

FLOYD BRYARS LITTLE,  
Complainant,

VS.

BILLIE FRANKLIN LITTLE,  
Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NO. \_\_\_\_\_.

SPECIAL APPEARANCE AND MOTION TO QUASH AND DISMISS.

Comes now the Respondent, Billie Franklin Little, by her Attorney, T. J. Mashburn, Jr, and enters herein her special appearance for the sole and exclusive purpose of contesting the jurisdiction of this Court over the person of this Respondent, and the validity and attempted service of sufficiency of the/summons by registered mail upon the said Respondent herein.

T. J. Mashburn, Jr.  
T. J. Mashburn, Jr.

MOTION TO DISMISS PROCEEDINGS, AND TO QUASH BILL.

Comes now the Respondent, Billie Franklin Little, in person, and appearing herein specially and solely for the purpose of contesting the jurisdiction of this Court:

Over the person of this Respondent, and/or

Over the subject matter of this suit, and not otherwise, and thereupon says:

1. That the Complainant, Floyd Bryars Little, was not a bona fide resident citizen of Baldwin County, Alabama, at the time of the filing of the bill in this cause;

2. That the said Complainant was a resident citizen of Mobile County, Alabama, at the time of the filing of the bill in this cause;

3. That your respondent is not now, was not at the time of the filing of the bill in this cause, and never has been, a resident of Baldwin County, Alabama;

4. That the Complainant and the Respondent were married at Pascagoula, Mississippi, on, to-wit, October 18, 1937; that since that time they have never lived in Baldwin County, Alabama.

5. That for more than two years next preceding the filing of this suit they lived together in Mobile, Mobile County, Alabama; that at the time of their separation they were living in Mobile, Mobile County, Alabama,

And this the respondent is ready to verify.

WHEREFORE, Respondent prays judgment of the said bill and summons and that the same be quashed and that the proceedings herein be dismissed.

Billie Franklin Little  
Billie Franklin Little, Respondent.

STATE OF ALABAMA, )  
                          ) ss  
COUNTY OF BALDWIN )

Personally appeared before me, Billie Franklin Little, to me well known, who, upon being duly sworn, deposes and says: That she has read the foregoing Special Appearance and Motion to Quash and Dismiss, and that the same and each and every allegation therein is true.

Billie Franklin Little

Sworn to and subscribed before  
me this 15 day of January,  
1942.

J. J. Mashburn, Jr.  
Notary Public, Baldwin  
County, Alabama.  
My Commission Expires  
6/7/42.

785 -

**RECORDED**

FLOYD BRYARS LITTLE,  
Complainant,

VS.

BILLIE FRANKLIN LITTLE,  
Respondent.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

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SPECIAL APPEARANCE AND MOTION TO  
QUASH AND DISMISS.

*Filed 1-16-42*  
*Ramick*  
*Rif*

FLOYD BRYARS LITTLE,  
Complainant,

VS.

BILLIE FRANKLIN LITTLE,  
Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NO. \_\_\_\_\_

SPECIAL APPEARANCE AND MOTION TO QUASH AND DISMISS.

Comes now the Respondent, Billie Franklin Little, by her Attorney, T. J. Mashburn, Jr, and enters herein her special appearance for the sole and exclusive purpose of contesting the jurisdiction of this Court over the person of this Respondent, and the validity and attempted service of sufficiency of the summons by registered mail upon the said Respondent herein.

T. J. Mashburn, Jr.

*Amended*

NOTICE TO DISMISS PROCEEDINGS, AND TO QUASH BILL.

Comes now the Respondent, Billie Franklin Little, in person, and appearing herein specially and solely for the purpose of contesting the jurisdiction of this Court:

Over the person of this Respondent, and/or

Over the subject matter of this suit, and not otherwise, and thereupon says:

1. That the Complainant, Floyd Bryars Little, was not a bona fide resident citizen of Baldwin County, Alabama, at the time of the filing of the bill in this cause;

2. That the said Complainant was a resident citizen of Mobile County, Alabama, at the time of the filing of the bill in this cause;

3. That your respondent is not now, was not at the time of the filing of the bill in this cause, and never has been, a resident of Baldwin County, Alabama;

4. That the Complainant and the Respondent were married at Pascagoula, Mississippi, on, to-wit, October 18, 1937; that since that time they have never lived in Baldwin County, Alabama.

5. That for more than two years next preceding the filing of this suit they lived together in Mobile, Mobile County, Alabama; that at the time of their separation they were living in Mobile, Mobile County, Alabama.

6. *The Respondent is not a non resident of the state of Alabama.*

7. *This Respondent is a resident citizen of and*

And this the respondent is ready to verify.

*she was born in Alabama; where she has been so domiciled for more than two years next preceding the filing of this suit.*

WHEREFORE, Respondent prays judgment of the said bill and summons and that the same be quashed and that the proceedings herein be dismissed.

*Billie Franklin Little*  
Billie Franklin Little, Respondent.

STATE OF ALABAMA, )  
                                  ) ss  
COUNTY OF BALDWIN )

Personally appeared before me, Billie Franklin Little, to me well known, who, upon being duly sworn, deposes and says: That she has read the foregoing Special Appearance and Motion to Quash and Dismiss, and that the same and each and every allegation therein is true.

