

4426

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 62-63

To the Register of the Circuit Court of Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between Edith Johnson Deese, Appellant, and Gordon W. Deese, Appellee, wherein by said Court, it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant.

Now, it is hereby certified, That it was thereupon considered, ordered, adjudged and decreed by our Supreme Court on the 12 day of November 1962,

for want of prosecution, that the said appeal be and stand dismissed, and that it was further considered, ordered, adjudged and decreed that the appellant, Edith Johnson Deese, and Wilson Hayes, surety on the appeal bond, pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Building, this the 12 day of November, 19 62 J. Render Thomas Clerk of the Supreme Court of Alabama.

4426

THE SUPREME COURT OF ALABAMA

October Term, 19~~62~~=63

1st Div., No. 13

Edith Johnson Deese

Appellant,

v.

Gordon W. Deese

Appellee.

From Baldwin Circuit Court.

In Equity No. 4426
CERTIFICATE OF DISMISSAL

The State of Alabama,

FILED County.

} Filed

this day of 14 1962 19

ALICE J. DUKA, CLERK REGISTER

2500

FILED

JUN 20 1961

ALICE L. DUCK, CLERK REGISTER

GORDON W. DEESE,)
)
 Complainant,) IN THE
)
 VS.) CIRCUIT COURT OF BALDWIN COUNTY,
)
 EDITH JOHNSON DEESE,) ALABAMA. IN EQUITY.
)
 Respondent.) JUNE 12, 1961
)
)

GORDON W. DEESE, THE COMPLAINANT, BEING FIRST DULY SWORN,
 TESTIFIED AS FOLLOWS:

Examination by Mr. Stone.

- Q. Is this Gordon W. Deese?
- A. Yes sir.
- Q. Mr. Deese, are you over the age of 21 years?
- A. Yes sir.
- Q. Where do you reside?
- A. Mobile, Alabama.
- Q. Are you presently employed?
- A. Yes sir.
- Q. By whom are you employed?
- S. Southern Bell Telephone Company?
- A. In Mobile, Alabama.
- Q. In and around Mobile, Alabama.
- Q. Are you married to Edith Johnson Deese?
- A. I am.
- Q. And is she over the age of 21 years?
- A. Yes sir.
- Q. Where does she now reside?
- A. To the best of my knowledge, Spanish Fort Estates.
- Q. Is that in the home owned jointly by you and Mrs. Dees at Spanish Fort Estates?
- A. It is.

MR. STONE: If the Court please, we would like, in order to obviate the necessity of copies, to ask the respondent to stipulate that on February 10, 1955, the Complainant and the Respondent purchased in their joint names from Spanish Fort Estates, Inc. Lot 4, Block 1 of Spanish Fort Estates, according to the Plat thereof, recorded in Map Book 3, pages 50-51, under a deed recorded in Deed Book 219, N.S. page 337, et seq., in the Office of the Judge of Probate of Baldwin County, Alabama, and

SECOND: That the Complainant and the Respondent did on April 16, 1955, execute to Pan-American Life Insurance Company a mortgage conveying the above described property to secure the payment of an indebtedness on which the balance due is not known exactly at this hearing, but was, on January 30, 1961, \$9,203.44, and that this mortgage is recorded in mortgage Record 266 at pages 8-10 in the office of the Judge of Probate of Baldwin County, Alabama.

MR. RICKARBY: I feel sure that is correct and will stipulate, with the privilege of correcting it with certified copies of documents --

THE COURT: You are both claiming under the same thing so that is very immaterial.

MR. STONE: In order to properly prove the Complaint I will have to get certified copies unless he will stipulate--

MR. RICKARBY: --If I find that that is not true, I will introduce certified copies myself.

Q.

Q. Have you made the payments on this mortgage you have heard me describing regularly since January of this year?

A. Yes sir.

Q. When is the next payment due?

A. It is due the 16th day of this month.

Q. June 16, 1961?

A. Yes sir.

Q. Do you know the exact amount due on that mortgage as of today?

A. I could figure it right quick; it would be -- \$78.45 are the monthly payments --

Q. Now Mr. Dees, when were you and Mrs. Deese married?

A. February 7, 1947.

Q. Where were you married, Mr. Deese?

A. In Whistler, Alabama.

Q. Mobile County, Alabama?

A. Yes sir.

Q. Are you now living together?

A. No sir.

Q. When were you separated, or when did you all separate?

A. We separated on February 13, 1956, and I stayed gone or separated both until about November of '56, at which time I returned home from a job that I was working on and on January 3 of the next year - 1957, I separated again and I have not returned since.

Q. So the last time you and Mrs. Deese lived together as man and wife was on or about January 3, 1957?

A. Yes sir.

Q. Now have you and Mrs. Dees had born to you any children?

A. One boy.

Q. What is his name?

A. Gordon Wilson Deese, Jr.

Q. Where does he reside?

A. At present with me at 758½ Broad Street, Mobile, Alabama.

Q. How old is he?

A. He is 10 years old.

Q. He is the only child born to you and Mrs. Dees?

A. Yes sir.

Q. All right, Mr. Deese, directing your attention to May 30, 1960 , do you recall having gone to the home in which your wife was residing at that time?

A. I do.

Q. Was there any one with you at the time you went there?

A. At the time I went there there was no one with me.

Q. Was your son at home then?

A. Yes sir.

Q. At that home?

A. Yes sir.

Q. Was he living there then?

A. He was.

Q. All right, did you see your wife on that occasion?

A. Yes sir.

Q. Where did you see her?

A. Well I seen her in the doorway, inside of the house and me being on the outside.

Q. Tell the Judge the purpose of your visit there, Mr. Deese?

A. Well usually on week-ends, your Honor, I would go over and get the boy and let him stay with me on week-ends and I thought it would help relieve her of him all of the time and I desired to have him.

