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**Record No. 4763**

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**WILLIAM PHILLIP BREWER**

v.

**ALMA McNEIL BREWER**

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FROM THE CIRCUIT COURT OF GILES COUNTY.

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**RULE 5:12—BRIEFS.**

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

199VA626



## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§6. Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.





IN THE  
**Supreme Court of Appeals of Virginia**  
AT RICHMOND

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**Record No. 4763**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 11th day of June, 1957.

WILLIAM PHILLIP BREWER,

Appellant,

*against*

ALMA McNEIL BREWER,

Appellee.

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From the Circuit Court of Giles County.

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Upon the petition of William Phillip Brewer an appeal and *supersedeas* is awarded him from a decree entered by the Circuit Court of Giles County on the 25th day of February, 1957, in a certain chancery cause then therein depending wherein Alma McNeil Brewer was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of five hundred dollars, with condition as the law directs.

## RECORD

\* \* \* \* \*

Filed in the Circuit Court Clerk's Office the 10 day of Nov. 1954.

## BILL FOR SEPARATE MAINTENANCE.

To the Honorable Vincent L. Sexton, Jr., Judge of the above named Court.

Your complainant, Alma McNeil Brewer, humbly complaining, would show unto Your Honor as follows:

1. That she was born Alma McNeil and was married to William Phillip Brewer in Covington, Kentucky, in 1921; that she and her husband have lived together as man and wife in Giles County, Virginia, for many years, and for more than one year next preceding the institution of this proceedings; that they are both members of the White or Caucasian Race, that neither is in the armed forces of the United States of America; that there was one child born to them, a daughter who is married and is now living in Venezuela, South America; that they last lived and cohabited together as man and wife in Giles County, Virginia, about the 26th day of November, 1953, at which time the said William Phillip Brewer went to South America to visit their daughter, and remained there for approximately nine (9) months; and,

2. That your complainant and her said husband live on a large farm consisting of 688-3/4 acres, in Giles County, Virginia, which land was conveyed to them pursuant to contract and agreement by the heirs of Willie Sue Hoge Brewer and John Alfred Brewer; that the deed was taken in the name of William Phillip Brewer to be held in trust for your complainant; that subsequent thereto, and shortly after the said deed was written, William Phillip Brewer, and in pursuance to their agreement, had their attorney, J. Livingstone Dillow, prepare a deed conveying the land to your complainant and her said husband as tenants by the entirety with page 2 } the right of common law survivorship; that the said deed was delivered to your complainant, but was never recorded, and subsequently and wrongfully destroyed by her said husband; that marital difficulties have arisen over

the destruction of said deed, between your complainant and her said husband; and,

3. That her said husband has deserted and abandoned your complainant and their farm, leaving her with the burdensome duties of looking after approximately sixty (60) head of cattle and running and operating and maintaining the said farm, and has refused to supply your complainant with the necessary food, clothing and money to maintain herself or to operate said farm; and that he has, and is now interfering with the tenants on the farm, making it impossible for your complainant to maintain and support herself, or to care for the farm and the animals thereon; and,

4. Your complainant would further show unto Your Honor that her said husband left and deserted her, moving away from the farm during the latter part of September, 1954, taking up his abode with his relatives in the community, from whence he has proceeded to make life miserable for your complainant; that he agreed on the 21st day of September, 1954, to pay your complainant the sum of Five (\$5.00) Dollars per day for her maintenance and support and for the use of her half of the automobile, which he had then and now has in his possession and control; that he has refused to comply with his agreement as above set out, and refuses to supply your complainant with food, clothing or money with which she can maintain and support herself and take care of the farm. Your complainant would show unto Your Honor that her said husband is financially able to maintain and support your complainant, and that your complainant is not financially able to maintain and support herself.

Your complainant is advised that Your Honor will decree unto her a separate maintenance and support to maintain herself in keeping with her husband's state and station in life; and that Your Honor will decree unto her a reasonable sum to be applied on account of her attorney's fees to page 3 } be paid to her attorney of record for instituting and prosecuting this separate maintenance suit, and for her costs in this behalf expended.

Therefore, being without remedy save in a court of equity where matters of this kind are properly cognizant, your complainant prays that the said defendant, William Phillip Brewer, may be made party defendant to this action for separate maintenance; and required to answer the same, but answer under oath is hereby expressly waived; that proper process may issue; that your complainant may have decreed unto her alimony for her maintenance and support, and a certain sum on account of counsel fees and costs, even though

no divorce is sought; that such sums allowed by this honorable court may be decreed as a judgment against her said husband, and recorded in the Clerk's Office in the Current Court Judgment Lien Docket; and may Your Honor grant unto your complainant all such other further relief as the nature of her case may require, or to equity seem meet.