*Billie Franklin Little*

Sworn to and subscribed before me this 2nd day of January, 1942.

*W. S. Adams*  
W. S. Adams

1. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 2. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 3. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 4. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 5. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 6. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 7. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 8. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 9. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 10. ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР

1945  
 1945  
 1945

Мухомедов

ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР

ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР  
 ИТТИГО БИЛЭГЭЙН ИТЭГЭГЭЙН ХААГАХААР

Stacy Bryers Little  
Complainant

vs

Billie Franklin Little  
Respondent

In the Circuit  
Court of Baldwin  
County, Alabama  
In Equity

Comes the Complainant and moves the  
Court to these Respondents ~~plea to~~<sup>matrimonial</sup>  
~~the jurisdiction of the Court~~, and for  
grounds thereof, says:

1. That the jurisdictional question is  
not properly presented
2. That question of jurisdiction  
is improperly raised
3. That question as to jurisdiction  
is raised by plea to jurisdiction  
and not by motion to quash

Respectfully  
Attest for Complainant

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

WE COMMAND YOU, That you summon BILLIE FRANKLIN LITTLE to be and appear before the Judge of the Circuit Court of Baldwin County, Alabama, exercising Chancery jurisdiction within thirty days after the service of summons, and there to answer, plead or demur, without oath, to a bill of Complaint lately exhibited by FLOYD BRYARS LITTLE, against BILLIE FRANKLIN LITTLE, and further to do and perform what said Judge shall order and direct in that behalf. And this the said Respondent shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

Witness, R. S. DUCK, Register of said Circuit Court, this

10th day of December, 1941.



Register.





The Complainant further prays that upon a final hearing of this cause your Honor will make and enter a decree awarding to him an absolute decree of divorce, forever barring the bonds of matrimony existing between him and the Respondent and that the care, custody and control of the said minor, BARBARA LUCILLE LITTLE, be awarded to him. The Complainant further prays for such other, further, different and general relief as he may be in equity and good conscience entitled to receive and as in duty bound he will ever pray.

BEEBE & HALL

BY: Thurs Loe  
Solicitors for Complainant.

FLOYD BRYARS LITTLE,  
Complainant,  
VS.  
BILLIE FRANKLIN LITTLE,  
Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY.

AMENDED MOTION

Now comes the Respondent in the above entitled cause and amends the special appearance and motion to quash and dismiss heretofore filed in this cause by her so that the same will read as follows:

Now comes the Respondent who appears specially for the purpose of filing this motion to dismiss this cause and as grounds for said motion sets down and assigns separately and severally the following:

1. The Complainant, Floyd Bryars Little, was not a bona fide resident of Baldwin County, Alabama at the time the Bill of Complaint was filed by him in this cause.

2. The Complainant, Floyd Bryars Little, was not and has not been a bona fide resident of Baldwin County, Alabama for more than one year next preceding the filing of the Bill of Complaint in this cause.

3. The Complainant, Floyd Bryars Little, was a resident of and domiciled in Mobile County, Alabama at the time the Bill of Complaint in this cause was filed.

4. This Respondent is not now and was not at the time of filing the Bill of Complaint in this cause a resident of or domiciled in Baldwin County, Alabama.

5. The Complainant and Respondent were married in Pascagoula, Mississippi on to-wit, October 18, 1937, and since that time have not resided in Baldwin County, Alabama for any period of time.

6. For more than two years next preceding the filing of

the Bill of Complaint in this cause the Complainant and Respondent lived together as man and wife and were domiciled in Mobile County, Alabama, which was the place of their separation.

7. This Respondent is not a non-resident of the State of Alabama.

8. This Respondent is a resident citizen of and domiciled in Mobile County, Alabama.

WHEREFORE, Respondent moves the Court to abate this action and dismiss this suit.

Respondent further prays that such other orders may be made and decrees rendered as may be requisite and proper in the premises.

Billy Franklin Little

Respondent.

Sworn to and subscribed before me  
on this the 2nd day of February, 1942.

Ora L. Nelson

Notary Public, Baldwin County, Alabama.

W. C. BEEBE  
H. M. HALL

**BEEBE & HALL**  
LAWYERS  
BAY MINETTE, ALABAMA

February 20, 1942

Honorable F. W. Hare  
Monroeville, Alabama

Dear Judge:                      In Re: Little Vs. Little

You will recall that testimony was taken in this matter, while you were in Bay Minette, on February 2 last, as to the case of jurisdiction of the Court, on the Respondent's plea in abatement.

After hearing the testimony you directed that Mr. Blackburn and I submit our briefs. I have been waiting on J. B. to file his brief, which he has not done, however, in order to rush the matter, I am submitting to you an outline as to what we consider to be the law governing in such cases. We are, of course, furnishing Mr. Blackburn with a copy of this letter.

The testimony of the Complainant and his mother, if you will recall, was to the effect that the Complainant had lived in Baldwin County all of his life, except a few months in Monroe County, and a few months, recently, while he was working in Mobile. He has, according to his own testimony, and that of his mother, considered Baldwin County as his permanent home, and that he has never moved away with the intention of changing or abandoning his Baldwin County domicile.