Q. You went to pick up your son to have him visit with you?

A. Yes sir.

Q. On that occasion did you see any weapon of any kind in the hands of Mrs. Deese?

A. Yes sir, I did.

Q. What kind of weapon?

A. Pistol.

Q. Revolver or Automatic, or what type?

A. Looked like a Revolver to me.

Q. You said you saw her at the door?

A. I seen her at the door.

Q. Was she on the porch or inside?

A. Just inside the screen door.

Q. Were you on the outside?

A. I was just outside the screen door.

Q. Was the porch lights on?

A. It was in the early part of the evening.

Q. Still light?

A. Yes sir.

Q. Could you see inside the house?

A. Yes sir.

Q. What did she do with the pistol?

A. She unwrapped it from a piece of cloth and put it on me and clicked it four times and said. "I could kill you right here" I told her: "You ought to put that thing up; you're headed for trouble fooling with that thing."

Q. Did your son leave with you at that time?

A. Yes sir, he was standing just inside of the door and was attempting to get his clothes for the week-end and me told me later --

Q. Don't tell what he said -- Now has Mrs. Deese exhibited any other weapons to you?

A. Yes sir, she has had a single barrel shot gun - I have seen that.

MR. RICKARBY: I object; irrelevant, incompetent and immaterial

THE COURT: How do you mean -- Not his objection.

Q. Has she ever presented this gun to you? -- Has she ever pointed it at you?

A. One time when we got in a scrap in the hall and she had it under the bed and she ran and jerked it out from under the bed but I got hold of it and we stopped that right there.

Q. Now has she ever exhibited a knife in your presence?

A. Yes sir.

MR. RICKARBY: I am going to repeat my objection to things not charged in the complaint.

MR. STONE: We alleged that we had reasonable apprehension that if we continued to live with her that we have reasonable apprehension that she would commit bodily harm to this gentlemen.

THE COURT: Note the objection.

Q. When was that?

A. Two weeks ago; she came to my house - her mother, daddy and her sister - and she eased her pocket book open and came out with a yellow handled knife.

Q. Did she say anything?

A. Yes - "I can use this on you right now" I know the knife; it was mine; she got it out of my automobile.

Her daddy, her mother and her sister told her in my presence that they had warned her not to cause any trouble, violence or any commotion, before she got there, but she still attempted to pull this knife out, I guess you would say to make a big threat.

- Q. Let me ask you this: How long has your son been living with you, Mr. Deese?
- A. She brought him to me either the second day after school was out in this County, or the third day and she brought a few clothes and said: "You can take him; I'm tired of him; I've been bothered with him long enough; you take him and keep him and you will find out what kind of trouble I have had.
- Q. When was this?
- a. At the end of the school year, 1960.
- Q. Has your son been in school in Mobile during the fall of '60 and through '61 thus far?
- A. He has stayed with me since he entered school in Mobile in '60 and he completed the year there and passed his grade.
- Q. Mr. Deese, are you able to provide your son with a proper home in which to raise him?
- A. I feel like what I have is proper and I feel that if I had some sort of relief from this situation I am in, it could be much better.
- Q. And is the Respondent, Mrs. Deese, a fit and proper person to have the care, custody and control of your minor son?
- A. Are you speaking of his mother?
- Q. Yes?
- A. In the past, I would say, "No, she is not, but all past actions and carrying on"

- Q. Now this property which you purchased at Spanish Fort jointly with your wife, is there a home on this property?
- A. Yes sir, there is.
- Q. And it consists of one lot, does it not?
- A. One lot.
- Q. Do you have any opinion as to the reasonable market value of that property?
- A. Yes sir I do; I think it is worth \$25,000.00 because --
- Q. Let me ask you this: What was the amount of the mortgage originally?
- A. \$11,000.00.
- Q. Do you remember the contract price on the house?
- A. \$13,000.00.
- Q. How much did you contract to build the house for?
- A. I contracted to build the house complete for \$13,000.00 but during the course --
- Q. Just answer the question. Have you made additional improvements to the house since?
- A. Yes sir, paved the side-walk and changed one car port into a den or utility or activity room.
- Q. And are there a number more houses in this subdivision than when you built this home?
- A. Many more.
- Q. Now Mr. Deese, do you feel that if you continued to reside with your wife that she might do you bodily harm?
- A. I do so very much so.
- Q. Has your son, Gordon, acquired friends in Mobile?
- A. I would say he has.
- Q. School buddies?
- A. Yes sir, and neighborhood children; they are always

playing ball in the alley; he is pretty well occupied all of the time.

Q. He has made friends in the neighborhood where you live?

A. Yes sir, he has attended two or three parties right recently - little birthday parties.

Q. I believe you testified that the payments on this mortgage was \$75.80 a month?

A. \$78.45 a month.

Q. Have you been making those payments since April of '55 when you first made the mortgage?

A. Yes sir; they have changed once or twice, but they are always getting higher for some reason.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Rickarby.

Q. Mr. Deese, when did you say Mrs. Deese drew the pistol on you?

A. Just prior to the time school was out last year.

Q. I didn't understand the date; did you say about May 30, 1960?

A. On or about.

Q. Now where did Mrs. Deese get this pistol?

A. Where did she get it or where did shee keep it?

Q. Where did she acquire?

A. I don't know.

Q. While you and she were living together as husband and wife she didn't have a pistol?

A. She had a shot gun.

Q. While you all were living together was she an experienced person with fire-arms?

A. I don't know sir - I couldn't judge her experience be cause she could have been experienced many years ago before I knew her.

Q. Did she ever use a pistol while you and she were living together?

A. I never possessed one.

Q. Tell the Court exactly how she drew this pistol on you on that occasion of May 30th?

A. Well as I said earlier, I had gone usually on the week-ends to get the boy and take him with me for the week-end and get him out so he could enjoy the outdoor activities. I rang the door bell and she came to the door and the boy, of course, he knew I was ready to get him and he went back - usually he had his stuff ready to go and he stepped back into the den and got his little bag and came to the den door - that enters into the hall, and she stepped into the kitchen - the den door and the kitchen door both enter into the hall; she reached in a little cabinet over the refrigerator and reached and got this little piece of cloth and unwrapped it and put it on me and pulled the trigger four times - her doing that = unwrapping it in my presence - doing that was a little unexpected to me; I didn't have time to do much; she took the pistol out and unwrapped it --

Q -- In your presence?