And she will ever pray, etc.

ALMA McNEIL BREWER.  
By BENTLEY HITE, Counsel.

\* \* \* \* \*

page 7 }

\* \* \* \* \*

Received, Filed 11/11/54.

F. E. SNIDOW, Clerk,  
Circuit Court of Giles County.

### ANSWER AND CROSS-BILL.

To the Honorable Vincent L. Sexton, Jr., Judge of said Court:

Respondent, William Phillip Brewer, for answer to the Bill of Complaint and by way of Cross-Bill of Complaint, would show unto the Court the following:

(1) That the allegations contained in paragraph No. 1 of the said Bill of Complaint are substantially true.

(2) That the allegations of paragraph 2 of said Bill of Complaint are not true as set forth therein. Respondent positively denies that the farm lands mentioned in said paragraph were ever conveyed to complainant but on the contrary the said lands were conveyed in fee simple to respondent. Respondent further positively denies that he ever conveyed to complainant any interest whatsoever in the said farm lands. Respondent further positively denies that there was ever any delivery, directly or indirectly, of any conveyance to complainant of any interest whatsoever in said farm lands.

(3) Respondent denies the allegations of paragraph 3 of said Bill of Complaint.

(4) Respondent positively denies the allegations contained

in paragraph 4 of said Bill of Complaint.  
page 8 } (5) Respondent specifically and positively denies  
each and every allegation of said Bill of Complaint,  
which is not herein specifically admitted to be true.

Respondent having fully answered said Bill of Complaint, prays to be hence dismissed with his reasonable costs in this behalf expended.

And in support of Respondent's Cross-Bill of Complaint, Respondent would represent unto the Court the following:

(1) During the latter days of November, 1953, respondent made a visit to his daughter in South America. Complainant was invited to accompany respondent on the said trip to South America but complainant refused to accept said invitation and remained at the home of respondent. For many years past, respondent has been employed by United Woolen Company as a salesman of clothing manufactured by said company. In the course of his employment it has been indispensably necessary that respondent at all times have an automobile with which to carry on his various work. In September, 1953, respondent and complainant jointly owned an automobile which respondent used in his said work. Complainant arbitrarily took charge of said automobile in September, 1953, and locked the said automobile up and refused to permit respondent to have the use of said automobile. As the result of the actions of said complainant, respondent was deprived of the benefits of the most lucrative season of the year in connection with his work which resulted in great injury and damage to respondent.

(2) For many years prior to the commencement of this suit, respondent alleges and charges that complainant has continuously fussed and nagged at him and that such acts on her part continued for such a long time and were so consistently practiced by complainant that the life of  
page 9 } respondent has been made miserable and to the  
point where his life and health have been endangered.

(3) Upon the return of respondent from the home of his daughter in South America, he immediately resumed his work as a salesman and shortly thereafter complainant again locked up respondent's automobile and refused to permit him to have the use of said automobile. Immediately upon the return of respondent to his said home, complainant resumed her conduct of nagging, fussing and being continuously dis-



agreeable and that her acts were of such a character that respondent was actually in great fear for his life and personal safety. That complainant continued to heap abuse upon respondent and has even gone to the extent of accusing him of addiction to narcotic drugs and has gone about the community and upon the public streets and public places and openly accused respondent of the addiction to narcotic drugs and of being criminally minded and insane. That complainant has on numerous occasions threatened physical violence against respondent and has openly threatened to have him committed to an insane asylum.

(4) Respondent alleges and charges that during the month of September, 1954, complainant wilfully deserted respondent, refusing to recognize any duty which she owed him, refused to prepare his meals and made known to respondent that she did not intend to live with him. That complainant brought her brother to respondent's home and thereafter complainant and her said brother arbitrarily and forcibly took over full and complete control and charge of respondent's lands, buildings, live-stock and all other personal property situated on respondent's lands and have ever since completely controlled the said property.

(5) Respondent alleges and charges that complainant has wrongfully and unlawfully continued to dispose of live-stock and other property of respondent located on said farm and has wrongfully interfered with the rights of respondent in the control and management of his farm and in the handling of his personal property.

