

ELLA A. SMITH,

Complainant,

VS.

JESSE H. SMITH,

Respondent.

THE STATE OF ALABAMA  
Baldwin County

IN EQUITY  
Circuit Court of Baldwin County

This cause is submitted in behalf of Complainant upon the original Bill of Complaint, \_\_\_\_\_  
Agreement between parties and testimony of Ella A. Smith and  
Kirby Wharton

and in behalf of Defendant upon Answer and waiver

*Robert S. Duck*

Register.

ELLA A SMITH  
Complainant

VS

JESSE H. SMITH  
Respondent

DEPOSITIONS OF  
ELLA A. SMITH AND  
KIRBY WHARTON

Filed this 25th day of April 1934  
*[Signature]*  
Clerk-Register

REGISTER

*Robert J. Moore*

day of August 1936

Filed in Open Court this 27th

NOTE OF TESTIMONY

Respondent.

JESSE H. SMITH,

VS.

Complainant.

ELIA A. SMITH,

Circuit Court of Baldwin County

IN EQUITY

BALDWIN COUNTY

The State of Alabama

No. 252

6-481

RECORDED  
*Moore*

252

STATE OF ALABAMA,  
BALDWIN COUNTY

CIRCUIT COURT, IN EQUITY.

No. 252 August Term, 1936

ELLA A. SMITH, Complainant

Vs.

JESSE H. SMITH, Defendant

To ROBERT S. DUCK, Register :

Answer and waiver filed by

In the above stated cause an ~~Answer Pro Confess~~ having been ~~made~~ against the Defendant, and evidence having been taken, and the cause being ready for submission for final decree, and no defense having been interposed, the Complainant, by ELLIOTT G. RICKARBY,

Solicitors of record, now files with the Register of this Court this written request to deliver the papers in this cause to the Judge for final decree in vacation.

*Elliott G. Rickarby*  
Solicitor for Complainant. (7)

**RECORDED**  
*Duck*

No. 252 Page 6-481

**The State of Alabama,**  
Baldwin County.  
CIRCUIT COURT, IN EQUITY

ELLA A. SMITH,

Complainant,

Vs.

JESSE H. SMITH,

Respondent.

**REQUEST FOR DECREE IN  
VACATION**

Filed August 27th, 1936

Robert S. Duck  
Register:

Recorded in \_\_\_\_\_ Record

Vol. \_\_\_\_\_ Page \_\_\_\_\_

Register.

**R. S. DUCK**

Register and Clerk of the  
Circuit Court, Baldwin County  
BAY MINETTE, ALA.

SEPTEMBER 9, 1936.

Judge F. W. Hare,  
Monroeville, Alabama

Dear Judge:

I am sending you herewith the file in the case of Ella A. Smith vs. Jesse H. Smith. You remember that you sent this file back last month without signing the decree, because the testimony was not sufficient.

Mr. Rickarby has inserted the following words into the testimony of Ella A. Smith: "of his own accord and without just cause" and has asked us to resubmit this case.

Very truly yours,



R. S. Duck,  
Register in Chancery.

RSD:MLF  
Encl.

TWENTY-FIRST JUDICIAL CIRCUIT

OF ALABAMA

F. W. HARE, JUDGE

R. L. JONES, CIRCUIT SOLICITOR

M. R. FARISH, COURT REPORTER

MONROEVILLE, ALABAMA

August 28, 1936

Mr. Robert S. Duck,  
Bay Minnetts, Alabama

Dear Duck:

I am returning the file of Smith Vs. Smith without decree for the reason that the testimony is not sufficiently full to prove the allegations of the bill. I have written Mr. Rickaby and called his attention to this omission.

With regards, I am

Your friend,

*F. W. Hare*

ELLA A. SMITH

Complainant

E Q U I T Y

vs

JESSE H. SMITH

CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

Respondent

DEPOSITIONS OF ELLA A. SMITH AND KIRBY WHARTON, WITNESS FOR  
COMPLAINANT.