The testimony of the Respondent, Mrs. Little, was to the effect that the Complainant was working in Mobile and that they rented apartments in different places in Mobile and that when the trouble arose between her and the Complainant, she was the one that broke up the home and left, and went to her parents' home in Pensacola, Florida.

There is no testimony in the record to refute the testimony on behalf of the Complainant that he did not at any time abandon or leave his residence in Baldwin County, Alabama, for the purpose of taking up a domicile, or residence in Mobile County, Alabama.

We wish to call to your attention the fact that the Respondent asserting a change of domicile had the burden as to such issue (172 Southern, 618, Caheen Vs. Caheen). We submit that the Respondent has not met the required responsibility.

The Respondent, having broken up the home, by leaving the Complainant and going to her folks in Florida, the Complainant, the husband, had the right to acquire a residence for the purpose of commencing the action for divorce (Caheen Vs. Caheen). We call your attention to this case, giving to the Respondent the most favorable interpretation of her testimony.

It has long been the rule, in our jurisdiction that a domicile once acquired, is presumed to continue until a new one has been gained, in fact, and in intent. It is also established in this jurisdiction that a person's domicile is that place in which his habitation is fixed without any present intention of removing, and it embraces the fact of residence, and the intent to remain (188 Southern, 685). The testimony on behalf of the Complainant was not contradicted, especially as to his intent to retain Baldwin County as his place of domicile.

If there was a change, there must have been both an abandonment of the Complainant's former domicile, Baldwin County, Alabama, with no present intent to return, and the establishment of another place of residence with intention to remain permanently, or, at least, for an unlimited time (188 Southern, 687). Most assuredly there is nothing in the record to refute the testimony offered by the Complainant as to this. What state of facts shall be deemed to constitute a change of domicile may be considered a mixed case of law and fact, and is one proverbially difficult to determine owing to the doubtful interpretation of human conduct. It is universally admitted that such a change is never effected by intention alone. It can be accomplished only by a completed act, done with the purpose of consummating a permanent removal from the original domicile, *animo manendi*. The old domicile continues until a new one is acquired *facto et animo*.

A change of domicile cannot be inferred from an absence which is said to be temporary, and attempted with the requisite *animus revertendi*. The intention to return is wholly the controlling element in the determination of the whole question (188 Southern, 685). We therefore submit that if we apply the law to the facts--the Respondent in one instance broke up the home, which gave the Complainant the right to then acquire a residence for purposes of commencing an action for divorce, and on the other hand we have the uncontradicted testimony on behalf of the Complainant that Baldwin County is and has been for the past several years his residence, or domicile, and that he has never abandoned it with the intention of taking up a domicile in Mobile County, but has always considered it his home, and that he was away only temporarily with the intent of returning. The Respondent's plea in abandonment should therefore be overruled.

We wish to call to your attention, also, the fact that the Respondent left the place where she and the Complainant were at that time temporarily residing and went to the State of Florida, and so far as the record shows remained there until after the suit was filed. At least the record affirmatively shows that she received her mail at the address set out in the Bill of Complaint. Did she intend to make the State of Florida her home? She now ~~tries~~ to show that she has taken up a residence some where on St. Francis Street in Mobile, and, if possible, she is going to secure work there. The Complainant has been a resident of Alabama all of his life and we submit that the facts show that the Respondent is, in fact, since her separation, when she left the Complainant, a resident of the State of Florida.

Yours very truly

BEEBE & HALL

By: 

FLOYD BRYARS LITTLE,

Complainant

VS.

BILLIE FRANKLIN LITTLE,

Respondent.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

In Equity

The pleadings and proof in this case are in confusion. The Bill prays for divorce on the ground of adultery, and alleges that complainant is a resident of Baldwin County, and that respondent is a non-resident of the State.

On January 16, 1942, a double-barreled motion was filed on behalf of respondent. One barrel of this motion was by one T. J. Mashburn, Jr., and the other barrel was by the respondent personally. The motion by the said attorney was a "special appearance for the sole and exclusive purpose of contesting the jurisdiction of this Court over the person of this respondent, and the validity and sufficiency of the attempted service by registered mail upon said respondent herein." The jurisdiction of the Court over the subject matter cannot be questioned. Service by registered mail against non-residents in such actions is provided for by statute, so that there can be nothing in the "contest" instituted by said attorney. The other barrel of said motion is by the respondent in person "appearing specially and solely for the purpose of contesting the jurisdiction of this Court over the person of the respondent and/or over the subject matter of this suit." The jurisdiction of the Court over the subject matter (divorce) is not to be questioned, nor can service by registered mail upon non-residents be questioned. Said double-barrel motion "prays judgment of said bill and summons and that the same be quashed and that the proceedings herein be dismissed." It is evident that said motion is (or said motions are) without merit. Such motions are in the nature of special demurrers and are necessarily appearances even though the movant alleges that he "appears specially."

At the hearing of said motion it was stricken on

confer a mere personal privilege which may be waived by a failure to claim it in a proper manner and at the proper time."

In the case of Tigret vs. Taylor, 180 Ala. 296; 60 So. 858, it is stated:

"Where want of jurisdiction appears on the face of the proceeding, the question may be raised by motion to dismiss or by demurrer, but if the defect is not apparent from the face of the proceeding it must be raised by special plea."