(6) Respondent alleges and charges that for a long time prior to the commencement of this suit, complainant has waged a concerted plan in an effort to compel respondent to convey to her his lands and personal properties, with a malicious design and the express purpose of driving him from his home. Since the institution of her suit No. 1, the said complainant has locked the gates on the said farm and has locked the buildings on said farm for the purpose of depriving respondent of all right to his property. On various and sundry occasions since the institution of Suit No. 1, respondent has been deprived of the right to make sale of livestock, horses and other articles of personal property on said farm, belonging to said respondent.

(7) Respondent alleges and charges that complainant has reached the point wherein she has exhibited a violent and vicious hatred of respondent. That because of such vicious hatred building up in the heart and mind of complainant, respondent is actually afraid to visit his home for fear that he

would be subjected to great violence and possibly death at the hands of complainant.

(8) Respondent specifically denies that he is under any duty whatsoever to support or maintain complainant and here alleges that complainant, because of her acts and conduct and mistreatment of respondent, has wilfully deprived herself of any right to demand of him any maintenance or support. In fact the said acts and conduct of complainant have resulted in depriving respondent of an opportunity to earn a modest living. Even for the support of himself.

page 11 } (9) Respondent alleges and charges that complainant has been guilty of extreme cruelty to respondent and has wilfully deserted respondent for which reasons respondent verily believes that he is entitled to have a divorce *a mensa et thoro* from complainant.

WHEREFORE, respondent prays that he may be awarded a divorce *a mensa et thoro* from complainant in the manner prescribed by law; that respondent may have and recover of complainant all of respondent's personal property situated on the farm of respondent in Giles County, Virginia; that respondent may have and recover of complainant the fair value of all his personal property which has been wrongfully disposed of by complainant; that pending this suit and thereafter, that complainant be enjoined and restrained from occupying the farm lands and buildings of respondent and that complainant may be further enjoined and restrained from exercising control over or in disposing of any properties of respondent.

Respondent further prays that he may be granted all such other, further and general relief as the nature of his cause may require and to equity shall seem meet and as in duty bound will ever pray, etc.

WILLIAM PHILLIP BREWER.  
By Counsel.

DILLOW & ANDREWS, Counsel,  
Pearisburg, Virginia,  
By: J. L. DILLOW.

CROWELL, DEED & NUCKOLS, Counsel,  
Pulaski, Virginia,  
By: A. I. CROWELL.

page 12 } I do hereby certify that a true copy of the foregoing pleadings was this day mailed to Bentley Hite, Christiansburg, Virginia, Counsel of Record for the Complainant.

Given under my hand this 11th day of November, 1954.

J. L. DILLOW.

page 13 } PROOF OF SERVICE.

VIRGINIA:

In the Circuit Court of the County of Giles.

CHANCERY NO. 1942.

CROSS-BILL.

Alma McNeil Brewer

v.

William Phillip Brewer  
Hoges Chapel, Va.

Returns shall be made hereon, showing service of Subpoena in Chancery issued Nov. 11th, 1954, with copy of Bill of Complaint filed Nov. 11th, 1954, attached:

Executed on the 12 day of Nov. 1954, in the County of Giles, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Alma McNeil Brewer in person.

EMORY JOHNSTON,  
Sheriff, County of Giles, Va.  
By H. B. Amo, Deputy Sheriff.

Returned and filed the 15th day of November, 1954.

CARRIE WILLIAMS, Deputy Clerk.

page 14 }

\* \* \* \* \*

Received and Filed Dec. 1, 1954.

F. E. SNIDOW, Clerk,  
Circuit Court. of Giles County.

ANSWER AND RESPONSIVE PLEADINGS TO CROSS-BILL FILED IN THE ABOVE-NAMED CASE.

To the Honorable Vincent L. Sexton, Jr., Judge of the above-named Court.

Your respondent comes and files this her Answer and Responsive Pleadings to the Cross-Bill dated November 11, 1954, and filed in this cause, asking for a divorce *a mensa et thoro* from the respondent.

1. Your respondent denies the allegations as set out in Paragraph 1 of the Cross-Bill in so far as it alleges that the respondent arbitrarily took charge of the automobile in September, 1953, and locked the automobile up and refused to let the complainant have the use of the said automobile. Your respondent admits that she and her said husband own the said automobile jointly, and that they have been employed for many years with the United Woolen Company as salesmen, and that they had worked up a lucrative business, and that your respondent sold and traveled with her husband for fifteen years for the same company.

