

22 A. No, sir, that was prior to the time I went to see
23 the lawyer and had him draw it up.

24 Q. What happened again on the day the agreement was
25 executed?

1 A. As I stated before, the best of my recollection
2 is that he got the papers ready, we went to the Magistrate - - -

3 Q. Do you remember, approximately, what time that was?

4 A. It was after lunch.

5 THE COURT: Did you have lunch together, you and
6 your wife?

7 MR. COOLEY: I am not positive. We might have
8 there at the house prior to going over there.

9 THE COURT: She has the impression that this was
10 just a paid vacation she was about to enter upon and
11 obviously she was distraught by the contents and still
12 is. Were you under that impression?

13 MR. COOLEY: No, sir.

14 Q. Were you under the impression that you all were
15 going to live together again?

16 A. No, sir.

17 Q. And did you leave/^{her}with the impression that she was
18 going to come back in December, that this was going to be a
19 trial separation?

20 A. If I did, I didn't intend to.

21 Q. You had no intention of making such an impression.
22 Did you explain to her that in selling the house that you
23 all were splitting what you all owned together? Did she
24 understand that?

25 A. Yes, sir, with cash payments that I made. I don't

1 recall the amount. It is in the agreement how much and signing
2 the car over to her. And we went down to the, I believe
3 it is the Chevrolet or Cadillac place has the Division of
4 Motor Vehicles in the back of the showroom. We transferred
5 the car to her that day.

6 Q. How much was the cash settlement and from whence
7 did it come?

8 A. It came from funds that were in a Calhoun, Georgia
9 bank.

10 THE COURT: Have you got the cancelled check?

11 MR. COOLEY: I am not certain that I have the
12 cancelled check. I can check back and see.

13 THE COURT: Did you give it to her at the
14 automobile agency?

15 MR. COOLEY: I gave it to her that day.

16 Q. But you said you thought there was some other
17 transfer that you thought took place the following day?

18 THE COURT: Well, she said she took off at 2:00
19 o'clock and you said the best of your recollection she
20 spent the night and left the next morning?

21 MR. COOLEY: Yes, my recollection is that she left
22 the next morning.

23 THE COURT: When did you hear from her again?

24 MR. COOLEY: Well - - -

25 THE COURT: Did she send you a card from Memphis,

1 St. Louis along the way?

2 MR. COOLEY: No, sir.

3 THE COURT: How did you know she ever got there?

4 MR. COOLEY: Through my daughter.

5 THE COURT: Did you have any correspondence through
6 her at that time?

7 MR. COOLEY: I may have received a letter from her.
8 I am not a letter writer.

9 THE COURT: What happened in December of '71?

10 MR. COOLEY: In December of '71, I went into the
11 hospital. I don't recall the exact date, but it
12 was on a Monday in the early part of December and I
13 went to an area Chamber of Commerce meeting at noon
14 and I came down with severe chest pains and there was
15 a doctor in the group and immediately took me to the
16 hospital and they diagnosed it as a severe heart attack.

17 THE COURT: That was there at Erwin?

18 MR. COOLEY: That was in Dunn. Erwin and Dunn are
19 contiguous. They are both almost the same town.

20 THE COURT: Both small towns, both like Chatham?

21 MR. COOLEY: Yes, sir, and I went into the hospital
22 and they put me in the Cardiac Care.

23 THE COURT: Did you notify your wife?

24 MR. COOLEY: No, sir.

25 THE COURT: Did anybody notify her?

1 MR. COOLEY: She attempted to call me and the
2 doctor instructed her not to be in contact with me,
3 because he did not think it was good for my condition.

4 Q. Did you have any telephone conversations with her
5 while you were in the hospital?

6 A. No, sir, the first eleven days I didn't have a
7 telephone in the room. They just had the tape and the
8 beeper.

9 THE COURT: How old are you now?

10 MR. COOLEY: 56.

11 Q. Then tell us about your income tax return, Mr. Cooley.

12 A. Well, as I stated earlier, because of the fact that
13 after I got out of the hospital they recommended that I take
14 three months for recuperation and I had requested an extension
15 on my taxes from the State of North Carolina and Federal
16 Government.

17 THE COURT: This is the calendar year of '71?

18 MR. COOLEY: Yes, sir, and in terms of the agreement
19 this was a joint return. This is the agreement the house
20 was involved in. But in any event, I photocopied the
21 front page of the return.