The said witnesses being by me first duly sworn,  
upon examination by the solicitor for the Complainant, testified  
as follows:

ELLA A. SMITH

I am the Complainant in this cause, over the age of  
twenty-one, and am now and have been since the year 1925 a bona  
fide resident of Fairhope, Baldwin County, Alabama. On June 29th,  
1901, I was married in the City of Indianapolis, Indiana, to Jesse  
H. Smith, who is also over the age of twenty-one years and with  
whom I lived as husband and wife first in Indianapolis and after  
1925 in Fairhope until the year 1927 when he left me, /during which  
time I have lived in Fairhope, but separate and apart from him up  
to the present day without in any way resuming marital relations.  
After he left me in 1925, he lived for a while in Mobile, but is  
now living near Fairhope. cause

Ella A. Smith

KIRBY WHARTON

I am a nephew of Complainant and have known her all of  
my life. I am a resident of Fairhope and know of my personal  
knowledge that Complainant and Jesse H. Smith separated in the year  
1925, when he left her and has lived separate and apart from her  
ever since. My relationship with them is such that had they resumed  
marital relations in this period I would have known it, but they  
have remained separate from the time they parted up to the present  
time. Part of this time he has lived in Fairhope and later resided  
at Seacliff, though he stayed in Fairhope during the winter months.



They are both over the age of twenty-one years and are now and have been for more than ten years bona fide residents of Baldwin County.

CERTIFICATE

I, Lois Petersen-Egebaek, the Commissioner acting by nomination of parties in that cause pending in equity side of the Court of Baldwin County, wherein ELLA A. SMITH is Complainant and JESSE H. SMITH, Respondent, hereby certify that as such commissioner I caused Ella A. Smith and Kirby Wharton, witness for Complainant, to come before me at my office in the Town of Fairhope where, after being first duly sworn to tell the truth upon examination by Complainant's solicitor, they testified as is above written; that their testimony was by me reduced to writing as given by them as near as might be in their language and so was read over and signed by said witnesses in my presence. I further certify that I am not of counsel or of kin to either party of this cause, or in any wise interested in the result thereof.

In witness whereof I hereunto set my hand and seal, as commissioner, this the 25th day of August, 1936.

*Lois Petersen - Egebaek*  
Commissioner.

Commissioner's fee,  
\$2.50, paid.

TO THE HONORABLE FRANCIS W. HARE

JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

SITTING IN EQUITY

ELLA A. SMITH, by this her Bill of Complaint presented against JESSE H. SMITH, respectively shows:

FIRST: That she and the Defendant above named are both over the age of twenty-one years and are now and have been for more than three years next prior to the filing of this bill bona fide residents of the County of Baldwin, to which County they removed in the year 1925 from the State of Indiana after having been lawfully married in the City of Indianapolis on the 29th day of June, 1901, and, having lived together as husband and wife in Indiana and Alabama from the date of said marriage up to the year 1925.

SECOND: That during the year 1925 Jesse H. Smith, voluntarily and without just cause, abandoned the bed and board of Complainant in the City of Fairhope and has since that time lived entirely separate and apart from her without, at any time, resuming marital relations. Said Smith now resides at Seacliff, near Fairhope.

THE PREMISES CONSIDERED Complainant prays that Jesse H. Smith be made party defendant to this bill and by appropriate process required to answer same within the time prescribed by law.

Complainant further prays that upon hearing of this cause a decree be rendered forever divorcing her from the said Jesse H. Smith, granting her the right to marry again should she so desire, to resume her maiden name of Kirby, and requiring the payment, by Defendant, of a reasonable sum to her as counsel fees and for permanent alimony, together with such other, further or different relief as to Equity may seem mete.

*Leah A. Kirby*  
Solicitor for Complainant.

ELLA A. SMITH,  
Complainant.

vs

JESSE H. SMITH,  
Respondent.

E Q U I T Y  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

This cause being submitted for final decree upon the pleadings, testimony of Complainant as noted by the Register, and agreement of parties, and being considered, the Court is of the opinion that the Complainant is entitled to the relief prayed for in her bill.