A. Yes and --

Q. She took the pistol out and unwrapped it in your presence and put it on you and pulled the trigger four times?

A. Yes sir.

Q. Did you take the pistol away from her?

A. No sir.

Q. Do you know whether the pistol was loaded?

A. Any time anybody points a pistol at me, I am assuming it is loaded.

Q. You stated that she drew a knife on you?

A. Yes, a couple of weeks ago. (Page 10)

- Q. That was after you had filed this amended bill, was it not?
- A. Yes sir.
- Q. That had not existed when you drew up the bill, had it?
- A. No sir.
- Q. What kind of knife was it?
- A. A little yellow handled knife about this long, indicating.
- Q. Pocket knife?
- A. Pocket knife.
- Q. Did you take that knife away from her?
- A. No sir.
- Q. Are you an abled bodied man?
- A. Yes sir.
- Q. Now how did you get the custody of your child?
- A. Of course, I have mentioned already that she brought this boy to me --
- Q. She brought the boy to your house over on Broad Street?
- A. Yes sir.
- Q. Of her own free will and accord or did you demand it?
- A. She did it on her own free will and accord, or maybe he did; I couldn't say about that,
- Q. At that time I heard you state that she said to you that she didn't want to take him?
- A. That is right -- She did not want to keep him any longer; she was tired of fooling with him; tired of trying to raise him and for me to take him and do the best I could with him - She didn't linger over a minute; she drove away.
- Q. Now I ask you another thing - You are now living on Broad Street in Mobile, are you not?
- A. Yes sir.
- Q. Where are you working now?
- A. Southern Bell Telephone Company.

- Q. While you are working at the Southern Bell Telephone Company who is able to stay with your child?
- A. He goes to school.
- Q. When he gets off from school is there any body there?
- A. He gets out of school at 3:15 and he walks from school to the house; I give him 30 minutes, say - it is eight blocks - that's not rushing him and so I say it is 4:00 o'clock roughly when he gets home and I get off from work at 5:00 o'clock; he has the TV and he has the privilege of a few things I guess he would like to do; he stops and plays with the children and plays ball in the alley; I am sure he is occupied and I am sure that he is not staying by himself for any great length of time or extended length of time.
- Q. How do you manage meals?
- A. On the way to school in the morning we stop at Malbis Bakery and I buy his breakfast every morning because I got there and let him get his breakfast and I get coffee and he walks to school from there and he gets his lunch at school and in the afternoon we eat at home or eat out; I have every cooking facility - whatever we want to do.
- Q. For the evening meal you either cook that or go out - one of the two?
- A. Yes sir.
- Q. You take care of that?
- A. Yes.

Q. You and he keep house?

A. I have a colored birl - colored people I guess you would say, that cleans the house up and sometimes I do all the cleaning; depends on my spare time.

Q. About how often do they come?

A. Once or twice a week and sometimes she doesn't come once a week because I do it.

Q. What school does he attend?

A. Oakdale.

Q. He has his friends in Oakdale school?

A. Yes sir.

Q. What Sunday School does he attend?

A. Well he has not attended any, but I had in mind after today --

Q. Let's talk about facts --

A. He has not attended Sunday School.

Q. You feel that you can provide a better home for your child than his mother could?

A. I feel like that I have made him a better home.

Q. Now you testified that you are working with the Southern Bell, did you not?

A. Yes sir.

Q. What is your salary with the Southern Bell?

A. \$115.00 a week.

Q. Do you have any other property than this house?

A. No sir.

Q. You do not have any property in Washington County?

A. No sir.

Q. Do you have a fishing lodge there?

A. We have what we call a houseboat, which I am not putting

in the catatory of property - not real property.

Q. When you say you have a house boat, I think you used the expression "We". Who is "We"

A. Me and four other mean.

Q. So you have an interest?

A. An equity or interest in the house boat.

Q. Now does your wife have any funds to live on? -- Any income?

A. I don't know sir.

Q. Since you and your wife have been separated have you supported Mrs. Dees?

a. Yes sir.

Q. When was the last time you did anything towards the support of Mrs. Dees?

A. The day she brought the boy to my home.

Q. Do you remember what day that was?

A. I would say at the end of the 1960 school year.

q. Wasn't it about the time you make the charge that she pulled the pistol on you?

A. As I said earlier, it was before school was out when the pistol deal came up.

Q. It was shortly after that, was it not?

A. How do you mean, shortly after --

Q. Your son came over to live with you shortly after the pistol deal?

A. I would say that.

ON RE-DIRECT EXAMINATION OF THE COMPLAINANT, HE TESTIFIED:

Examination by Mr. Stone.

Q. Mr. Deese, during the time that your son was living there with Mrs. Dees, his mother, there at Spanish Fort, during the latter part of the school year of 1960, you visited

him regularly and he visited with you on the week-ends, is that correct?

A. Yes sir.

Q. Do you know, Mr. Dees, if he acquired friends and playmates at Spanish Fort Estates?

A. Well I didn't live there, but I know he --

MR. RICKARBY: I object, unless he knows of his own knowledge.

A. I know that he had friends there.

Q. Some of his belongings in the house still, are they not?

A. All of his clothes other than a couple of pair of pants and shirts that she brought when she left him and all of his other belongings - toys bicycle and everything that he owned during his 10 years are still there and he has been refused the use of them.

Q. Have you taken him there to get those things?

A. I have; she didn't acknowledge the door bell and I--

Q. Do you know that she was there at the time?

A. Yes, because she came over about a week later and made the state ment that she wasn't going to let him have them -- that the boy was over there tha t night --

THE COMPLAINANT REST.

MRS. EDITH JOHNSON DEESE, THE RESPONDENT, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Rickarby.

Q. Mrs. Dees, you heard the testimony in this case - I will ask you whether you drew a pistol on Mr. Deese?

A. No sir, and could I say something further--?

Q. Just answer the questions --

A. No sir I didn't.

Q On May 30, 1960, did you see Mr. Deese?