In this case, there is no want of jurisdiction on the face of the proceedings -- jurisdictional facts are alleged. If the last motion filed by respondent, which she names an "amended special appearance and motion to quash and dismiss," can be classed as a plea to the jurisdiction of the court, it was not framed in a proper manner and filed at a proper time. The two preceding motions (both without merit) had waived such a plea.

"The action of the chancellor in overruling the plea in abatement can be sustained upon the grounds irrespective of all others, that by demurring to the bill the plea was waived." Cartright, et al. vs. West, 155 Ala. 619; 47 So. 93.

The Register will enroll the following

DECREE

This cause coming on to be heard is submitted for decree on respondent's "amended motion to dismiss proceedings and quash bill", and the testimony taken orally in open court before the judge in support of and opposed to said motion, and upon consideration thereof, I am of the opinion that said motion should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that said motion be, and the same here is, overruled and denied.

Respondent is allowed thirty days from the filing of this decree within which to file answer.

This 8th day of May, 1942.

  
Judge



44  
Hugh Bryan Little

12  
Billie Faudan Little

RECORDED

Filed 2/2/12  
Product  
Report

785

FLOYD BRYARS LITTLE,

Complainant,

VS.

BILLIE FRANKLIN LITTLE,

Respondent.

RECORDED

SUMMONS & COMPLAINT

Beebe & Hall, Lawyers,  
Bay Minette, Alabama

RECORDED

in the case of Taylor vs. Taylor, 180 Ala. 296; 60 So. 2d 858, it is stated:

"have want of jurisdiction appears on the face of the proceeding, the question may be raised by motion to dismiss... the two preceding motions (both without merit) had waived such a plea."

*Handwritten signatures and notes:*  
- *Boone*  
- *Malone*  
- *W. J. [unclear]*  
- *W. J. [unclear]*  
- *W. J. [unclear]*

*Handwritten notes:*  
- *W. J. [unclear]*  
- *W. J. [unclear]*  
- *RECORDED*

"The action of the chancellor in overruling the plea in abatement can be sustained upon the grounds... that by demurring to the bill the plea was waived."

Barthright, et al. vs. West, 157 Ala. 619; 47 So. 93.

The Register will enroll the following

D E C R E E

This cause coming on to be heard is submitted for... should be denied... denied... denied... this decree within which to file answer... This 5th day of May, 1913.

FLOYD BRYARS LITTLE,  
Complainant,

Vs.

BILLIE FRANKLIN LITTLE,  
Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. NO. 785.

ANSWER.

Now comes the Respondent, and without waiving her right to have a review of the decree heretofore rendered in this cause, but insisting on such right at all times, and without waiving her right to at all times insist that this suit is wrongfully and improperly filed in the Circuit Court of Baldwin County, Alabama, in Equity, and that the said Court had no authority to proceed further with this cause, files this as her answer to the Bill of Complaint:

1. The Respondent admits that the Complainant is over twenty-one years of age, but denies that he was a bona fide resident of Baldwin County, Alabama at the time this suit was filed and further denies that he had been a bona fide resident of Baldwin County, Alabama for more than one year next preceding the filing of this suit. The Respondent admits that she is over twenty-one years of age, but denies that she was a non-resident of the State of Alabama at the time of the filing of this suit. The Respondent alleges that both the Complainant and the Respondent were bona fide residents of Mobile County, Alabama at the time this suit was filed; that the Complainant and Respondent did not at any time live together as man and wife in Baldwin County, Alabama; that they were not residing in Baldwin County, Alabama at the time they separated and, therefore, further alleges that this suit was wrongfully and improperly filed in the Circuit Court of Baldwin County, Alabama. The said Court, for the aforesaid reasons, has no authority to proceed further with this cause.

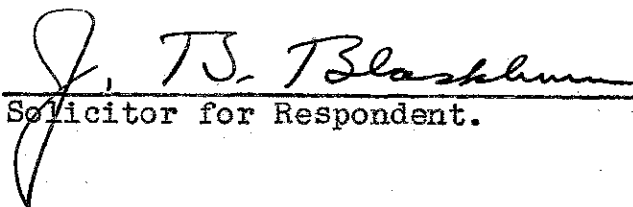
2. The Respondent admits the allegations of paragraph numbered two (2) of the Bill of Complaint.

3. The Respondent denies that she committed adultery on October 15, 1941, or at any other time with George Faulk, or any other person. The Respondent further denies each and all of the other allegations of paragraph numbered three (3) of the Bill of Complaint.

4. The Respondent admits that there was born to the Complainant and the Respondent a girl child, Barbara Lucille Little, a girl two years of age. The Respondent denies that she is not a fit and proper person to have the care, custody and control of the said minor child and alleges that she is in all respects a most fit and proper person to have the care, custody and control of the said child and further alleges that because of the tender years of the said child, it is to the best interest of the said child that she remain in the custody of the said Respondent, her mother. The Respondent denies that the Complainant is a fit and proper person to have the custody and control of the said child and denies each and all of the other allegations of paragraph numbered four (4).

5. The Respondent denies each and all of the other allegations of the said Bill of Complaint.

Having fully answered the Bill of Complaint, the Respondent prays that it be dismissed and that she be discharged with her reasonable costs in this behalf expended.

  
Solicitor for Respondent.