22 THE COURT: You mean the gains reported on the
23 sale of the house?

24 MR. COOLEY: Yes, they were capital gains.

25 THE COURT: You are talking about the house in

1 Buena Vista?

2 MR. COOLEY: Yes, sir, and I photocopied the front
3 page, I didn't photocopy it, I just sent her the original
4 of the front page, which summarized all the findings
5 in the back part of the return as prepared by the
6 accountant in Salisbury who handled our tax work.

7 Q. This was the first page of the 1040?

8 A. Yes, sir, but at any rate, she refused to sign it.

9 Q. Did she give you any reason for refusing to sign it?

10 A. It was indicated on the advice of somebody else and
11 I assume counsel, because they - - -

12 THE COURT: Was this while you were in the hospital?

13 MR. COOLEY: No, sir, this was while I was still
14 in the process of recovering.

15 THE COURT: In the spring of '72?

16 MR. COOLEY: Yes, sir, and subsequent to that I went
17 to Duke Hospital for another seven days with a heart
18 catherization and they found my heart condition was not
19 as serious as had been diagnosed. It was during that
20 period of recuperation is the period she refused to
21 sign the tax return and as a result I went back to my
22 accountant in Salisbury and had him refile the return as
23 head of the household, because my daughter was living
24 with me. Later, during the negotiations, which commenced
25 at the time the divorce was filed, between her attorney

1 in California, Mr. Globin, and my attorneys, that tax
2 form, a photocopy of the original that I sent to
3 California for her to sign, became a great matter of
4 issue in regard to how much money I should pay her,
5 trying to substantiate how high my income was, but they
6 did have all the facts.

7 Q. This was not a blank tax form?

8 A. No, sir, it was completely filled out.

9 THE COURT: He was using it in his negotiations?

10 MR. COOLEY: Yes, sir.

11 Q. Just tell the judge just what that character in
12 Los Angeles was trying to get out of you.

13 A. Well, I was trying to refresh my mind, but I think
14 he started out at \$2,500.00 a month alimony and, truthfully,
15 when I saw his first proposal, I believe it was \$10,000.00
16 cash, plus \$5,000.00 attorney fee and then there was to be
17 some provision for a lifetime income and there were a number
18 of other provisions. And when I just saw the letter and
19 talked with my attorney, I said, "I just don't know how we
20 will ever settle this thing, because it is so unreasonable
21 in my mind". And that is what we did back and forth for six
22 months and finally we settled with the figure in the agreement.

23 THE COURT: Why didn't you go ahead with the
24 litigation?

25 MR. COOLEY: I think, really, more than anything

1 else, during that whole period of time I was concerned
2 in my own mind about her rights. I had a very responsible
3 position and I had a promotion by then and I, frankly,
4 am completely aware today that this is not a valid
5 assumption that I made during that period of time.

6 Q. Infrequently, if they try to contest a divorce case
7 in North Carolina it might have set some sort of precedent
8 in the state, because the lawyers down there are not quite as
9 smart as we are.

10 A. I didn't want pressure brought on my company
11 and that sort of thing.

12 Q. So you exceeded to these demands to get your
13 divorce. Anything else you want to say in regard to testimony
14 that has come forth here?

15 A. No, sir, I don't have anything else. You mentioned
16 something about phone calls. I won't get into that.

17 CROSS EXAMINATION

18 BY MR. CRAIG:

19 Q. Just one or two questions, Mr. Cooley. I take it,
20 the two of you had decided, according to what you understood,
21 to separate and as far as you were concerned that was going
22 to be a permanent separation, that was your intention at that
23 time?

24 A. Yes, sir.

25 Q. This separation agreement was entered into to

1 provide some support for her. You said yourself you wanted
2 her to have some money if you were not going to be living
3 with her.

4 A. Yes, sir.

5 Q. And so after you and your wife had agreed upon
6 the separation and settled upon what you were going to do about
7 the division of property and car, money, then you went to an
8 attorney, told him about it and he wrote it up and then you
9 both signed it and she left for California?

10 A. Yes, sir.

11 Q. And as far as a later one, that was a cash agreement
12 to get everything cleared away and get your divorce and to
13 be the end of it?