A. No sir. Could I say something else?

Q. Did you ever draw a pistol on Mr. Deese?

A. No. -- Could I same something further?

Q. Just answer the questions.

Q. Do you have a pistol?

A. No sir.

Q. Did you ever threaten Mr. Deese?

A. No sir.

Q. Did you ever threaten him with a knife?

A. No sir.

Q. A bout two weeks ago, did you have a meeting with Mr. Deese?

A. No sir, my folks did, but I stayed in the car; we went over about -- it was about the middle of last month, I would say; they wanted to see our son and they went up and I stayed in the car where they parked; no, I didn't have any words with him at all.

Q. Did you ever threaten your husband with a shot gun?

A. No sir.

Q. Do you have a shot gun?

A. No sir, he has the artillery; I don't have any; I never did; all of that belonged to my husband.

Q. When you say they --

A. He has some guns; he has the guns; they belong to him; I never have been in possession of the pistols or fire-arms, as you have put it and when he left he took them with him; he has two guns - I don't have them.

Q. And you never drew a pistol on Mr. Deese?

A. No sir.

- Q. On or about the 30th day of May, 1960, did you and Mr. Deese have any quarrel?
- A. No sir. Could I say something else? You know May 30th is our son's birthday and our son was with you at the camp; I didn't even see you and our son; he took our boy after he got out of school at Daphne from me.
- Q. Before school was out in 1960, during the last month of school, you never had any fuss with Mr. Deese?
- A. No sir.
- Q. Now Mr. Deese testified that your son was living with him, is that correct?
- A. When?
- Q. He testified that the son is now living with him?
- A. Yes sir.
- Q. When did your son start living with him?
- A. It was after the school year of '60; I would say it was in the early part of May of '60 - You mean when he went over to live with my husband?
- Q. Yes?
- A. I forget the date the school turned out in Daphne, but I would say it was around the 8th or 9th day of May, of '60; it was on the week-end that he went over and he wanted to stay with his daddy some.
- Q. In the early part of May of 1960 did you take your son over to visit his father?
- A. I did, but I didn't say what he said I said.
- Q. whose idea was it that your son stay with his father?
- A. School was out and he wanted to stay with his daddy some and I agreed for him to stay a while with him, but I didn't tell him the things he said I did about my own child; that was a terrible thing to say.

- Q. Was any arrangements made about how long the visit was to last?
- A. No, he said he would come back on the week-end later and stay with me and then after - he came back after that and stayed with me and after that his daddy would come over and get him and just refused to bring him back, and during the summer of '60 he got accustomed to staying with his daddy and it was hard for me to get him back, but I would like to have him back.
- Q. So when your son was visiting with his father, was that a permanent or a temporary arrangement?
- A. Temporary; I taken him over to see his daddy and have dinner with him; I didn't think there was any harm in that; he seemed to enjoy eating with his daddy, but I have never made a remark like he said; I would not dare say that; I would'nt dare say I didn't want my child.
- Q. Is there a time that you told him that you didn't want the custody of the child?
- A. No.
- Q. Was there any time that you told anybody that you didn't want the custody of your son?
- A. No.
- Q. Did you ever threaten to kill your husband?
- A. No sir.
- Q. When your son was living with you, where did he go to school?
- A. Daphne, Alabama.
- Q. Did he have friends in scholl there?
- A. Yes sir.
- Q. Was he happy there?

A. Yes sir.

Q. Where did he go to Sunday School?

A. Daphne Baptist Church.

Q. Did he have his friends in Sunday School?

A. Yes sir.

Q. Did he have friends in Spanish Fort?

A. Yes sir.

Q. Was he happy up there?

A. Yes sir.

Q. Who fixed his meals while he was there with you?

A. I did.

Q. Who took care of patching his clothes?

A. I did.

Q. Are you able to look after and keep house for your son?

A. Yes sir.

Q. Is Mr. Deese able to do that?

A. Yes sir, he sure is.

Q. Is he personally able to keep house for your son?

A. No sir, not keep house, with him working with the Southern Bell, off leaving our boy by himself -- No, I would not say so -- No.

Q. Mrs. Deese, do you have any money to pay for the defense of this law suit?

A. No sir.

Q. Do you feel that it was necessary to employ counsel to represent you?

A. Indeed.

Q. Do you still want your child?

A. Oh yes I do.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Stone.

- Q. Mrs. Deese, you say "No" - you are tellin Judge Hall that you have never drawn a pistol on Mr. Deese?
- A. I sure am.
- Q. What you're telling Judge Hall is that the incident he told about is a figment of his immagination or something he made up?
- A. I didn't say that.
- Q. Didn't you say that?
- A. I said "No" to the question; you said that.
- Q. Do you think he made up that story, Mrs. Deese?
- A. Well, I'm going to let you be the judge of that.
- Q. Did it happen, Mrs. Deese?
- A. No it didn't.
- Q. Did you have a pistol in the house?
- A. No sir.
- Q. Have you ever had any kind of fire-arms?
- A. No.
- Q. Have you had any kind of fire-arms in your house since the time he moved out and has lived on Broad Street?
- A. No.
- Q. Has the Sheriff of Baldwin County ever been to your home to investigage whether there were fire-arms in and around your house?
- A. No sir.
- Q. You know Mr. Taylor Wilkins?
- A. Yes.

- Q. He has never communicated with you about the shooting of firearms?
- A. No sir, he told my mother and father about me having a gun in my house and he was badly mistaken.
- Q. Did he come to your house?
- A. No sir, I called him and talked to him.
- Q. You called Mr. Wilkins and told him that you didn't have any fire-arms?
- A. Yes I did he called my mother and daddy --
- Q. Who asked you to call him?
- A. Who asked me? Nobody didn't ask me to call the Sheriff.
- Q. How did you know that he wanted to know?
- A. My mother and father told me about some news of a gun and I wanted him to understand about it, but I didn't have a gun; If you would like for me to go into the Story, I will tell you about it ; it don't have a thing to do with this case -
- Q. You have told me and the Court, Mrs. Deese, that you did not have or have not had a gun. -- Let me start the question again and when I get through, please answer me. You have testified here in Court, under oath, that you did not have fire-arms and that you have not had fire-arms in your house since January 3, 1957, is that correct?
- A. That's correct.
- Q. And you did not point or present a pistol to your husband through the screen door?
- A. No sir, I did not.
- Q. You have never done that?
- A. No sir.
- Q. You did not pull a yellow pocket knife out of your pocket-

book over in Mobile about two weeks ago?

