



Case Files, General Index, and Briefs
of the Supreme Court and the Court
of Appeals

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1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

3 Faye V. Peterson,

File No. 566224

4 Plaintiff,

5 vs.

REPORTER'S CERTIFICATE

6 Palmer A. Peterson,

7 Defendant.

8
9 I, Robert J. Solheim, do hereby certify that I am one
10 of the official court reporters of the District Court of the
11 Fourth Judicial District of the State of Minnesota; that as such
12 reporter I reported in shorthand the testimony and proceedings had
13 on the trial of the above-entitled action; that I thereafter
14 transcribed the same into typewriting; that the foregoing pages
15 of typewritten matter, consisting of four pages, constitute, a
16 partial, true and correct transcript of the proceedings offered
17 or received at the hearing.
18

19 Dated: February 23, 1965.
20 Minneapolis, Minn.

21 Robert J. Solheim
22 Robert J. Solheim
23 Court Reporter
24
25

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
3 -----
4 Faye V. Peterson,)
5 Plaintiff,) File No. 566224
6 vs.)
7 Palmer A. Peterson,) PARTIAL TRANSCRIPT
8 Defendant.)
9 -----

10
11 The above-entitled action came duly on for hearing
12 before Judge Stanley D. Kane on the 7th day of January, 1965
13 at approximately 2:00 p.m., in the City of Minneapolis Court
14 House, Minneapolis, Minnesota.

15 James P. Morris, Esq., Messrs. Dygert and Gunn, by
16 Robert W. Dygert, Esq., and Charles B. Andrews, Esq., appeared
17 on behalf of the plaintiff, Faye V. Peterson. Jerome Daly, Esq.,
18 appeared on behalf of the defendant, Palmer A. Peterson.

19 Whereupon, proceedings were had and the following
20 partial transcript was ordered, to-wit:

21 * * * *
22 * * * *

23 THE COURT: At this time, the Court orders a Bench
24 Warrant for the arrest of the defendant in this matter bringing
25 him before the Court --

1 MR. BORRIS: (Interposing) Would you specify the
2 defendant, Palmer A. Peterson?

3 THE COURT: (Continuing) Palmer A. Peterson, both on
4 its own motion based on the affidavit attached to the Order to
5 Show Cause and on the basis of the Order to Show Cause and the
6 non-appearance of the defendant under, or pursuant to that Order
7 To Show Cause. The Court wishes to make clear that it is issuing
8 the Warrant, whether it be called a Bench Warrant or simply a
9 Warrant, under its independent power to do so and because of the
10 failure of the defendant to appear pursuant to the Order to Show
11 Cause. The Court would suggest to counsel that reliance should
12 not be had solely on the Sheriff's office to pick up the defendant,
13 Palmer A. Peterson, and that therefore, perhaps more than one
14 original Bench Warrant be secured so that other law enforcement
15 agencies or constables or police officers or police departments
16 might be able to pick up the defendant. Now that is number one.

17 2. Pursuant to 518.24, because and based on the
18 affidavit alleging non-payment of alimony and support money --

19 MR. BORRIS: (Interposing) May I add this, Your Honor.
20 Can the Court also put based upon all the files, records and
21 proceedings herein?

22 THE COURT: Based upon all the files, records and
23 proceedings herein, included in the first Order including every-
24 thing, the Court appoints a --

25 MR. DYGERT: May we suggest, Your Honor, that the man

1 to be appointed be Mr. Leonard Swanson who is a Certified Public
2 Accountant?

3 THE COURT: The Court will go into that later. The
4 Court appoints a receiver under the provisions of 518.24 and any
5 other applicable provisions of the law, the rules, the statutes
6 of common law with all of the powers that he may be given under
7 either 518.24 or any other applicable provision of the statute,
8 the rules of the common law.

9 Further, that a referee shall be appointed and the referee
10 and the receiver appointed shall be one and the same person. And
11 he shall have all of the powers conferred upon him by any applic-
12 able statute as well as any applicable rule including specifically,
13 but not necessarily exclusively, Rule 53 of the MRCP, and without
14 limitation. And that he is directed to report in full to the
15 Court in all matters, with reference to all matters.