14 A. That was to the validity of the contested divorce.

15 Q. Well, what would have happened if she had contested
16 the divorce?

17 A. I really don't know.

18 Q. You still realize there was some obligation to pay
19 some support?

20 A. I didn't feel it was my obligation to pay any more
21 than I was paying.

22 Q. You didn't want to pay any more than \$350.00?

23 A. In fact, I questioned in my own mind I had no
24 obligation to pay it.

25 THE COURT: Well, why did you pay that?

1 MR. COOLEY: I guess at that time I felt that - - -
2 THE COURT: It looks like you wanted to get her
3 out of the house, is that right?
4 MR. COOLEY: We were having too many problems.
5 THE COURT: After you got her out of the house,
6 it would be a little eaiser?
7 MR. COOLEY: Yes, sir.
8 Q. Of course, you accomplished your purpose, didn't
9 you? You got her out of the house. You did accomplish your
10 purpose?
11 A. Well, she moved to California.
12 Q. That is what you wanted her to do?
13 A. We wanted to separate.
14 Q. But you wanted it as much as she did?
15 A. That is right.
16 Q. You wanted the divorce more than she did?
17 A. The point and time of the divorce, I thought to get
18 my affairs in order that I needed a final decree, because of
19 things that had happened regarding the income tax and other
20 things.
21 Q. At that time you were going with a woman you thought
22 you might probably marry?
23 A. I wasn't too keen on that idea. I was seeing
24 scmaone else.
25 ~~MR. CRAIG: I have no further questions.~~

EXHIBIT "D"

COPY FOR CAROLYN J. COOLEY

le # 72CVD 6671

STATE OF NORTH CAROLINA

County of Harnett

EXHIBIT-~~DEFENDANT~~ No. D

Film #

CYRUS EUGENE COOLEY, JR.

Date 12-16-72 Judge W.C.T.

In The General Court of Justice
District Court Division

Against

CAROLYN J. COOLEY

CIVIL SUMMONS

Served 6 July 72

STATE OF NORTH CAROLINA

To each of the defendants named below---GREETING:

Defendant

Carolyn J. Cooley

Address

10710 Camarillo Street

North Hollywood, California 91602

YOU ARE HEREBY SUMMONED AND NOTIFIED to appear and answer to the above entitled civil action as follows: a written Answer to the Complaint must be served upon the plaintiff or his attorney within THIRTY DAYS after the service of this Summons and a copy thereof must be filed at the office of the undersigned clerk. If you fail to do so, the plaintiff will apply to the court for the relief demanded in the Complaint.

Issued at 4:00 o'clock P.m., this 27 day of June, 1972.

Wilson, Bowen & Lytch

Plaintiff's Attorney

P. O. Box 305, DUNN, N. C. 28334

Address

Georgia Lee Brown
Deputy/Assistant/Clerk of Superior Court

RETURN OF SERVICE

I certify that this Summons was received on the _____ day of _____, 19____, and together with the Complaint was served as follows:

On _____ on the _____ day of _____, 19____, at the following place: _____ By: _____

(fill in address where copy was delivered or left)

☐ delivering copies to him personally. ☐ leaving copies with _____
who is a person of suitable age and discretion and who resides in the defendant's dwelling
house or usual place of abode.

On _____ on the _____ day of _____, 19____, at
the following place: _____ By: _____
(fill in address where copy was delivered or left)

☐ delivering copies to him personally. ☐ leaving copies with _____
who is a person of suitable age and discretion and who resides in the defendant's dwelling
house or usual place of abode.

If not served on defendant, state reason and give his name: _____

Fee \$ _____ Sheriff of _____ County, N. C.
Paid _____ By: _____ Deputy
By _____ Date _____

G.S. 1A-1, Rule 4
AOC-L Form 49
Rev 8/70

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

FILED
JUN 27 1972

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

CYRUS EUGENE COOLEY, JR.)

VS.

CAROLYN J. COOLEY
.....

ELIZABETH F. MATTHEWS
CLERK OF SUPERIOR COURT
HARNETT COUNTY, N. C. COMPLAINT

1. The plaintiff is a resident of Harnett County, State of North Carolina, and has been a resident of Harnett County, North Carolina for several years, particularly for more than six months immediately preceding the commencement of this action.

2. The defendant, Carolyn J. Cooley, is a resident of 10710 Camarillo Street, North Hollywood, California, 91602.

3. That plaintiff and defendant were married on or about September 1, 1958, and thereafter lived together as husband and wife until on or about June 16, 1971, when they separated.

4. That since June 16, 1971, plaintiff and defendant have lived continuously separate and apart from each other and at no time have resumed the marital relation which formerly existed between them.

