

1106

PLEA IN ABATEMENT

JOHN W. SMITH,  
Complainant

-VS-

NANCY SMITH,  
Respondent

\*  
\*  
\*  
\*  
\*  
\*  
\*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. CASE NO 1106.

TO THE PRESIDING JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA. IN EQUITY SITTING.

Comes Nancy Smith, by her Guardian Ad Litem, Howard Scott, and files this special appearance for the specific purpose hereinafter set forth, and respectfully shows unto the Court as follows:

PARAGRAPH ONE

That the affiant has been informed and believes that he has heretofore been, by an order and decree of the Circuit Court of Baldwin County, Alabama, in Equity sitting, appointed as Guardian Ad Litem for the Respondent Nancy Smith, in this cause;

PARAGRAPH TWO

That the Respondent was at the time of the filing of this suit, and is now, a bona fide resident of Washington County, Alabama, residing west of Millry, Alabama, and was not at the time of the filing of this suit, and is not now, a legal resident of Baldwin County, Alabama;

PARAGRAPH THREE

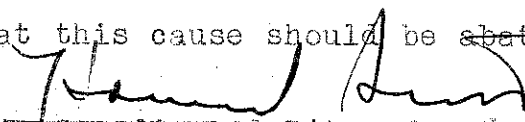
That the Complainant abandoned the Respondent while they were living together in Washington County, Alabama, as man and wife.

PARAGRAPH FOUR

That the Respondent, Nancy Smith, is mentally incapable of defending the above styled cause.

PRAYER FOR RELIEF

WHEREFORE, Respondent, who defends this suit by her Guardian Ad Litem, Howard Scott, respectfully submits to this court that it should not take jurisdiction of this cause and that this cause should be abated.

  
As Guardian Ad Litem for Nancy Smith,

STATE OF ALABAMA,

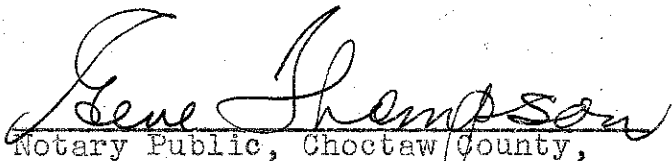
CHOCTAW COUNTY.

Before me the undersigned authority in and for Choctaw County, Alabama, personally appeared Howard Scott, who is known to me and who after being by me first duly sworn, says on his oath as follows:

My name is Howard Scott. I am the Guardian Ad Litem for Nancy Smith, the Respondent in the case of John W. Smith versus Nancy Smith, now pending in the Circuit Court of Baldwin County, Alabama. I have carefully read the above and foregoing Plea in Abatement and the matters and things therein alleged are true and correct according to the best of my information, knowledge and belief.

  
\_\_\_\_\_

Subscribed and sworn to before me on this the 19th day of October, 1944.

  
Notary Public, Choctaw County,  
Alabama.

JOHN W. SMITH,  
Complainant

-VS-

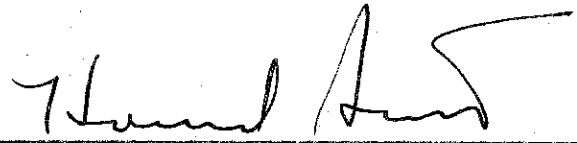
NANCY SMITH,  
Respondent

\*  
\* IN THE CIRCUIT COURT OF  
\*  
\* BALDWIN COUNTY, ALABAMA.  
\*  
\* IN EQUITY. CASE NO 1106.  
\*  
\*

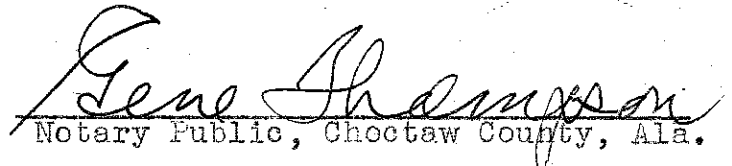
Comes Howard Scott, as attorney of record and Guardian Ad Litem for the Respondent, Nancy Smith, in the above entitled cause and being sworn, says on his oath as follows:

That the Respondent desires to take depositions of Otto Dearman, Morris Thompson, Flossie Thompson, Martha H. Richards, Jean Thompson and Myrtle Dearman, all of whom are material witnesses for the Respondent on the trial of the issue of the Plea in Abatement in this cause and all of said witnesses reside at Millry, Washington County, Alabama, and which is more than one-hundred miles from Bay Minette, Baldwin County, Alabama. R

Respondent attached hereto interrogatories to be propounded to each of said witnesses, and suggest that Maggie LeNoir, a Notary Public, whose address is Butler, Alabama, be appointed commissioner to take the depositions of the said witnesses.