IT IS THEREFORE ADJUDGED AND DECREED that the bonds of matrimony heretofore existing between Complainant and Respondent, be and the same are hereby dissolved and the Complainant, ELLA A. SMITH is forever divorced from the Respondent, JESSE H. SMITH, upon the ground of abandonment and permitted, if she so desires to resume her maiden name of Kirby.

An agreement as to the amount of alimony and counsel fees to be paid by Respondent being on file in this cause, thereby eliminating the necessity of a reference, it is FURTHER ORDERED that Respondent pay to Complainant the sum of \$35.00 as fees toward the services of her solicitor in this cause, and the further sum of \$70.00 in lieu of permanent alimony; and it further appearing that \$15.00 has been heretofore paid for such solicitor's fees, and \$35.00 toward said alimony IT IS THEREFORE FURTHER ORDERED that Respondent pay to Complainant the further sum of \$20.00 as balance of the said counsel fees within five days of the rendition of this decree and \$35.00 as the balance due on alimony within ninety days hereafter; and shall also pay the costs of this cause for all of which execution may issue.

IT IS FURTHER ORDERED that neither party marry again except to the other within sixty days of this date, and that should an appeal be taken from this decree, neither party shall marry again except to the other during the pendency of such appeal.

Done at Monroeville, Alabama, this the *ninth (9<sup>th</sup>)*  
day of *Sept* 1936.

*F. W. Hare*

Judge.

FILED

ELLA SA. SMITH

Complainant

vs

JESSE H. SMITH

Respondent

E Q U I T Y

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

Comes JESSE H. SMITH, Respondent in the above styled cause, and for answer to the bill of complaint says that he denies each and every allegation of same.

Respondent hereby waives service and notice of demand for oral examination of Complainant's witnesses; of the issue of commission to take testimony of the time and place set for taking same and of the right to introduce evidence in her own behalf. She further agrees that this cause may be submitted for final decree at any time on the pleading and Complainant's evidence as notice by the Register.

  
Respondent

Before me the undersigned Notary personally appeared Jesse H. Smith who acknowledged that she executed the foregoing answer voluntarily with knowledge of its contents.

Witness my hand this the 25th day of August, 1936.

Notary Public, Baldwin County, Alabama.



ELLA A. SMITH

Complainant

vs

JESSE H. SMITH

Respondent

It is agreed between parties in this cause that should decree of divorce be rendered same shall contain a provision for the payment of solicitors' fees to Complainant's solicitor ~~to~~ the sum of \$35.00 and also the payment of \$70.00 in lieu of all alimony of which amount \$35.00 is <sup>not</sup> ~~to be~~ paid ~~within ten days of rendition of this decree~~ and the remainder within ninety days thereafter.

Executed in duplicate this the 25th day of August,  
1936.

Ella A. Smith  
Jesse H. Smith

ELLA A. SMITH  
Complainant

vs

JESSE H. SMITH  
Respondent

DEPOSITIONS

of

ELLA A. SMITH

and

KIRBY WHARTON

Commissioner's fees,  
\$2.50, paid.

*Quecks*  
**RECORDED**  
6/4/80

ELLA A. SMITH  
Complainant

VS

JESSE H. SMITH  
Respondent

B I L L

Filed  
*Bill*  
*Barlow*  
34

Elliott G. Rickarby



RECORDED  
Book  
6-481

ELLA A. SMITH  
Complainant

vs

JESSE H. SMITH  
Respondent

AGREEMENT

Filed this 31<sup>st</sup> Aug 1884  
*Paul [Signature]*

Elliott G. Hickarby

RECORDED

*Smith*

6-481

ELLA A. SMITH  
Complainant

vs

JESSE H. SMITH  
Respondant

ANSWER AND WAIVER

Filed

*35 Aug 36*  
*Ball*

RECORDED  
Quack  
2-236

ELLA A. SMITH,

Complainant.

JESSE H. SMITH,  
<sup>VS</sup>

Respondent.

R E C O R D E D

Filed Sept. 18, 1936  
R. S. Quack, Reg.