5. That no children have been born to this union of marriage.

WHEREFORE, plaintiff prays that the bonds of matrimony heretofore existing between plaintiff and defendant be dissolved, that he be granted an absolute divorce from the defendant and that he pay the cost of court.

WILSON, BOWEN & LYTCH
ATTORNEYS FOR PLAINTIFF
P. O. BOX 305, DUNN, N. C.
Telephone: 919-892-2152

By: Wiley F. Bowen
Wiley F. Bowen

COOLEY vs. COOLEY - Complaint

VERIFICATION

STATE OF NORTH CAROLINA

COUNTY OF HARNETT

Cyrus Eugene Cooley, first being duly sworn, says that he has read the foregoing Complaint and that the same is true of his own knowledge except as to those matters and things therein alleged upon information and belief, but as to those he believes them to be true.

/s/ Cyrus Eugene Cooley, Jr.
Cyrus Eugene Cooley, Jr.

Sworn to and subscribed before

me this 21st day of June, 1972.

/s/ Shelby F. Johnson
Notary Public

My Commission Expires: 10/19/74

EXHIBIT-PLAINTIFF No. C

EXHIBIT "E"

Date 12-16-77 Judge WCT.

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

72 CVD 0671

CYRUS EUGENE COOLEY, JR.)

VS .)

CAROLYN J. COOLEY)

.....)

J U D G M E N T
OF ABSOLUTE DIVORCE
JULY 19 1972
DISTRICT COURT

THIS CLAIM FOR RELIEF having come on regularly for trial and having been tried before this Court held in Lillington, North Carolina, and Wiley F. Bowen having appeared as attorney for the plaintiff, and the Court having heard the testimony and having examined the proofs offered, and being fully advised in the premises, finds the facts as follows:

FINDINGS OF FACT

1. This Claim for Relief was filed and summons issued on the 27th day of June, 1972.
2. That a copy of the summons and complaint were duly served upon the defendant on July 6, 1972.
3. That neither the plaintiff nor defendant has filed a request for a jury trial with the Clerk of the Court prior to the call of this claim for trial.
4. That the plaintiff is a resident of the State of North Carolina, and has been so for several years, particularly for more than six months immediately preceding the commencement of this action.

5. The plaintiff and defendant were lawfully married on or about September 1, 1958.

6. The plaintiff and defendant lived continuously separate and apart from each other since the 16th day of June, 1971.

CONCLUSIONS OF LAW

That as a result of the aforesaid separation of the plaintiff and defendant, the Court finds that the plaintiff is entitled to a decree dissolving the bonds of matrimony between the plaintiff and defendant.

72 CVD 0671 - Judgment

IT IS NOW, THEREFORE, ORDERED ADJUDGED AND DECREED that the bonds of matrimony heretofore existing between the plaintiff and defendant be, and they are hereby, dissolved and that the plaintiff is granted an absolute divorce from the defendant. The cost of this action shall be taxed by the Clerk and paid by the plaintiff.

This the 19th day of December, 1972.

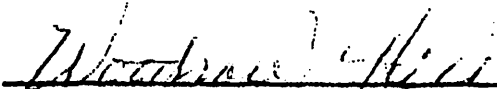

Judge Presiding

EXHIBIT "F"

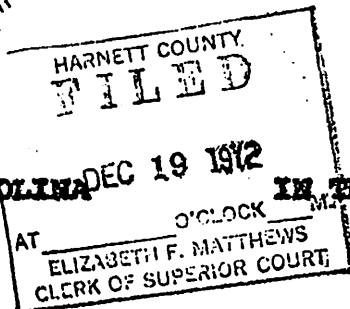


EXHIBIT-PLAINTIFF No. 7

Date 12-16-77 Judge W.C.T.

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

72 CVD 0671

CYRUS EUGENE COOLEY, JR.

VS.

CAROLYN J. COOLEY

ORDER

.....

THIS CAUSE coming on upon motion of the plaintiff
for an absolute divorce, and it appearing to the Court that
Carolyn J. Cooley, is a dependent spouse and is now presently
covered by medical and hospital insurance and is substantially
in need of continuous coverage; therefore, Cyrus Eugene Cooley,
Jr. shall maintain such insurance for the benefit of Carolyn
J. Cooley until her remarriage or death
and in the event the present provisions for insurance
is unavailable, Cyrus Eugene Cooley, Jr. shall then procure
substantially similar other insurance coverage for the benefit
of Carolyn J. Cooley.