Subscribed and sworn to before me on this the 19th day of  
October, 1944.



Notary Public, Choctaw County, Ala.

INTERROGATORIES TO BE PROPOUNDED TO OTTO DEARMAN, MORRIS THOMPSON,  
FLOSSIE THOMPSON, MARTHA H. RICHARDS, JEAN THOMPSON AND MYRTLE  
DEARMAN:

INTERROGATORY ONE

State your name, age, residence and occupation.

INTERROGATORY TWO

Are you related to Nancy Smith, and if you are related to her, state the degree of that relationship?

INTERROGATORY THREE

Do you know John W. Smith, the Complainant in this cause?

INTERROGATORY FOUR

State, if you know, whether or not John W. Smith and Nancy Smith, the parties to this suit, were living together in Washington County, Alabama, near Millry, Alabama, as man and wife, during the early part of the calendar year 1941?

INTERROGATORY FIVE

State, if you know, whether or not John W. Smith, while he was allegedly working out of Washington County, Alabama, made trips to see the Respondent, Nancy Smith, during the latter part of the calendar year 1939 and the early part of the calendar year 1941 and part of the calendar year 1940, and on said week ends the said John W. Smith lived with the said Nancy Smith as man and wife and provided groceries for her and her child?

INTERROGATORY SIX

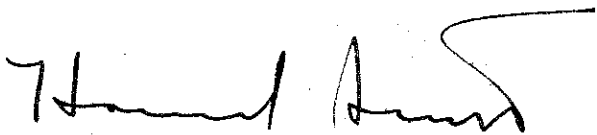
State, if you know, whether or not John W. Smith, the Complainant in this cause, abandoned his wife, Nancy Smith, while they were living together as man and wife in Washington County, Alabama?

INTERROGATORY SEVEN

State whether or not, if you know, Nancy Smith is now a bona fide resident of Washington County, Alabama, and whether or not she was also such a bona fide resident of Washington County, Alabama, during all of the calendar year of 1944?

INTERROGATORY EIGHT

State, if you know, whether or not Nancy Smith is mentally capable of defending this suit filed against her, giving the specific acts on which you base your conclusions?

  
\_\_\_\_\_  
Attorney and Guardian Ad Litem for  
Nancy Smith, Respondent.

JOHN W. SMITH  
Complainant

vs.

NANCY SMITH,  
Respondent

In the Circuit Court of Baldwin  
County, Alabama.  
In Equity.

To the Presiding Judge of the Circuit Court of Baldwin County,  
Alabama, In Equity Sitting:

Comes Nancy Smith, by her sister-in-law and next friend, Jean L. Thompson, and files this special appearance for the specific purpose hereinafter set forth, and respectfully shows unto the Court as follows:

(1). That the respondent is a non-compos mentis and is mentally incapable of defending the above styled cause;

(2) That the respondent is now a resident of near Millry, in Washington County, Alabama, and is not a resident of Baldwin County, Alabama;

(3) That Complainant abandoned the respondent while they were living together as man and wife and residing in Washington County, Alabama, near Millry, Alabama.

PRAYER FOR RELIEF:

Wherefore, respondent, who defends this suit by her sister-in-law and next friend, Mrs. Jean L. Thompson, respectfully submits that this Court should not take jurisdiction of this cause and that this suit should be abated.

  
STATE OF ALABAMA, CHOCTAW COUNTY

Before me the undersigned authority in and for Choctaw County, Alabama personally appeared Jean L. Thompson, who is known to me and who after being by me first duly sworn, says on her oath as follows:

My name is Jean L. Thompson. I am a sister-in-law of Nancy Smith, the respondent in the case of John W. Smith vs. Nancy Smith, now pending in the Circuit Court of Baldwin County, Alabama. I have carefully read the above and foregoing plea in abatement. The matters alleged of fact in

the aforesaid plea in abatement are true and correct and the matters alleged on information and belief are true according to the best of my information and belief, which I verily believe to be true.

Jean L. Thompson

Subscribed and sworn to before me on this the 27<sup>th</sup> day of May, 1944.

Maggie Lenoir  
Notary Public, Choctaw County, Alabama

Howard Scott  
Attorney for Respondent.

JOHN W. SMITH,

Complainant,

VS.

NANCY SMITH,

Respondent.

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

TO THE HONORABLE THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY, AND THE HONORABLE F. W. HARE, JUDGE THEREOF:-

Your Orator John W. Smith humbly complaining of the Respondent Nancy Smith in a matter of divorce as will hereinafter appear, shows unto this Court and unto your Honor as follows:-

FIRST:

That he is over the age of twenty-one years and a resident citizen of the State of Alabama and has been such a resident for many years last past; that he has been at Camp Baldwin in Baldwin County, Alabama, for the last month but that his head office and Post Office address is at Grovehill, Alabama; that the Respondent Nancy Smith is over the age of twenty-one years and is a resident citizen of Milry, Alabama.