A. No sir.

Q. Was your mother and father and your sister with you when you were in Mobile a couple of weeks ago?

A. Yes sir.

Q. Did they go there to see Gordon, Jr.?

A. Yes sir.

Q. That part of your husband's testimony was absolutely incorrect, was it not?

A. Yes sir.

Q. They did see him?

A. Yes sir, but --

Q. --But he is absolutely wrong when he says there is - there was a ruckus there?

A. Yes sir, he is; I didn't pull a knife on him.

Q. That just didn't happen at all?

A. No sir.

Q. Mrs. Deese, your husband is making the payments regularly on the house?

A. So far as I know he is; he is late making the payments; they are due on the 16th day of each month and I have received letters from people that hold the mortgage.

Q. He is making the payments on the mortgage?

A. When he wants to.

Q. He is providing you with a home, is he not?

A. That's all.

Q. Who buys your groceries?

A. I do.

Q. Do you have any separate income?

A. No sir.

Q. Where do you get the money for the groceries?

A. Do I have to answer that?

MR. RICKARBY: Yes.

A. You are asking how I'm living?

Q. Where do you get the money?

A. My folks gave me money around Christmas time and I had a little land at Pollard and I sold it.

Q. How much money did your people give you?

A. That's my business -- Do I have to answer that?

MR. RICKARBY: She testified that she didn't have a separate income --

A. I don't that would be something that I make and it comes to me.

THE COURT: What was your question?

Q. How much money did her people give her around Christ time?
If it was \$10,000. it was material --

A. It was \$600.00

Q. How much did you get for the property around Pollard?

THE COURT: Is that the same money or different money?

A. Yes sir.

Q. Same money?

A. Some of it that I had came from the property -- Do I have to tell you my personal business? -- It's not much --

THE COURT: You alleged that you had no money?

A. I don't - much--

Q. You have enough to buy groceries?

A. Yes sir.

- Q. You do?
- A. Yes. I would like some financial help from my husband.
- Q. Do you work?
- A. Not now.
- Q. Are you able to work?
- A. Yes sir.
- Q. Have you worked in the past?
- A. Yes sir.
- Q. What kind of work?
- A. Clerical work.
- Q. Now you say that you never threaten@d your husband?
- A. I did.
- Q. When did you threaten him?
- A. You said that --
- Q. Your testimony is that you have never threatened him?
- A. That is right.
- Q. Have you ever had any fusses?
- A. Oh yes.
- Q. Have you ever had any fusses where you wrestled or slapped one another?
- A. Yes sir.
- Q. When was that?
- A. Well, let's see -- the date I can't give you the date, but we have had our fusses during the time we have lived together.
- Q. Since your husband has left you, or since January of 1957, have you had any fusses?
- A. No sir.
- Q. No trouble at all between you?
- A. No. I have stayed out of his way.

- Q. Everything has been rosy?
- A. I have dodged him and stayed out of his way; I know too --I know better.
- Q. You have not had any words, altercations, or fusses where Gordon, Jr. would be on the week-ends?
- A. I wouldn't say fusses; I would object to the way he kept him away from me; he kept him from coming back to me and going to school.
- Q. Now during the time your son was there with you at Spanish Fort, did he use the swimming pool up there?
- A. Un huh--
- Q. You went with him there regularly?
- A. Not regularly; we didn't go to the swimming pool regularly. You are referring to the pool at the Motel?
- Q. Yes?
- A. That's for the guests and you had to have a membership Card.
- Q. Did you have one?
- A. No.
- Q. Did you ever have any trouble with the people at the pool?
- A. Wait a minute -- Does that have anything to do with this? That is my own personal business; I don't mean to snap at you, but do I have to answer that?
- THE COURT: I don't think so.
- MR. STONE: I except to the ruling of the Court.
- Q. Mrs. Deese, you say that you did take your son to Mobile right after school was out last year?
- A. He likes his Daddy and I'm going to be truthful with you; He wanted to stay with his daddy--
- Q. Will you please answer the questions?
- A. Yes.

Q. Did you take any clothes?

A. Yes sir; he needed his clothes.

Q. How many did you take?

A. Two or three suits so he would have a changing; they go to the camp and he swims in the lake and he needs his clothes

Q. Has he been back for his other clothes?

A. No.

Q. For his bicycle?

A. He did and I refused to let him have it.

Q. Did he come back for his other toys?

A. No.

Q. Your answer is that he has not been back?

A. For his bicycle and that is all.

Q. Did you tell your son himself that he could not have his bicycle?

A. Un huh.

Q. He asked you and you told him that he couldn't have it?

A. Yes sir.

Q. Did they ever come there when you were in the house and you didn't answer the door bell?

A. That didn't happen.

Q. That didn't happen?

A. No.

Q. Did you see your son about two weeks ago?

A. Yes sir.

Q. Did he come out to the car?

A. Yes sir.

Q. And you didn't go in the house to see him?

A. No - over to his house?

Q. Yes?

A. No sir.

Q. Your son came out to see you?

A. Yes sir.

Q. And did Mr. Deese come out to the car with him?

A. Two weeks ago you are referring to?

Q. Yes?

A. I don't believe it was two weeks ago.

Q. You remember the incident when your mother and father and your sister were there?

A. Yes sir.

Q. Did Gordon come to the car?

A. Yes sir.

Q. Did you have any words with him?

A. No , he didn't come to the car; he came outside and stayed way in front of his place; I saw him from where I was sitting in the car.