Shayd Bryans Little  
12

Belle Franklin Little

Comes the Complainant and demands  
to Respondents plea to jurisdiction, ~~and particularly~~  
~~to paragraphs 2, 4, 6 & 7~~ <sup>separately & distinctly</sup> and for grounds thereof  
says -

1. Said paragraph presents questions not material to the issues involved
2. Said paragraph presents matters not germane to the issues involved
3. Said paragraph presents irrelevant and immaterial issues.
4. Said paragraph presents no facts which constitute a defense to Complainant's cause of action.
5. That said paragraph presents facts which constitute a defense in bar to Complainant's cause of action.

Belle + Hall  
for Complainant

185-

RECORDED

Miss J. J. J. J.  
J. J. J. J.

RECORDED

Remembrance

CIVIL SUBPOENA--ORIGINAL--In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he will be barred. Moore Printing Co. Bay Minette, Ala.

THE STATE OF ALABAMA, Baldwin County.

S. D. Page No. \_\_\_\_\_ CIRCUIT COURT

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETINGS:

Case No. 785, July. Term, 193 42

YOU ARE HEREBY COMMANDED TO SUMMON Julia Anne Evans, 600 1/2 S Hamilton st

OUT OF TOWN

if to be found in your County, at the instance of the Com, WONT BE BACK SEPT  
to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by 10 o'clock of the forenoon, on the 16th day of July. 193 42, and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain cause pending, wherein Floyd B Little. Plaintiff and Billie F Little. Defendant.

Herein fail not, and have you then and there this Writ.

Given under my hand and seal, this 11th day of July. 193 42

R. Deuch

CLERK

CIVIL SUBPOENA--ORIGINAL--In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he will be barred. Moore Printing Co. Bay Minette, Ala.

THE STATE OF ALABAMA, Baldwin County.

S. D. Page No. \_\_\_\_\_ CIRCUIT COURT

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETINGS:

Case No. 785, July. Term, 193 42

YOU ARE HEREBY COMMANDED TO SUMMON Mrs Margurit EXXX Guilliot 1659 S. Washington

Ave

DOES NOT LIVE HERE

if to be found in your County, at the instance of the Complt,  
to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by 10 o'clock of the forenoon, on the 16th day of July. 193 42, and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain cause pending, wherein Floyd B Little. Plaintiff and Billie F Little. Defendant.

Herein fail not, and have you then and there this Writ.

Given under my hand and seal, this 11th day of July. 193 42

R. Deuch

CLERK



W. C. BEEBE  
H. M. HALL

BEEBE & HALL  
LAWYERS  
BAY MINETTE, ALABAMA

May 6, 1942

Honorable F. W. Hare

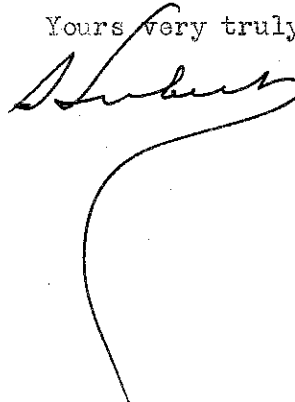
Monroeville, Alabama

Dear Judge:

I am returning the papers in the Little Vs. Little matter.

My client has been worrying me, severely, for the past days. I will appreciate your letting us have a decree as soon as you can. In the meantime it would be well for you to come down to Baldwin and rest two or three days.

Yours very truly



Enclosures

HMH:B



(2)

We submit that the law and the facts establish the right of Mr. Little to prosecute the suit in Baldwin County, Alabama.

We, therefore, think, and humbly request, that the plea to the jurisdiction be overruled, and the suit allowed to proceed in this jurisdiction.

Yours very truly

BERBE & HALL

By: 

HMH:B

(2)

We submit that the law and the facts establish the right of Mr. Little to prosecute the suit in Baldwin County, Alabama.

We, therefore, think, and humbly request, that the plea to the jurisdiction be overruled, and the suit allowed to proceed in this jurisdiction.

Yours very truly

BEEBE & HALL

By: 

HMH:B

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

FEBRUARY 24, 1942

Judge F. W. Hare  
Monroeville, Alabama

Dear Judge:

I am enclosing a copy of the Respondent's Brief in the equity case of Little v. Little.

Miller told me that he made a copy of the testimony for you, consequently I am not sending you the transcript of the evidence.

I am sorry that I have been delayed in getting this brief to you but several weeks ago I consented to serve on the Rationing Board here and since that time I have spent more time talking to people wanting automobile tires than I have to my clients.

Very truly yours,

  
J. B. BLACKBURN.

JBB:ON

Encl.

Copy: Mr. H. M. Hall  
Attorney at Law  
Bay Minette, Alabama

THE STATE OF ALABAMA  
BALDWIN COUNTY

CIRCUIT COURT In Equity

Case No 785. June. Term, 194

To any Sheriff of the State of Alabama, GREETING:

✓ Mrs T T Hickman, Fulton Road. ✓ Ben Tillman 1016 Dauphin st. ✓ Jack Hickman. 123 westwood. ✓ Julia Anne Evans. 600 1/2 Hamilton.