This the 19th day of December, 1972.

Woodward Hill
Judge Presiding

EXHIBIT "G"

EXHIBIT-PLAINTIFF No. 4

LIFE INSURANCE TRUST AGREEMENT

Date 12-16-71 Judge W.C.T.

THIS AGREEMENT, made this the 3rd day of ^{December}~~November~~, 1971, and executed in duplicate, between Cyrus Eugene Cooley, Jr., of the County of Harnett, State of North Carolina, hereinafter called the Grantor, and the Wachovia Bank and Trust Company, ^{N.A.} a corporation organized and existing under the laws of the ^{United States}~~State of North Carolina~~, hereinafter called the Trustee, WITNESSETH THAT

INSURANCE POLICIES - The Grantor has designated the Trustee, as Trustee hereunder, the beneficiary of the life insurance policies listed on the sheet marked B, which is attached hereto and incorporated herein by reference. The Grantor agrees to inform the Trustee of any other policies that may hereafter be made subject to this agreement, but a failure by the Grantor to do so will not cause a termination of this agreement. (Each reference herein to "this agreement" shall refer to this agreement as from time to time amended.)

PAYMENT OF PREMIUMS - The duty and responsibility of paying premiums, assessments and other charges on all such policies shall rest solely upon the Grantor.

CUSTODY OF THE POLICIES - The duty and responsibility of maintaining the custody and control of all such policies during the Grantor's lifetime shall rest solely upon the Grantor.

RIGHTS RESERVED BY GRANTOR - Except for "Other Assets" referred to below, this agreement shall be operative only with respect to the net proceeds of such policies as may be due and payable to the Trustee, hereunder, upon the death of the Grantor or other insured; and during the Grantor's lifetime all rights of every nature accruing under the policies are reserved by the Grantor and may be exercised without the knowledge or consent of the Trustees.

or the beneficiaries under this agreement. The Grantor also reserves the right during his lifetime—and the Trustee agrees to take whatever steps may be reasonably necessary to enable him to assert his right—to terminate any or all of the policies or change the beneficiaries thereunder; to designate the Trustee beneficiary of additional policies; and to modify, amend, add to, or revoke this agreement. The Grantor specifically reserves the right to pledge any or all of the policies as security for any debt or obligation of any kind and for that purpose to assign any or all of said policies to any person, firm, or corporation, and the Trustee, as beneficiary, shall execute or join with the Grantor in the execution of any assignment or other instrument that may be reasonably necessary to complete such assignment which does not impose any liability or obligation on the Trustee.

OTHER ASSETS - Assets other than insurance policies may be transferred to this trust if such transfers are effected on or after the death of the Grantor or the death of any other person whose life has been insured in favor of this trust.

DUTIES OF TRUSTEE - As soon as practicable after it has knowledge of the death of the Grantor or any other person whose life has been insured in favor of this trust, the Trustee shall make proper proofs of death and shall take all reasonable steps to collect all moneys as and when due under the policies which, within the knowledge of the Trustee, are then within the operation of this agreement.

The Trustee shall make every reasonable effort to ascertain and bring within the operation of this agreement the life insurance policies on the Grantor's life and on the lives of the persons which are payable to the Trustee under the terms of this agreement, but the Trustee shall not be held responsible or liable for locating and processing the collection of moneys as and when due under any policies of life insurance payable to the Trustee under the terms

of this agreement if the Trustee has no prior knowledge of its designation as such beneficiary under such life insurance policies.

The Trustee is authorized to compromise and adjust claims arising out of the insurance policies, or any of them, upon such terms and conditions as it may deem just, and the decisions of the Trustee shall be binding and conclusive upon all persons interested therein.

The Trustee shall not be required to maintain any litigation to enforce the payment of any of the policies unless it is indemnified to its satisfaction against all expense and liability arising from litigation. If the Trustee shall elect to demand indemnity, it shall make such demand in writing upon each of the beneficiaries under this agreement by mailing or delivering the same to his last known address. If satisfactory indemnity is not furnished within thirty days thereafter, the Trustee may assign its rights as beneficiary under the policy in question to the beneficiaries under this agreement and thereupon its liability with respect to such policy shall cease.