2. Your respondent denies the allegations in Paragraph 2 of the said Bill, wherein it is charged that she continuously fussed and nagged at her husband, denies that his health and life have been endangered by her conduct; but on the contrary, would show unto Your Honor that her said husband wrecked his own health and life by his conduct, by drinking and using drugs of various kinds.

3. Your respondent admits that her said husband went to visit their daughter in South America as set out in page 15 } Paragraph 3, but denies that he immediately resumed his work as a salesman with the Woolen Company upon his return to the United States, and emphatically denies that she locked up his automobile and refused to let him have the use of the said automobile, and would show unto Your Honor that her said husband has the said automobile now and has had it almost continuously since his return from South America, even though your respondent owns a one-half interest in the said automobile. Your re-



spondent denies that she resumed her conduct of fussing, nagging, and being continuously disagreeable; denies that her husband is actually in great fear of his life and personal safety. Your respondent denies that she has heaped abuse upon her said husband, or has gone about the county accusing him of addiction to narcotic drugs, or accused him upon the streets or public places, or openly of being addicted of narcotic drugs, or being criminally minded or insane. Your respondent emphatically denies that she has on numerous occasions threatened physical violence on her husband; denies that she has openly threatened to have him committed to an insane asylum, but admits that her husband has been taking some kind of drugs, that he has become disturbed mentally at times, and that your respondent has done all she could to protect him and secure for him all medical attention and protection.

4. Your respondent denies the allegations set out in Paragraph 4 of the said Cross-Bill, wherein it alleges and charges that during the month of September, 1954, your respondent wilfully deserted your complainant and refused to recognize any duty which she owed him, or refused to prepare his meals, or made known to the complainant that she did not intend to live with him. Your respondent would show unto Your Honor that she has never deserted her said husband; that she has always been a dutiful and true wife to him, and has cared for and protected him in every way possible during his weakness, illness and affliction; that she has al-  
page 16 } ways prepared his meals for him and has always been a dutiful and true wife to him. Your respondent would show unto Your Honor that her said husband has on several occasions deliberately and without just cause deserted and abandoned your respondent, always returning to live with her; and she would show unto Your Honor that approximately seven (7) years ago your respondent's husband became impotent sexually and has remained so until this day; that he has been physically and sexually unable to perform his marital relations with your respondent, though he tried on several occasions; that his inability sexually has embittered the complainant against your respondent to such an extent that he has become cruel and abusive to her, and has accused her unjustly of many things; that his sexual impotency is partly the result of his drinking and taking drugs, and is partly responsible for the marital difficulties which he now faces; that he has been wholly and completely impotent and powerless sexually for

the greater portion of seven (7) years; that there have been no sexual relations between your respondent and her said husband whatsoever for approximately three (3) years; Your respondent denies the allegations in Paragraph 4 of the said Cross-Bill that she brought her brother to the complainant's home and that she and her brother arbitrarily and forcibly took over the complete control of his lands, buildings, livestock, etc., but your respondent would show unto Your Honor that her husband went to her brother's home, William Edgar McNeil, in Floyd County, Virginia, about three years ago and told him that he had deeded one-half of the farm to his wife, and that he wanted the said William Edgar McNeil to move on the said land and to come and live with them in their home in Giles County, Virginia, and did persuade the said William Edgar McNeil to move on the said farm as agreed upon; that shortly thereafter the said William Phillip Brewer, on the strength of promises that one-half of the farm had been deeded to his wife and other

page 17 } promises, borrowed more than One Thousand (\$1,000.00) Dollars in cash from the said William Edgar Brewer. Your respondent would further show unto Your Honor that when her husband left her on the 26th day of November, 1953, and went to South America, where he stayed for nine (9) months; that her said brother remained on the farm helping her operate and manage the same, taking care of about seventy (70) head of livestock during the winter; that it would have been utterly impossible for her to have operated the farm had it not been for her brother.

5. Your respondent denies that she has disposed of the livestock and other property of complainant located on the farm, and would show unto Your Honor that of the livestock sold the proceeds of which have been turned over to Bentley Hite and Alton I. Cromwell; that she has not even used the proceeds from the sale for her own maintenance and support, though she is now just about penniless.