You are hereby commanded to summon ✓ Sonny Messirang Sariland, Ala. ✓ Mrs J W Little. 868. Pettus St.

if to be found in your County, at the instance of the ✓ Mrs Margurite Guilat. 1057 S Washington Ave. Leola ✓ Bendolph 557 Elmira St.

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House there-

R S Duck Commissioner.

of, by 10 o'clock of the forenoon, on the 26th day of June, 1942

and from day to day and term to term of said Court until discharged by law, then and there to testify, and

the truth to say, in a certain cause pending, wherein Floyd Bryars. Little. Plaintiff

and Billie Franklin. Little. Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 20th day of June, 1942

*R. L. Duce* Clerk

552  
63  
Mobile. Co. *Hickman Ferguson*

454

ORIGINAL 26

Received in office this 22 day of  
June 1942  
W. H. Holcombe  
SHERIFF

WBS Equity. Page \_\_\_\_\_

THE STATE OF ALABAMA  
Baldwin County

CIRCUIT COURT

Floyd Bryars Little.

Plaintiff

VS.

Billie Franklin Little.

Defendant

CIVIL SUBPOENA

Issued this 20th day of

June. 1942

*R. P. [Signature]*  
Clerk.

6-22-42

I have executed this writ by serving  
*Copies on:*  
Mrs. V. J. Wickman  
Ben Tillman  
Jack Wickman  
Donny Messering  
Mrs. J. B. Little  
Mrs. Marguerite Guinat  
Leola Bendolph

*Judie Anne Evans not found in my County*

W. H. Holcombe  
SHERIFF  
J. J. Hickman  
W. H. Ferguson  
D. S. [Signature]

THE STATE OF ALABAMA  
BALDWIN COUNTY

CIRCUIT COURT  
Case No. 785. Equity. July. Term, 1942

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon ~~Mrs J W Little. 868 Pettus st.~~  
~~Mrs Maguire, Guilliot, 1059 S Washington Ave. Ben Tillman 1016 Dauphin st~~  
~~Mrs H A Williams 259 Tuttle Ave. Mrs John Bush, Rt Near Dog River. Barwell~~  
if to be found in your County, at the instance of the Compt, ~~James P Kennedy, Holingers Island.~~  
~~Jack Hickman 123 Westwood. Sonny Mesirang Whistler. Ala Rt 1 (Saraland)~~  
to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House there-  
~~77~~ ~~Julia Anne Evans 500 1/2 S Hamilton, st Leola Bendolph 659 Cedar St.~~

of, by 10 o'clock of the forenoon, on the 16th day of July., 1942

and from day to day and term to term of said Court until discharged by law, then and there to testify, and

the truth to say, in a certain cause pending, wherein Floyd Bryars Little, Plaintiff

and Billie Franklin Little. Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 11th day of July. 1942

R. S. Duck Clerk



566

Kirkman  
Brewster  
Sugrue

Received in office this 13 day of  
July 1942  
W. N. Holcombe  
SHERIFF

I have executed this writ  
Mrs. J. W. Little  
Mrs. N. C. Williams  
Mrs. John Busli  
Jack Hickman  
James P. Kennedy  
Leola Bendolph

Received  
Returned  
Not  
Served  
by  
J. H. Holcombe  
SHERIFF

W. H. Holcombe  
SHERIFF

ORIGINAL

No. 566, Page 16

THE STATE OF ALABAMA  
Baldwin County 16

CIRCUIT COURT

IN EQUITY.

Floyd Bryars Little.

Plaintiff

VS.

Billie Franklin Little.

Defendant

CIVIL SUBPOENA

Issued this 11 day of  
July. 1942

R. D. Duck  
Clerk.

7-13-42

RECEIPT FOR REGISTERED ARTICLE No.

10 fee paid. 1/10 class postage paid. 82-16 (Date) 1941

Declared value, \$ 1000.00 Surcharge paid, \$ (Sender) From W. H. Dyer, Cur Clerk

Addressed to 1010 Sand St (Street and number) (Post office and State) Connecticut

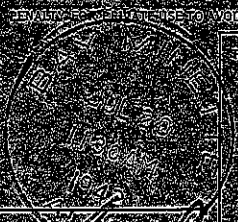
Accepting employee will place initials in space below, indicating restricted delivery. Return receipt fee 3 in person or order Fee paid 10 Special delivery fee Postmaster, per



Mr Ben Dittman 1016 Dauphin Mrs J. J. Hickman Aulton Rd Jack Hickman 123 Westwood

Post Office Department  
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE: \$300



POSTMARK OF DELIVERING OFFICE

Return to *R. S. Duck Co. Clerk*  
(NAME OF SENDER)

Street and Number  
or Post Office Box

REGISTERED ARTICLE *53* *Witch*

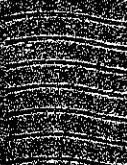
No. *44* Post Office

INSURED PARCEL

No. *1-22* State

Post Office Department  
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE: \$300



POSTMARK OF DELIVERING OFFICE

Return to *Mrs. G. L. ...*  
(NAME OF SENDER)

Street and Number  
or Post Office Box *1010 E. ... St*

REGISTERED ARTICLE *SAO*

No. *7-16* Post Office

INSURED PARCEL

No. *1-22* State *FLA*

Post Office Department  
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE: \$300

POSTMARK OF DELIVERING OFFICE

Return to *R. S. Duck Co. Clerk*  
(NAME OF SENDER)