TOLBERT M. BRANTLEY, BEING FIRST DULY SWORN, TESTIFIED AS

FOLLOWS:

Examination by Mr. Rickarby.

Q. What is your name?

A. Tolbert M. Brantley.

Q. Are you a practicing Attorney at the Baldwin County Bar?

A. Yes sir.

Q. Are you familiar with the usual and proper charges made by Attorneys for representing clients in Divorce actions?

A. Yes sir.

Q. From your experience as such, would you tell us what, in your opinion would be a reasonable fee for the Solicitor for the Defendant in a divorce action, involving a divorce, custody of child, division of property and support?

A. Well, Yes, if I know how many children there were --

Q. When the division of the property consists of a home worth \$25,000.00, with about a \$10,000.00 mortgage on it?

A. I would like to know before I state a figure the number of conferences and the number of children?

A. Where it involves one child and about eight or ten conferences with my client and one hearing?

A. I would say \$250.00.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Stone.

Q. Mr. Brantley, what was the figure?

A. \$250.00.

Q. That is not based, of course, on the fact that the Solicitor asking you these questions as to the sale of division -- You understood that he was defending a ~~prayer~~ prayer for relief that the property be sold and not bringing it?

A. No, I thought he was bringing , but the number of conferences he has had, I would still say that is a reasonable fee.

Q. What, in your opinion, would you say would be a reasonable Solicitor's fee for the Solicitor for the Complainant where the property is owned jointly with the Respondent and a prayer that the property be sold for division among the joint owners, subject to a mortgage, which would be paid from the proceeds, the amount of the mortgage being approximately \$9,000.00, and the reasonable market value of the property being approximately \$25,000.?

A. For the Complainant who is bringing the suit for divorce?

Q. Yes?

A. Just the work for the sale for division?

Q. Yes, assuming the property brought approximately \$25,000.00

and it was subject to a mortgage in the amount of approximately \$9,000.?

A. --

MR. RICKARBY: He can't assume; the property in this case hasn't brought \$1,000.--

MR. STONE: It hasn't brought anything; I am posing a hypothetical question.

THE COURT: I imagine he is going to put it on a percentage basis.

A. I would say from 5% to 10% of the value of the property.

THE RESPONDENT REST.

GORDON W. DEESE, JR., BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Stone.

MRS. DEESE, THE RESPONDENT: I object to him putting the child on the Stand.

THE COURT: He has a right to put him on the Stand.

Q. Son, are you Gordon W. Deese, Jr.?

A. Yes sir.

Q. This is your mother sitting over here, and this is your father here, is that right?

A. Yes sir.

Q. You live with your father in Mobile, don't you?

A. Yes sir.

Q. The Judge has asked you, but I want to ask you again. You understand the difference between telling the truth and not?

A. Yes sir.

Q. And you want to tell the truth?

A. Yes sir.

Q. How old are you, G. W.?

A. 10.

Q. G. W. , what grade are you in?

A. I was in the Fourth, but I passed to the fifth.

Q. Where do you go to school?

A. Oakdale.

Q. G. W. , have you ever seen your mother pull a pistol on your father?

A. Yes sir.

Q. Do you remember when that was?

A. No sir - it was one week-end when my daddy came over to take me up the river.

Q. Were you still going to school in Daphne at the time?

A. Yes sir.

Q. You were living with your mother at the time?

A. Yes sir.

Q. Over at Spanish Fort?

A. Yes sir.

Q. Where was your mother when this happened?

A. In the house right at the front door.

Q. Where was your father?

A. Outside on the porch; you see my house is on the hill and the porch is on the front of the house and he was on the porch.

Q. Where were you, G. W.?

A. In the door of the den, close to my mother.

Q. Did you see your mother?

A. Yes sir.

Q. What did she pull out?

A. A Pistol.

Q. Did she point it through the door?

A. She pointed it at him, but she didn't open the door.

Q. Did she pull the trigger?

A. Yes sir.

Q. Did the gun fire?

A. Wasn't nothing in it.

Q. How many times did she pull the trigger?

A. Four or five times.

Q. All right, during the time that you were living there with your mother at Spanish Fort and your daddy was living in Mobile, did your mother ever shoot the pistol out in the yard?

A. Yes sir.

Q. What did she shoot at, if anything?

A. Dirt bank.

Q. She wasn't shooting at anybody was she?

A. No sir.

Q. Did she ever shoot a shot gun in that yard?

A. Yes sir.

Q. Was she shooting at anybody?

A. No sir. she had it up in the sky.

Q. She wasn't trying to hit anybody?

A. No sir.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Rickarby.

MR. STONE: I would like to ask just one more question.

Q. (Mr. Stone) G. W. your daddy has not gotten you to say this?

A. No sir.

Q. (Mr. Stone) You saw this?

A. Yes sir.

Q. (Mr. Stone) He hasn't told you to say this, has he?

A. No sir.

CROSS EXAMINATION BY MR. RICKARBY:

Q. Did you talk to anybody about what you were going to say here in Court?

A. No sir.

Q. G. W., when your mother pulled the pistol on your father, where did she get the pistol from? Did she have it in her pocket-book?

A. No sir.

Q. Where did she get it from?

A. She got it from a home that lived in the south part of Town.

Q. That wasn't what I was asking you. Where was the pistol before your mother pulled it on your father?

A. I think she always kept it in the Cedar chest.

Q. In the Cedar Chest?

A. Yes sir.

Q. Where was the Cedar Chest?

A. In her bed room.

Q. So when your mother pulled this pistol on your father, your father was at the door and she went to the bed room and got the pistol and came back?

A. No sir, I think she had it with her at that time.

Q. You think she had it with her?

A. Either she seen my daddy coming up the drive-way and got it .

Q. So that was the way it happened?

A. Yes sir.

C E R T I F I C A T E:

I hereby certify that the foregoing, consisting of pages 1 to 32, both inclusive, correctly sets forth a true and correct transcript of the testimony as taken by me, in open Court, before Hon. Hubert M. Hall, Judge of said Court, on the 12th day of June, 1961.