POWERS OF TRUSTEE - The Trustee shall receive, hold, manage, convert, sell, exchange, assign, alter, invest, reinvest and otherwise deal with the above described properties as it in its discretion shall deem to be for the best interests of the beneficiaries hereunder. By way of illustration but not of limitation of the Trustee's powers, the Grantor hereby authorizes the Trustee:

1. To receive all rents, issues, income, profits and properties of every nature due the trust and to hold or make distribution thereof in accordance with the terms of this agreement;

2. To retain any properties constituting principal now or hereafter received by it or to dispose of them as and when it

shall deem advisable by public or private sale or exchange or otherwise, for cash or upon credit or partly for cash and partly upon credit and upon such terms and conditions as it shall deem proper;

3. To acquire by purchase or exchange or otherwise properties belonging to the Grantor's general estate and to hold or dispose of them in accordance with the terms of this agreement;

4. To participate in any plan of liquidation, reorganization, consolidation, merger, incorporation or other financial adjustment of any business or corporation in which the trust estate is or shall be financially interested and to exchange any property held in the trust estate for property issued under any such plan;

5. To pay such charges and expenses as the Trustee shall deem requisite or desirable for the protection of any property belonging to the trust estate;

6. To invest or reinvest the funds belonging to the trust estate in units of any common trust fund of the Trustee or in such common or preferred stocks or bonds or other securities or properties (real or personal) as shall from time to time be approved by the Trust Investment Committee or other similar Committee of the Trustee without being restricted to statutory investments, and to hold any investment belonging to the trust estate in bearer form or to register and hold any such investment in the name of the duly authorized nominee of the Trustee;

7. To borrow for the benefit of the trust estate, for such periods of time and upon such terms and conditions as the Trustee shall deem proper, including the power to borrow from its own banking department, any sum or sums of money and to secure such loans by mortgage or pledge of any property belonging to the trust estate without incurring any personal liability on account thereof;

8. To compromise, arbitrate or otherwise adjust or settle claims in favor of or against the trust estate;

9. To make improvements upon any lands belonging to the trust estate and to make, or to join with other persons in making partition of any such lands;

10. To execute such deeds, leases (for any period of time even though it may extend beyond the duration of the trust in which the property so leased shall be held), contracts, bills of sale, notes, proxies and other instruments as the Trustee shall deem requisite or desirable in the proper administration of the trust estate;

11. To divide or allot all or any portion of the properties belonging to the trust estate either in kind or in money or partly in kind and partly in money and to include undivided interests in the properties so divided or allotted.

Anyone dealing with the Trustee is not required to see to the application by the Trustee of the funds or other properties it receives. The Trustee shall not be liable for depreciation in the value of properties held in trust or for errors of judgment, or for any act, or failure to act, not amounting to negligence, bad faith, or positive wrongdoing.

DISTRIBUTIVE PROVISIONS - The Trustee shall administer this trust estate for the following uses and purposes:

Section 1. CAROLYN J. COOLEY, UNTIL REMARRIAGE OR DEATH

Upon the death of the Grantor, if the Grantor's wife, Carolyn J. Cooley, shall survive the Grantor, the Trustee shall pay from the income derived from this trust, or in the Trustee's sole discretion from the principal of this trust, the sum of Three Hundred Fifty (\$350.00) Dollars per month to Carolyn J. Cooley until her remarriage or her death.

Section 2. AFTER DEATH OR REMARRIAGE OF CAROLYN J. COOLEY, REMAINDER IN TRUST FOR GRANTOR'S CHILDREN

Upon the remarriage or death of Carolyn J. Cooley or upon the Grantor's death if his said wife shall predecease him all the funds and properties then constituting the trust estate shall be apportioned in five shares to the Grantor's children as follows: two (2) shares to Catherine Ann Cooley, and one (1) share to each of the other three children then living and to the living issue per stirpes of such of the Grantor's children as shall be dead with issue then living—such issue representing its parent. The several shares shall be administered and disposed of as follows:

(a) The share or shares of the trust estate apportioned to a child of the Grantor at the time of the aforesaid apportionment shall be administered and disposed of as follows:

(1) The share or shares apportioned to each child of the Grantor who shall have attained thirty-five (35) years of age at the time of such apportionment shall thereupon be delivered and conveyed to such child, discharged of the trust;

(2) The share or shares apportioned to each child of the Grantor who shall be under Thirty-five