Street and Number  
or Post Office Box

REGISTERED ARTICLE *Bay ...*

No. *381* Post Office

INSURED PARCEL

No. *1-22* State

# RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. [Signature]  
(Signature of name of addressee)

2. \_\_\_\_\_  
(Signature of addressee's agent or authorized addressee's name on line ONE above)

Date of delivery 12-15, 1941

# RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. \_\_\_\_\_  
(Signature of name of addressee)

2. \_\_\_\_\_  
(Signature of addressee's agent or authorized addressee's name on line ONE above)

Date of delivery \_\_\_\_\_, 1941

# RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. [Signature]  
(Signature of name of addressee)

2. Deliver to Addressee Only  
(Signature of addressee's agent or authorized addressee's name on line ONE above)

Mrs A. A.

Williams

259 Tuttle

ave.

Mrs John

Bush

Dog River

~~xxxxxxxxxxxxxxxx~~

Gulia Anne

Evans

600 1/2 Hamilton

Tommy Messirang

Sariland Ala

W. C. BEEBE  
H. M. HALL

**BEEBE & HALL**  
LAWYERS  
BAY MINETTE, ALABAMA

April 11, 1942

Honorable F. W. Hare  
Monroeville, Alabama

Dear Judge:

In Re: Little Vs. Little

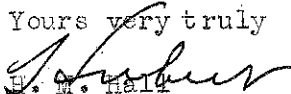
I have a copy of your letter to Mr. Blackburn, relative to the above matter. I fully concur with your conclusion that the Respondent was a non-resident of the State of Alabama, and living in the State of Florida at the time the Bill for divorce was filed. There may be, and, in fact, is, some question, as to whether or not the Complainant was a resident of Mobile County, Alabama, at the time of the separation, however, there is no doubt, from the evidence, that the Complainant at the time the suit was filed was a resident, and domiciled at Bay Minette, in Baldwin County, Alabama. You, of course, remember the testimony of the Respondent, that she is the one who broke up the home and left Mobile, and went to Pensacola, Florida. This, if it is a fact that the Complainant at that time lived in Mobile, gave him a right to immediately establish a new residence, and the right to determine the place, where, in the State of Alabama, he would bring suit (172 Southern, 618). Title 34, Section 28 provides that if the Defendant is a non-resident, then in the Circuit Court of the County in which the other party to the marriage resides. There is no contest of the fact, that at the time the suit was brought, the Complainant was living here in Bay Minette, and making his home, with his mother and father.

Title 34, Section 29, provides that when the Defendant is a non-resident the other party to the marriage must have been a bona fide resident of this State for one year next before the filing of the bill, which must be alleged in the bill and proved. It is my construction of this statute that it does not mean that the Complainant must have been a bona fide resident of the County in which the suit is brought, for a year prior thereto, but that it is sufficient to establish a residence within the State of Alabama for one year and then have his residence within the County in which the suit is brought at the time the suit is actually instituted.

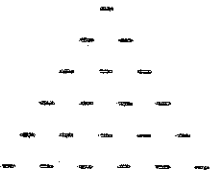
I have studied the question quite a bit and have come to the conclusion that under the evidence the Respondent, at the time the suit was filed, was a non-resident of the State of Alabama, and that the Complainant lived at Bay Minette, in Baldwin County, Alabama, and hence the Circuit Court of Baldwin County, Alabama, has jurisdiction, and in fact, the only Court that has jurisdiction over the matter.

If a suit should be in Mobile County, then immediately the Sections above cited would be set up, and I am afraid that the Court there would sustain the pleas which would place the Complainant in a position of having no Court in which to bring the action.

Yours very truly

  
H. M. Hall

HMH:B



Brief of Respondent in  
connection with Motion to Dismiss.  
By J. B. Blackburn, Attorney

Respondent.

BILLIE FRANKLIN LITTLE,

IN EQUITY

BALDWIN COUNTY, ALABAMA

VS.

IN THE CIRCUIT COURT OF

Complainant,

FLOYD BRYARS LITTLE,

B R I E F



## STATEMENT OF THE CASE

The Complainant, Floyd Bryars Little, filed a suit for divorce in Baldwin County, Alabama, on December 16, 1941, alleging that he is a resident of the said county and state and that the Respondent, Billie Franklin Little, is a non-resident of the State of Alabama. The Respondent filed a plea to the jurisdiction, alleging in substance that the Complainant is not a resident of Baldwin County, Alabama, that the Respondent is a resident of Mobile County, Alabama and that she is not a non-resident of the State of Alabama, contending therefore that the Circuit Court of Baldwin County, Alabama, Sitting in Equity has no jurisdiction of the said cause.

The matter was set for hearing in Bay Minette, Alabama by agreement on February 2, 1942 when the testimony of the Respondent, Billie Franklin Little, the Complainant, Floyd Bryars Little, and his mother, Mrs. Little, was taken.

At the completion of the hearing the Court requested that the testimony be transcribed and that the parties furnish briefs.

## POINTS AND AUTHORITIES

"Bills for divorce may be filed in the circuit court of the county in which the defendant resides, or in the circuit court of the county in which the parties resided when the separation occurred; if the defendant is a nonresident, then in the circuit court of the county in which the other party to the marriage resides." Section 28, Title 34, 1940 Code of Alabama.