16 MR. DALY: I am going to object to the appointment of
17 any referee unless the Court Orders that he file the prescribed
18 oath required of a referee and that the referee file a bond in the
19 sum of \$50,000.

20 THE COURT: The referee must file an oath under the
21 Rules, and previously under the Statute, or now under the Statute
22 he will be required to do that. He will not be required to file
23 any bond. And he will report in full to the Court.

24 MR. DALY: You mean if a referee is going to receive
25 money in this case?

1 THE COURT: The receiver and the referee is the same
2 person.

3 He shall report in full on all matters raised now before the
4 Court and all matters raised by the Order to Show Cause and the
5 attached motion. Any of the motions and affidavit or affidavits,
6 and specifically but not necessarily exclusively, on all of the
7 assets and liabilities of whatsoever kind wherever located of
8 the defendant Palmer A. Peterson and on the failure of the defend-
9 ant Palmer A. Peterson -- alleged failure of the defendant Palmer
10 A. Peterson to pay alimony and support money. The appointment
11 of the referee in no way shall restrict the power of the Court
12 at any subsequent time to himself inquire into any of these matters
13 independently of the report or of the activities of the referee.

14 (Off-record discussion)

15 THE COURT: The oral Order will become effective
16 forthwith, but the receiver -- the Court, rather, does sequester
17 all of the assets of the defendant and the receiver will take them
18 into his possession. And by assets, I don't mean to limit it to
19 property, but he shall have all the powers of a receiver and be
20 required and directed to collect assets, collect accounts receivable
21 to anything and everything necessary to effectuate the broad pur-
22 poses of the oral Order which becomes effective forthwith, but
23 which will be reduced to writing. And counsel are instructed to
24 draft an appropriate Order for signature by the Court. But this
25 does not prevent the oral Order from going into effect at once.

(Transcript of testimony of Paul L. Halverson and
William E. Drexler)

(Transcript of proceedings held January 13, 1965,
Peterson v. Peterson:)

* * *

THE COURT: I think I would like to hear the
following: That is, evidence concerning what assets
were received by the defendant Paul Halverson at the
time of the creation of the trust, reaffirmance of what
he testified to concerning where the assets were located,
and what disposition was made of the cash as reflected
in the record book that he kept.

MR. DYCERT: If the Court please, we would
like to call Mr. Halverson, and we would, if it meets
with the Court's approval, like to permit his attorney,
Mr. Fisch, to examine him in reference to those matters.

MR. FISCH: I would be very happy to.

PAUL L. HALVERSON

being first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. FISCH:

Q Your full name, please?

A Paul L. Halverson.

Q Where do you live, Mr. Halverson?

A Stillwater, Minnesota.

Q And do you have a brother-in-law, Dr. Palmer Peterson?

1 A Yes.

2 Q Calling your attention, Mr. Halverson, to the 8th day, or
3 on or about the 8th day of, was it December, 1964, did
4 he come to see you?

5 A Yes.

6 Q Where did he come to see you?

7 A At my office at the high school.

8 MR. DALY: One minute, please. May the
9 record note a continuing objection to this witness'
10 testimony as being irrelevant and immaterial.

11 THE COURT: The record will show a continuing
12 objection by Defendant Palmer Peterson to this entire
13 hearing and to all aspects of it.

14 BY MR. FISCH:

15 Q That was at the junior high school in Stillwater,
16 Minnesota?

17 A Yes.

18 Q Where you are the principal?

19 A Yes.

20 Q About what time of day was that?

21 A Oh, between 10:00 and 11:00.

22 Q In the morning, the forenoon?

23 A Yes.

24 Q And was anyone with your brother-in-law, Dr. Peterson?

25 A Yes.

1 Q Who?

2 A Attorney Drexler.

3 Q Do you see your brother-in-law here in the court, Dr.
4 Peterson?

5 A No, I do not.

6 Q Do you see the attorney, Mr. Drexler, here?

7 A Yes, I do.

8 Q Can you indicate which man that is, please?

9 A Yes. The gentleman sitting between the benches, in front
10 of the benches.

11 MR. ROHRIS: Could we have Mr. Drexler stand
12 up and be identified by the Court?

13 BY MR. FISCH:

14 Q Was there a conversation at that time between yourself
15 and your brother-in-law and Mr. Drexler all in your office?