Louise Musselwhite
Court Reporter

STATE OF ALABAMA

IN THE CIRCUIT COURT - IN EQUITY

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Edith Johnson Deese to appear and plead, answer or demur, within thirty days from the service hereof, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, In Equity, by Gordon W. Deese, as Complainant, against Edith Johnson Deese, as Respondent.

Witness my hand this the 6 day of Nov.,

1958.

Alice J. Aluck
Register

GORDON W. DEESE,	I	
Complainant,	I	IN THE CIRCUIT COURT OF
vs.	I	BALDWIN COUNTY, ALABAMA
EDITH JOHNSON DEESE,	I	
Respondent.	I	IN EQUITY
	I	

Comes the undersigned Gordon W. Deese and respectfully represents and shows unto this Honorable Court and unto Your Honor as follows:

FIRST:

That he is over the age of twenty-one years and a resident citizen of Mobile, Mobile County, Alabama, his more particular address being in care of Southern Bell Telephone & Telegraph Company, Mobile, Alabama. That the Respondent Edith Johnson Deese is over the age of twenty-one years and a resident citizen of Baldwin County, Alabama, her more particular address being Spanish Fort Estates, Daphne, Alabama.

SECOND:

That your Complainant and the Respondent were married on, to-wit: February 7, 1945, in Whistler, Mobile County, Alabama, and they lived together as man and wife until approximately one year ago. That there was born to your Complainant and the Respondent one child, Gordon W. Deese, Jr., who is now seven (7) years of age and who is presently residing with the Respondent at Spanish Fort in a home owned jointly by the Complainant and the Respondent.

THIRD:

That on or about the 15th day of September, 1958, the Respondent made threats to kill your Complainant and from her conduct your Complainant has reasonable apprehension that she would commit actual violence upon the person of your Complainant.

FOURTH:

That the Respondent is not a fit and proper person to have the care, custody and control of the said Gordon W. Deese, Jr., and your Complainant is a fit and proper person to have such care, custody and control and your Complainant is able to furnish his minor son with a proper home in a proper environment. That your Complainant is willing for the Respondent to have the care, custody and control of his minor son pending a final determination of this cause inasmuch as he is presently enrolled in school in Baldwin County, Alabama, and your Complainant feels that it would be to his best interest to remain in the school in which he is enrolled for the remainder of this school year.

FIFTH:

That there is now pending in the Domestic Relations Court of Mobile, Mobile County, Alabama, before Hon. Herndon Inge a proceeding instituted by the Respondent to compel your Complainant to pay a certain sum for the support and maintenance of herself and the said minor child and your Complainant has been ordered to appear in said court on Wednesday, November 5, 1958, to answer said proceeding. That your Complainant is now, and has been in the past, supporting his said wife and his son by the payment of approximately Sixty Dollars (\$60.00) per month to his said wife, the payment of the note and mortgage on said home at Spanish Fort and the purchase of clothing and other necessaries for his said minor son.

PRAYER FOR PROCESS

The premises considered, your Complainant respectfully prays that this Honorable Court will cause the usual process to be issued and served upon the Respondent and that she be required to answer this complaint within the time required by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

Your Complainant further prays that upon the filing of this Bill of Complaint that this Honorable Court will enter an order

fixing a day for the hearing to determine the amount which your Complainant should pay to the Respondent for the support and maintenance of herself and their minor son pending a determination of this cause and will give notice of the day so set to the Respondent in accordance with the rules of this Honorable Court and will otherwise assume full jurisdiction of the parties to this marriage and the child born thereof. Your Complainant further prays that upon a final hearing of this cause that this Honorable Court will enter an order and decree forever divorcing your Complainant from the Respondent for and on account of the grounds hereinabove stated and will, in and by the terms of said decree, award to your Complainant the care, custody and control of his said minor son with the right of the Respondent to visit with said child upon such terms and conditions as this Court sees fit. And your Complainant prays for such other, further and different orders and decrees as in the premises will be meet and proper.

Gordon W. Deese
Gordon W. Deese

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Nicholas C. Stone, Jr., a Notary Public, in and for said County in said State, personally appeared Gordon W. Deese, who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Gordon W. Deese and that he signed the foregoing Bill of Complaint and that the facts alleged therein are true and correct.

Gordon W. Deese
Gordon W. Deese

Sworn to and subscribed before me on this the 31st day of November, 1958.

Nicholas C. Stone, Jr.
Notary Public, Baldwin County, Alabama

month; that the minor child born to Respondent and Complainant, Gordon W. Deese, Jr., who is now seven years of age, is now in the care, custody and control of your Respondent, who is, in all respects, a fit and proper person to have the permanent care, custody and control of the said child and the Respondent further alleges that it is to the best interest of the said minor child that he remain in her custody and under her control.

Respondent alleges that it has been necessary for her to employ an attorney to represent her in this suit which was brought by the said Complainant and that she is without funds to pay her said attorney for services rendered and to be rendered by him in this cause.

PRAYER FOR PROCESS:

Respondent prays that this answer be taken and treated in all respects as a cross bill and that the usual process of this Honorable Court issue to Complainant and Cross Respondent, Gordon W. Deese, requiring him to appear and plead, answer or demur to this Cross Bill within the time prescribed by law and under the rules and practice of this Honorable Court.

PRAYER FOR RELIEF:

Respondent and Cross Complainant respectfully prays for the following separate and several relief:

1. That the Court will make all necessary orders and decrees as may be proper, fixing a sufficient amount of money to be paid by the Complainant and Cross Respondent, Gordon W. Deese, for your Respondent and Cross Complainant, and to provide for the necessary support and maintenance of Respondent and Cross Complainant and the minor child, Gordon W. Deese, Jr., and compelling the payment thereof.