"When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for one year next before the filing of the bill, which must be alleged in the bill and proved." Section 29, Title 34, 1940 Code of Alabama.

Residence, as used in divorce statute, means legal residence and domicile and is a mixed question of law and fact depending upon bona fide intention of party asserting question of residence. *Caheen v. Caheen*, 253 Ala. 494, 172 Ala. 618. *Ex Parte State v. Altman*, 237 Ala. 642, 188 So. 685.

Intention alone does not establish domicile. A change in domicile can never be effected by intention alone. *Ex Parte State v. Altman*, supra.

## ARGUMENT

The venue of divorce actions in the State of Alabama is fixed by Section 28 of Title 34 of the 1940 Code. This section requires that divorce suits be filed in the county where the Defendant resides or in the county where the parties resided when the separation occurred, or, if the Defendant is a non-resident, then in the county in which the other party to the marriage resides, therefore, the first thing to determine in this controversy is whether the Respondent, Billie Franklin Little, is a non-resident of the State of Alabama, because if she is not a non-resident of the State and is on the other hand a resident of Alabama, the suit must be filed in the county where she is domiciled, regardless of where the Complainant is domiciled.

Domicile is a mixed question of law and fact and where a party resides in several localities, then, in such event, the intention of the party has much to do with the party's place of domicile, however, on the other hand, where a party resides in one fixed location, a mere intention to fix a domicile in another place cannot establish such domicile.

We urgently request the Court to carefully read the testimony of the Respondent, Billie Franklin Little, contained in the first twelve pages of the transcript. It will be noticed from reading the Respondent's testimony that she stated that she met her husband in Mobile, Alabama, that they were married in

Pascagoula, Mississippi in 1937 and lived in Mobile continuously from the time of their marriage up to the time of their separation (October, 1941) except for a short time when they lived at Kimbrough, and a short time during which they lived in Uriah, Alabama, neither of which places is in Baldwin County, Alabama. The witness testified clearly, and I submit truthfully, the various places where they lived in Mobile, Alabama. The fact that they lived in Mobile until the separation, that her husband has since lived there, that she has since communicated with him there, that the furniture which they used is still in the house where they lived, that her stay in Pensacola is only temporary, that her true fixed and permanent abode to which when she is absent she expects to return, is Mobile, Alabama. This evidence shows and there is nothing before the Court to refute this evidence, that the Respondent, Billie Franklin Little, has resided in Mobile, Alabama practically all of her life; that Mobile is her domicile and her true fixed and permanent home. If the Court agrees with the Respondent's contention in this connection, it is not necessary then for the Court to consider the matter further because the suit is improperly filed, the Respondent's motion or plea to the jurisdiction should be granted and the suit dismissed.

If, on the other hand, the Court takes the position that the Respondent is a non-resident of the State of Alabama, then the next question to decide is what is the domicile or place of residence of the Complainant, and if it is not Baldwin County,

*the suit is filed in the wrong jurisdiction*  
Alabama because even if the Respondent is a non-resident of the State of Alabama, then this does not authorize the Complainant to wander at will through the sixty-seven counties of the State and file a suit for divorce in any county in which he may temporarily locate. Section 29 of Title 34 of the 1940 Code provides that if the Respondent is a non-resident, a year's residence by the Complainant must be proved, therefore, if the Court takes the position that the Respondent is a non-resident, then it must examine the testimony to determine if the Complainant has resided in Baldwin County, Alabama for one year prior to December 16, 1941, because, if he was not such resident of Baldwin County, Alabama for one year next preceding the filing of the suit then the suit must be dismissed even if the Respondent is a non-resident.

The Complainant's attorney, in his brief assumes that the Complainant was a resident of Baldwin County, Alabama; that he never abandoned Baldwin County as his residence and consequently is still domiciled here. This, however, is not supported by the Complainant's own testimony.

We do not consider it necessary to burden the Court with a lengthy discussion of the evidence. I am sure that the Court remembers the demeanor of the witnesses at the time they testified and that the Court will read and carefully consider the testimony contained in the transcript. When this is done we are confident that the Court will agree that the Complainant's own testimony shows the following:

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1. That the Respondent is not a nonresident of the State of Alabama.
2. That the Complainant was not a bona fide resident of Baldwin County, Alabama at the time the Bill of Complaint was filed by him in this cause on to-wit, December 16, 1941.
3. That he had not been a bona fide resident of Baldwin County, Alabama for one year next preceding the filing of the Bill of Complaint.

His testimony shows that he actually resided in Mobile; that his mother and father resided here part of the time and that he considered this his home. Intention alone can never establish domicile. Authorities supra.

In conclusion we respectfully submit that the only proper decree to be rendered in this cause is one sustaining the Respondent's Plea to the Jurisdiction ~~or Motion~~ to Dismiss and dismissing this suit on the ground that it has been filed in a county having no jurisdiction.

Respectfully submitted,

J. B. Blackburn  
Solicitor for Respondent.

I hereby certify that I have on this date mailed a copy of the foregoing Brief to Mr. H. M. Hall, Solicitor for the Complainant.

Dated this 24 day of February, 1942.

J. B. Blackburn  
Solicitor for Respondent.