Your respondent denies the allegations set out in Paragraph 6 of the said Cross-Bill, but would show unto Your Honor that she and her said husband had an agreement when they moved upon the said farm with her husband's parents, that they were to be the owners of two hundred (200) acres of the said land; and that during the years your respondent helped to maintain and operate the said farm, and that her husband promised her on numerous occasions that he would deed her one-half of the farm; and that he did deed her a one-half undivided interest in the said farm, and delivered

the deed to your respondent, but later destroyed the said deed before it was placed on record. Your respondent denies that she has locked the gates to keep her said husband off the property; denies that she has prevented the sale of any of the livestock on the farm except two (2) horses which did not belong to her husband.

7. Your respondent denies the allegations in Paragraph 7; denies that she has been vicious towards her said husband; denies that he has any reason to fear her, or fear that he would receive violence or possible death at the hands of your respondent.

page 18 } 8. Your respondent denies the allegations as set out in Paragraph 8, that she has forfeited her right to support or maintenance from her said husband because of her acts and conduct; denies that she has wilfully deprived herself of any right to demand of him maintenance and support; denies that she has deprived her husband of the right or opportunity to make a modest living; but would show unto Your Honor that her said husband deliberately, wilfully and without just cause deserted and abandoned her and has refused to come to their home where they had labored and lived for more than twenty-five (25) years.

9. Your respondent denies the allegations set out in Paragraph 9, that she has been guilty of extreme cruelty to her said husband, and has wilfully deserted him, but would show unto Your Honor that she has been deserted by her said husband without just cause. Your respondent says that she does not wish, and has never sought a divorce from her said husband; that even though he has deserted her that she does not want a divorce from him, and does not want him to divorce her, because she has never given him any cause whatsoever.

And now, having answered as fully as she is advised it is necessary that she should answer, she further generally denies all allegations herein set out which have not specifically been denied.

Respectfully,

ALMA McNEIL BREWER.  
By BENTLEY HITE, Counsel.

BENTLEY HITE, p. q.,  
Christiansburg, Virginia.

I, Bentley Hite, hereby certify that I have this November 30, 1954, mailed a copy of the within Answer and Responsive Pleadings to Alton I. Cromwell, Pulaski, Virginia, and J. Livingstone Dillow, Pearisburg, Virginia, Attorneys for William Phillip Brewer.

BENTLEY HITE.

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page 28 }

\* \* \* \* \*

Received and Filed Dec. 26th, 1956.

F. E. SNIDOW, Clerk,  
Circuit Court of Giles County.  
O. G. CALDWELL, Clerk.

DEMURRER IN SEPARATE MAINTENANCE SUIT.

Alma McNeil Brewer, the plaintiff in the original suit and defendant to the cross bill, comes and says that the cross bill filed against her by William Philip Brewer in the above named chancery cause now pending in the Circuit Court of Giles County, Virginia, is not sufficient in law, and states the grounds of demurrer relied on by her to be as follows:

1. The cross bill of the defendant was improperly filed and should be dismissed upon demurrer.
2. A cross bill may not be filed in an action of separate maintenance in which the bill of complaint contains no prayer for a divorce.
3. Divorce proceedings are statutory, and the statute should be strictly followed.
4. A cross bill is a mere auxiliary suit, and is dependent on the original in determination of the matter already in litigation.



5. The cross bill is not sufficient on its face in law or in equity.

December 22, 1956.

Respectfully,

ALMA McNEIL BREWER.

By BENTLEY HITE, Counsel.

BENTLEY HITE, p. q.,  
Christiansburg, Virginia.

I, Bentley Hite, hereby certify that I have this 22nd day of December, 1956, mailed a copy of the above Demurrer to J. L. Dillow, Dillow and Andrews, Pearisburg, Virginia, and to Alton I. Cromwell, Pulaski, Virginia, attorneys for the defendant.

BENTLEY HITE.

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page 40 }

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### DECREE.

This cause came on to be heard on the 8th day of February, 1957, upon Complainant's bill for separate maintenance filed in this cause on November 10, 1954; upon the answer of Defendant, W. P. Brewer, to said separate maintenance suit and cross-bill for divorce filed on November 11, 1954, in the manner provided by law; upon the Complainant's answer to Defendant's answer and cross-bill for divorce filed on December 1, 1954, in the manner provided by law; upon complainant's demurrer to Defendant's Cross-bill filed, without leave of court, on November 26, 1956, and was argued by counsel.

The court having considered the said Bill of Complaint, the said answer and cross-bill of Defendant, and the demurrer filed by said Complainant to said Defendant's cross-bill, the court doth adjudge, order, and decree that the said demurrer be, and it is hereby sustained, and that the said Defendant's cross-bill be, and the same is hereby dismissed, for the reason

that the court is of the opinion that the Defendant has no right to file a cross-bill in a suit for separate maintenance instituted by Complainant.