(35) years of age at the time of such apportionment shall be held in trust hereunder for the benefit of such child and the net income derived from the trust for such child and all or any part of the principal thereof shall be paid or applied for the benefit of such child in such manner and at such intervals and in such amounts as the Trustee in its sole discretion shall from time to time deem requisite or desirable in providing for the suitable support and education of such child and when he or she shall attain the age of Thirty-five (35) years all the funds and properties then constituting the child's separate trust shall be delivered and conveyed to such child, discharged of the trust; and

(3) If a child shall die prior to the termination of his or her trust pursuant to the foregoing provisions, all the funds and properties constituting the trust for such child at the time of his or her death shall thereupon vest in and be delivered and conveyed to such child's surviving issue per stirpes subject to the provisions contained in Section 5 hereunder; or if such child shall leave no issue surviving him or her, the said funds and properties shall inure in equal shares to the benefit of the Grantor's then living children and the living issue per stirpes of such of the Grantor's children as shall be dead with issue then living (such issue representing its parent), and their

respective shares or portions shall be administered and disposed of in accordance with the terms and provisions hereof.

(b) The share or shares of the trust estate apportioned to the living issue per stirpes of each child of the Grantor who shall be dead with issue then living at the time of the aforesaid apportionment shall thereupon vest in and be delivered and conveyed to such issue per stirpes, subject to the provisions contained in Section 5 hereunder.

Section 3. VESTED INTEREST IN TRUST FOR BENEFICIARIES UNDER
TWENTY-FIVE

If any of the funds and properties constituting a part of the trust estate shall vest in any person among the issue of any deceased child or stepchild of mine who shall be under Twenty-one (21) years of age at the time of the vesting thereof in accordance with the foregoing provisions, such funds or properties so vesting shall nevertheless continue to be held in trust by the Trustee under the provisions hereof and be administered as a separate trust and the net income therefrom or the principal thereof shall be applied, in such manner and at such intervals and in such amounts as the Trustee in its sole discretion shall deem requisite or desirable, for the suitable support and education of such person until he or she shall attain the age of twenty-one (21) years or shall sooner die, whereupon the then principal and any accumulated income of such trust shall be delivered and conveyed, discharged of the trust to such person if he or she shall attain the age of Twenty-one (21) or if such person shall die prior to his or her attainment of Twenty-one (21) years, to such person's executors or administrators.

Section 4. FUNDS AVAILABLE FOR ADMINISTRATION EXPENSES AND DEATH TAXES.

The Trustee shall pay to the Grantor's executors or administrators, upon the request of such executors or administrators, such sum or sums out of the proceeds from life insurance on the Grantor's life payable to this trust in excess of the sum of Twenty Thousand (\$20,000.00) Dollars and out of assets of this trust other than proceeds from life insurance, as the Grantor's executors or administrators in their sole discretion shall determine to be necessary for the purpose of enabling such executors or administrators to pay all or any part of the Grantor's just debts, his funeral expenses, cost of administration of his estate, and the inheritance taxes and estate taxes payable upon or by reason of the Grantor's death, provided further that in no event will assets received into this trust from pension or profit-sharing plans be subject to the provisions of this Section 4.

Section 5. SIMULTANEOUS DEATH PROVISION.

If the Grantor's wife, Carolyn J. Cooley, and the Grantor shall die under such circumstances that there is not sufficient evidence to determine the order of their deaths, then it shall be presumed that the Grantor's wife pre-deceased the Grantor; and this trust estate shall be administered and distributed, in all respects, in accordance with such presumption.

Section 6. GRANTOR'S CHILDREN

Wherever in this trust agreement the words, "child" or "children" are used, these shall be interpreted to mean the Grantor's children, namely: Catherine Ann Cooley, Kathleen Brown Cooley, Martha Corinne Cooley and Susan Cooley.

TERMINATION OF TRUST IF MINIMAL - Notwithstanding any other provisions hereof to the contrary, if at the time of the death of the Grantor or of

any other person whose life is then insured in favor of the Trustee hereunder the total assets held in trust under this agreement (after taking into consideration funds and properties payable to the Trustee hereunder from all other sources) shall be less than Five Thousand (\$5,000.00) Dollars, then the Trustee, in its sole discretion, may forthwith terminate any trust created under this agreement, whereupon the assets thereof shall be distributed outright to such then living beneficiaries as are then entitled to the income therefrom and in the same proportions; but if no beneficiary is then entitled to a specific portion of such income, then to the then living income beneficiaries, per stirpes, provided, that if any then living income beneficiary of any trust created under this agreement is under twenty-one (21) years of age at such time, the termination of such trust shall not be effected until all income beneficiaries of such trust shall have attained such age.