SECOND:

That your Complainant married the Respondent on the 27th day of April, 1930 at Ward, Alabama, and that they lived together as man and wife until in April, 1939, at which time they were residents of Baldwin County, Alabama, living at Camp Baldwin; that immediately prior to April, 1939, while your Complainant was at work the Respondent would take their automobile and drive all over Baldwin County and carry different men with her over the objections of your Complainant; that on several occasions your Complainant asked the Respondent to quit carrying the different men off and she refused to pay any attention to him; that finally your Complainant told the Respondent that he would refuse to live with her any longer and they separated while Residents of Baldwin County, Alabama; that following the separation in September, 1939, your Complainant went to Kissimmee, Florida,

and remained there continuously until June, 1941, except for one trip to Alabama in May, 1940 that your Complainant made; that while here on that trip Complainant did not live with the Respondent as man and wife. The Complainant further shows unto your Honor that in the first of December, 1941, there was born to the Respondent a boy, which she claims to be the child of your Complainant, but which was conceived while he was in Florida; that as above stated your complainant did not return to Alabama until about five months prior to the birth of said child and your Complainant had not lived with the Respondent as man and wife for more than two and one-half years prior to the birth of said child.

THIRD:

That there was born to your Complainant and the Respondent in March, 1931, a child named John W. Smith Jr. and this child has been in the custody of your Complainant since the fall of 1939; that your Orator further alleges that he is a fit and proper person to have the care, custody and control of the said John W. Smith Jr. and is able to maintain, support and educate him, and that the said Nancy Smith is not a fit and proper person to have the care, custody and control of such minor child.

PRAYER FOR PROCESS AND RELIEF.

The premises considered your Orator prays that your Honor will cause the usual Writ of process to issue to the said Nancy Smith making her a party defendant to this Bill of Complaint and requiring her to plead, answer or demur to the same within the time as prescribed by law and the rules of this Honorable Court, and that upon a final hearing of this cause that your Honor will grant unto your Orator an absolute divorce from the said Nancy Smith; and that your Honor will award your Complainant the care, custody and control of the said John W. Smith Jr.. Your Orator further prays for such other, further, different and general relief as in Equity may seem just and meet and your Orator will ever pray.

*John W. Smith*

Sworn to and subscribed before me, a Notary Public, whose seal is hereto affixed, this 24 day of April, 1944.

*Margaret G. Bennett*  
Notary Public, Clarke County, Ala.

*Margaret G. Bennett*





*For atty John Chas...*

PLEA IN ABATEMENT

JOHN W. SMITH,  
Complainant  
  
-VS-  
  
NANCY SMITH,  
Respondent

\*  
\* IN THE CIRCUIT COURT OF  
\*  
\* BALDWIN COUNTY, ALABAMA.  
\*  
\* IN EQUITY. CASE NO 1106.  
\*  
\*

TO THE PRESIDING JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA. IN EQUITY SITTING.

Comes Nancy Smith, by her Guardian Ad Litem, Howard Scott, and files this special appearance for the specific purpose hereinafter set forth, and respectfully shows unto the Court as follows:

PARAGRAPH ONE

That the affiant has been informed and believes that he has heretofore been, by an order and decree of the Circuit Court of Baldwin County, Alabama, in Equity sitting, appointed as Guardian Ad Litem for the Respondent Nancy Smith, in this cause;

PARAGRAPH TWO

That the Respondent was at the time of the filing of this suit, and is now, a bona fide resident of Washington County, Alabama, residing west of Millry, Alabama, and was not at the time of the filing of this suit, and is not now, a legal resident of Baldwin County, Alabama;

PARAGRAPH THREE

That the Complainant abandoned the Respondent while they were living together in Washington County, Alabama, as man and wife.

PARAGRAPH FOUR

That the Respondent, Nancy Smith, is mentally incapable of defending the above styled cause.

PRAYER FOR RELIEF

WHEREFORE, Respondent, who defends this suit by her Guardian Ad Litem, Howard Scott, respectfully submits to this court that it should not take jurisdiction of this cause and that this cause should be abated.

*Howard Scott*  
As Guardian Ad Litem for Nancy Smith

STATE OF ALABAMA,

CHOCTAW COUNTY.