And the Defendant's cross-bill is hereby stricken and dismissed from the docket to which ruling and action of the court in sustaining the demurrer and dismissing said cross-bill and dismissing this cause from the docket, the Defendant,

W. P. Brewer, by counsel duly excepted. And the  
 page 41 } Defendant indicating his intention to apply for an  
 appeal to the Supreme Court of Appeals of Virginia from this decree, it is further ordered that the execution of this decree be, and the same is hereby suspended for a period of sixty days from the date of the entry of this decree.

Requested:

C. B. ANDREWS,  
 Of Counsel for Defendant, W. P. Brewer.

Seen:

BENTLEY HITE,  
 Counsel for Complainant, Alma McNeil  
 Brewer.

Enter this decree this 25th day of February, 1957.

V. L. S., JR., Judge.

page 42 }

\* \* \* \* \*

# NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To O. G. Caldwell, Clerk of the Circuit Court of Giles County, Virginia:

Notice is hereby given that the Defendant, William Philip Brewer, will appeal from the final order entered in the above styled cause, dismissing Defendant's cross bill, to the Supreme Court of Appeals of Virginia. Notice is further given that upon such appeal Defendant will rely upon the following Assignment of Error.

## ASSIGNMENT NO. ONE.

The court erred in entering a decree in this cause on the 25th day of February, 1957, sustaining Complainant's demurrer to Defendant's cross bill and striking and dismissing the same from the docket.

WILLIAM PHILIP BREWER.  
By Counsel.

CROWELL, DEEDS & NUCKOLS, Counsel,  
Pulaski, Virginia.

DILLOW & ANDREWS, Counsel,  
Pearisburg, Virginia.  
By C. B. ANDREWS.

Received and Filed Mar. 4, 1957.

F. E. SNIDOW, Clerk,  
Circuit Court of Giles County.  
By CARRIE WILLIAMS, Dep. Clerk.

This is to certify that on the 4th day of March, 1957 a copy of the foregoing was mailed to Bentley Hite, Counsel for Complainant, Christiansburg, Virginia.

C. B. ANDREWS.

\* \* \* \* \*

page 44 }

\* \* \* \* \*

## CERTIFICATE.

I, Vincent L. Sexton, Jr., Judge of the Circuit Court of Giles County, Virginia, sitting at Pearisburg, Virginia, do certify that the foregoing is a true and correct transcript and statement of the record, assignments of error, and other incidents of trial therein, or questions raised, and all rulings thereon and exceptions noted in the above styled case, tried in the Circuit Court of Giles County, Virginia, and a decree entered therein on the 25th day of February, 1957; and it ap-

pearing in writing that the attorney for the Complainant has had a reasonable notice of the time and place, pursuant to Rule 5:3 (f), when this record would be presented to the undersigned for certification, which was presented to me this the 14th day of March, 1957, within sixty (60) days after final judgment, and signed by me within seventy (70) days after final judgment.

Given under my hand this 21st day of March, 1957.

VINCENT L. SEXTON, JR.,  
Judge of the Circuit Court of  
Giles County, Virginia.

I, O. G. Caldwell, Clerk of the Circuit Court of Giles County, Virginia, do hereby certify that the original record, transcript and copies of all proceedings, papers and decrees, and other incidents in the trial of the case of Alma McNeil Brewer v. William Philip Brewer were filed with me as Clerk of said Court on the 22nd day of March, 1957.

O. G. CALDWELL,  
Clerk of the Circuit Court of Giles  
County, Virginia.

Received and Filed March 22nd, 1957.

O. G. CALDWELL, Clerk.  
Circuit Court of Giles County.

A Copy—Teste:

H. G. TURNER, Clerk.



## INDEX TO RECORD

	Page
Appeal and <i>Supersedeas</i> Awarded . . . . .	1
Record . . . . .	2
Bill for Separate Maintenance . . . . .	2
Answer and Cross-Bill . . . . .	4
Proof of Service . . . . .	8
Answer and Responsive Pleadings, etc. . . . .	9
Demurrer in Separate Maintenance Suit . . . . .	13
Decree—Entered February 25, 1957 . . . . .	14
Notice of Appeal and Assignment of Error . . . . .	15
Certificate . . . . .	16
Certificate . . . . .	17