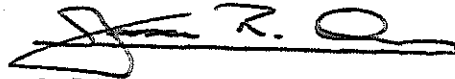
2. That the Court make and enter a proper order or decree giving and granting the Respondent and Cross Complainant the permanent custody and control of the said minor child, Gordon W. Deese, Jr.,

3. That the Court will ascertain and fix a reasonable amount to be paid by the Complainant and Cross Respondent to the Respondent's and Cross Complainant's Solicitor of record for services rendered

and to be rendered in this cause.

4. Respondent and Cross Complainant further prays for such other, further and general relief as she may be equitably entitled to, the premises considered.

Respectfully submitted,



Solicitor for Respondent and Cross Complainant.

GORDON W. DEESE,	Y	
Complainant,	Y	IN THE CIRCUIT COURT OF
	Y	
vs.	Y	BALDWIN COUNTY, ALABAMA
	Y	
EDITH JOHNSON DEESE,	Y	IN EQUITY
Respondent.	Y	

AMENDMENT TO BILL OF COMPLAINT

Comes now the undersigned Gordon W. Deese and amends the complaint heretofore filed by him in this cause so that the same shall read as follows:

FIRST:

That he is over the age of twenty-one years and a resident citizen of Mobile, Mobile County, Alabama, his more particular address being in care of Southern Bell Telephone & Telegraph Company, Mobile, Alabama. That the Respondent Edith Johnson Deese is over the age of twenty-one years and a resident citizen of Baldwin County, Alabama, her more particular address being Spanish Fort Estate, Daphne, Alabama.

SECOND:

That your Complainant and the Respondent were married on, to-wit: February 7, 1947, in Whistler, Mobile County, Alabama, and they lived together as man and wife until approximately one year ago. That there was born to your Complainant and the Respondent one child, Gordon W. Deese, Jr., who is now nine (9) years of age and who is presently residing with the Complainant in Mobile, Alabama.

THIRD:

That on or about May 30, 1960 the Respondent threaten to kill your Complainant and at the time had a pistol pointed at him and was pulling the trigger repeatedly; and from the conduct of the Respondent your Complainant has reasonable apprehension that the

Respondent would kill your Complainant or do him serious bodily harm if he continued to live with the Respondent or if he continued to visit his son while he was in the home owned by your Complainant and the Respondent.

FOURTH:

That the Respondent is not a fit and proper person to have the care, custody and control of the said Gordon W. Deese, Jr., and your Complainant is a fit and proper person to have such care, custody and control and your Complainant is able to furnish his minor son with a proper home in a proper environment.

FIFTH:

That your Complainant and the Respondent are joint owners and tenants in common of a house and the lot on which the same is situated at Spanish Fort, Baldwin County, Alabama. That said property is more particularly described as Lot 4, Block 1, Spanish Fort Estates. That there is presently a mortgage on said property owned by Pan American Insurance Company of New Orleans, Louisiana on which there is a balance due of approximately Eight Thousand Dollars (\$8,000.00), but said property has a reasonable market value of Twenty-five Thousand Dollars (\$25,000.00) and if the property was sold it would bring a price more than sufficient to pay said mortgage indebtedness. That said property can not be equitably divided between your Complainant and the Respondent without a sale thereof and a division of the proceeds of such sale among your Complainant and the Respondent as joint owners.

SIXTH:

That it has been necessary that your Complainant employ an attorney in order to bring this suit and seek a division of the proceeds of the sale of the property owned jointly by your Complainant and the Respondent and to that end has employed the firm of Chason & Stone, Attorneys at Law, Bay Minette, Alabama.

SEVENTH:

That since the filing of the original bill of complaint

in this cause your Complainant has obtained from the Respondent the full care, custody and control of the minor son of your Complainant and the Respondent, Gordon W. Deese, Jr., and his said son is now living with him in Mobile, Alabama. That your Complainant has had such custody since the end of the school year in 1960.

PRAYER FOR PROCESS

The premises considered, your Complainant respectfully prays that this Honorable Court will cause the usual process to be issued and served upon the Respondent and that she be required to answer this complaint within the time required by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

Your Complainant further prays that upon a final hearing of this cause that this Honorable Court will enter an order of decree forever divorcing your Complainant from the Respondent for and on account of the grounds hereinabove stated and will, in and by the terms of said decree, award to your Complainant the care, custody and control of his said minor son. And your Complainant further prays that this Honorable Court will enter an order or decree requiring the above described real property and the improvements located thereon to be sold for a division of the proceeds of the sale among your Complainant and the Respondent after the payment of all amounts due Pan American Insurance Company under their mortgage aforesaid, and that this Court will fix the terms of such sale and the manner in which such sale shall be handled. And your Complainant prays for such other, further and different orders and decrees as in the premises may be meet and proper.

Gordon W. Deese
Gordon W. Deese.

STATE OF ALABAMA

MOBILE, COUNTY

Public, in and for said County in said State, personally appeared Gordon W. Deese, who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Gordon W. Deese and that he signed the foregoing Bill of Complaint and that the facts alleged therein are true and correct.

Gordon W. Deese
Gordon W. Deese

Sworn to and subscribed before me on
this the 1st day of February ~~January~~ 1961.

Patricia L. Spain
Notary Public, Mobile County, Ala.

FILED

FEB 17 1961

ALICE J. DUCK, Register

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,
Baldwin County.



Circuit Court, Baldwin County

No. 4426

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon Edith Johnson Deese

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

Edith Johnson Deese, Defendant.

by Gordon W. Deese

_____, Plaintiff.

Witness my hand this 17 day of February 1961

Alice J. Deese, Clerk

STATE of ALABAMA

Baldwin County

CIRCUIT COURT

GORDON W. DEESE

Plaintiffs

vs.

EDITH JOHNSON DEESE

Defendants

Summons and Complaint

Filed February 17, 1961

Alice J. Duck Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

2/17, 1961

Sheriff.

I have executed this summons

this 20 Feb 1961

by leaving a copy with

Edith Johnson Deese

Sheriff claims 54 miles at

Ten Cents per mile Total \$ 5.40

TAYLOR WILKINS, Sheriff

BY Daphne DEPUTY SHERIFF

Taylor Wilkins

Sheriff.

W. O. Garner

Deputy Sheriff.

Daphne