Before me the undersigned authority in and for Choctaw County, Alabama, personally appeared Howard Scott, who is known to me and who after being by me first duly sworn, says on his oath as follows:

My name is Howard Scott. I am the Guardian Ad Litem for Nancy Smith, the Respondent in the case of John W. Smith versus Nancy Smith, now pending in the Circuit Court of Baldwin County, Alabama. I have carefully read the above and foregoing Plea in Abatement and the matters and things therein alleged are true and correct according to the best of my information, knowledge and belief.

Howard Scott

Subscribed and sworn to before me on this the 19th day of October, 1944.

Gene Thompson  
Notary Public, Choctaw County,  
Alabama.

JOHN W. SMITH,  
Complainant

-VS-

NANCY SMITH,  
Respondent

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY. CASE NO 1106.

Comes Howard Scott, as attorney of record and Guardian Ad Litem for the Respondent, Nancy Smith, in the above entitled cause and being sworn, says on his oath as follows:

That the Respondent desires to take depositions of Otto Dearman, Morris Thompson, Flossie Thompson, Martha H. Richards, Jean Thompson and Myrtle Dearman, all of whom are material witnesses for the Respondent on the trial of the issue of the Plea in Abatement in this cause and all of said witnesses reside at Millry, Washington County, Alabama, and which is more than one-hundred miles from Bay Minette, Baldwin County, Alabama. R

Respondent attached hereto interrogatories to be propounded to each of said witnesses, and suggest that Maggie LeNoir, a Notary Public, whose address is Butler, Alabama, be appointed commissioner to take the depositions of the said witnesses.



Subscribed and sworn to before me on this the 14th day of  
October, 1944.



Notary Public, Choctaw County, Ala.

INTERROGATORIES TO BE PROPOUNDED TO OTTO DEARMAN, MORRIS THOMPSON,  
FLOSSIE THOMPSON, MARTHA H. RICHARDS, JEAN THOMPSON AND MYRTLE  
DEARMAN:

INTERROGATORY ONE

State your name, age, residence and occupation.

INTERROGATORY TWO

Are you related to Nancy Smith, and if you are related to her, state the degree of that relationship?

INTERROGATORY THREE

Do you know John W. Smith, the Complainant in this cause?

INTERROGATORY FOUR

State, if you know, whether or not John W. Smith and Nancy Smith, the parties to this suit, were living together in Washington County, Alabama, near Millry, Alabama, as man and wife, during the early part of the calendar year 1941?

INTERROGATORY FIVE

State, if you know, whether or not John W. Smith, while he was allegedly working out of Washington County, Alabama, made trips to see the Respondent, Nancy Smith, during the latter part of the calendar year 1939 and the early part of the calendar year 1941 and part of the calendar year 1940, and on said week ends the said John W. Smith lived with the said Nancy Smith as man and wife and provided groceries for her and her child?

INTERROGATORY SIX


State, if you know, whether or not John W. Smith, the Complainant in this cause, abandoned his wife, Nancy Smith, while they were living together as man and wife in Washington County, Alabama?

INTERROGATORY SEVEN

State whether or not, if you know, Nancy Smith is now a bona fide resident of Washington County, Alabama, and whether or not she was also such a bona fide resident of Washington County, Alabama, during all of the calendar year of 1944?

INTERROGATORY EIGHT

State, if you know, whether or not Nancy Smith is mentally capable of defending this suit filed against her, giving the specific acts on which you base your conclusions?

  
Attorney and Guardian Ad Litem for  
Nancy Smith, Respondent.

100  
the ... of the ...  
...  
...

*[Handwritten signatures and notes]*

**STATE OF TEXAS**

...  
...  
...

1106

*[Handwritten signature]*

**COUNTY OF ...**

...  
of ...  
...

...

*[Handwritten signature]*  
...  
...  
...

SUMMONS AND COMPLAINT

**THE STATE OF ALABAMA,**  
BALDWIN COUNTY

No. 1106

CIRCUIT COURT BALDWIN COUNTY

April, TERM, 1944

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Nancy Smith.

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against Nancy Smith.

Respondent.

by John W Smith.

Complainant.

Witness my hand this 28th day of April, 1944

[Signature] Register.

Page \_\_\_\_\_

**ALABAMA**  
**COUNTY**  
**COURT**

Defendant lives at

*Millers Alabama,*

RECEIVED IN OFFICE

*April 29th* 194 *4*

*L. S. Brumby* Sheriff

I have executed this summons

Plaintiffs

this *1st day of May* 194 *4*  
by leaving a copy with

*Nancy Smith*

Defendants

**COMPLAINT**

*Repossessed*

194

Clerk

Plaintiff's Attorney

*L. S. Brumby* Sheriff

Defendant's Attorney

*W. C. Locke* Deputy Sheriff