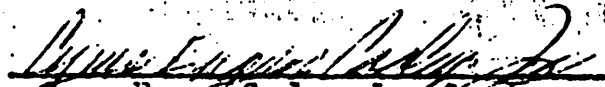
RIGHT OF TRUSTEE TO RESIGN - The Trustee reserves the right to resign as Trustee hereunder during the Grantor's lifetime by giving the Grantor thirty days notice in writing; but after the Grantor's death only for cause satisfactory to the probate court of the county in which the trust is being administered, which court shall have authority, if it shall deem it advisable, to accept the resignation and appoint a successor clothed with all the powers of the original Trustee.

COMPENSATION OF TRUSTEE - As compensation for its services, after receipt of any assets other than unmatured life insurance policies, the Trustee shall be entitled to retain the commissions stipulated in its regularly adopted schedule of compensation in effect and applicable at the time of the performance of such services; but in no event shall the annual compensation be less than the minimum charge stipulated in its regularly adopted schedule of compensation; provided that if this agreement shall be revoked prior to the receipt by the Trustee of any such assets,

then upon its revocation, the Trustee shall be entitled to receive, and the Grantor hereby agrees to pay, the sum constituting the revocation charge stipulated in the said schedule of compensation at the time of such revocation.

THIS AGREEMENT (except as herein otherwise provided) shall be construed in accordance with, and the administration of properties held in trust hereunder shall be determined by the laws of the State of North Carolina irrespective of the domicile or residence of the Grantor or of the situs of any property (real or personal) held in trust hereunder.


IN WITNESS WHEREOF, the Grantor has signed this agreement and affixed the seal adopted by the Grantor, and the Trustee, in acceptance of the trusts hereby created, has caused this agreement to be signed by one of its Vice-Presidents and attested by its Secretary or one of its Assistant Secretaries, and its corporate seal to be affixed, all as of the date first above stated.

 (SEAL)
Cyrus Eugene Cooley, Jr., Grantor

WACHOVIA BANK AND TRUST COMPANY, ^{N.A.} Trustee

Attest:

By: 
Vice President


Assistant Secretary

SHEET B

WACHOVIA BANK AND TRUST COMPANY, N. A., acknowledges that it has been advised by the Grantor that the following life insurance policies have been made payable to trust for the purposes set forth in the foregoing trust agreement of which this sheet is specifically made a part:

26 986 823	New York Life Insurance Company plus decreasing term coverage	\$ 5,000 5,110
30 517 536	New York Life Insurance Company plus decreasing term coverage	25,000 14,300
AP 447-66-74	American Insurance Company (accidental death coverage)	5,000
043 228 571-6	American Express Company (Group insurance through the Fire- man's Fund-American Life Insurance Company-Flight Insurance)	100,000
	Burlington Industries Profit-Sharing Retirement Benefits	
	Burlington Industries Special Travel Coverage	100,000
5617-408-22- 4622	Provident Life & Accident Insurance Co. (Group with Burlington Industries)	40,000
A063L-7511	Provident Life & Accident Insurance Co. (Group with Burlington Industries)	30,000

This 3rd day of April, 19 77

WACHOVIA BANK AND TRUST COMPANY, N.A.

ATTEST:

By

P. F. (Signature)
Vice President

Frances J. Northcutt
Assistant Secretary

EXHIBIT "H"

EXHIBIT-PLAINTIFF No. 17

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

Date 12-16-72 Judge _____

WHEREAS, Cyrus Eugene Cooley, Jr. entered into a Life Insurance Trust Agreement with Wachovia Bank & Trust Company, in November, 1971, and,

The said Cyrus Eugene Cooley, Jr. desires to make an amendment to said Trust Agreement; therefore,

Section 1 of Distributive Provisions is hereby modified to provide for the payment of Four Hundred Fifty (\$450.00) Dollars per month to Carolyn J. Cooley, in lieu of Three Hundred Fifty (\$350.00) Dollars per month, until her death or remarriage.

Except as herein specifically modified, the Life Insurance Agreement is ratified and reaffirmed.

This the 15th day of December, 1972.

 (Seal)
Cyrus Eugene Cooley, Jr., Grantor

WACHOVIA BANK & TRUST COMPANY, Trustee

ATTEST:

By _____
Vice President

Assistant Secretary