16 A Yes.

17 Q And in the presence of each other?

18 A Yes.

19 Q And what was the conversation? Would you relate it to the
20 best of your ability to the Court, please?

21 A Yes. The conversation was opened by Dr. Peterson informing
22 me that Judge Brand had issued an order dissolving the
23 trust and ordering that all assets be turned back to Dr.
24 Peterson. It was necessary that his total net worth be
25 determined. They were to see his accountant that evening

1 to set up the total net worth.

2 And Mr. Drexler then subsequently displayed
3 an order. I saw Judge Brand's signature on it. He
4 interpreted a few things from it.

5 THE COURT: What did he say?

6 MR. FISCH: Could I just offer the exhibit,
7 Your Honor, please?

8 Would you mark that as Defendant Halverson's
9 Exhibits 1, 2 and 3.

10 (Defendant Halverson's Exhibits 1,
11 2 & 3 marked for identification.)

12 BY MR. FISCH:

13 Q I will show you, Mr. Halverson, Halverson's Exhibits 1,
14 2 and 3. Will you look at them, please?

15 A Yes.

16 Q Will you tell me what they are? Just read from the top
17 what are they?

18 A Well, they are Notice of Filing Findings of Fact,
19 Conclusions of Law and Order for Judgment and Notice of
20 Hearing.

21 Q All right. That is No. 1. What is No. 2?

22 A That is an amendment to Judgment and Decree.

23 Q What is No. 3?

24 A The last one?

25 Q Yes.

1 A That is entitled Order, is what it says.

2 Q All right. Now, you look at these. On the 8th day
3 of December when they came, at that conversation, had you
4 received any of these exhibits, 1, 2 and 3?

5 A None of them.

6 Q When did you get these exhibits, 1, 2 and 3?

7 A Exhibits 1 and 2 I received either on the 10th or 11th.

8 Q How?

9 A From a sheriff in Washington County.

10 Q Yes. That was two or three days after?

11 A Yes.

12 Q When did you get Exhibit 3?

13 A Well, it is a few days ago.

14 Q From the sheriff, again?

15 A No. This was mailed.

16 Q You got this in the mail?

17 A Yes.

18 MR. DALY: At the order of the 7th?

19 MR. FISCH: Yes, the 7th.

20 BY MR. FISCH:

21 Q Now, let me ask you something: At the time of this
22 conversation did either Dr. Peterson or Mr. Drexler
23 have a like or similar duplicate original of 1 and 2
24 with them?

25 A Yes; at least one.

1 about this; also indicating Judge Brand's signature, which
2 I think this was signed by Judge Brand.

3 Q There was his signature that was shown?

4 A Yes.

5 Q I want you to look at the last page of this exhibit
6 and what does this part of the exhibit state on the top?

7 A Memorandum.

8 Q Now, calling your attention to the last paragraph of
9 that Memorandum, particularly this last paragraph under
10 which are the initials "IRB." You look at that and you
11 tell the Court what you remember about being quoted
12 from that paragraph by someone in that conversation. Will
13 you tell the Court, please?

14 A Essentially what it says here: In view of the foregoing
15 the trust in question should be set aside and the trust
16 assets treated as assets of defendant Peterson.

17 Q Yes. That is what was told to you, was it?

18 A Yes.

19 Q Is there anything further in that paragraph?

20 A Yes.

21 Q Further along?

22 A Yes.

23 Q I wish to have you read that.

24 A "Subject to the jurisdiction of the Court."

25 Q Was that told to you in this conversation?

1 A No.

2 Q And you believed that conversation, did you?

3 A Yes, I did.

4 Q And as a result of it, what did you do after you had this
5 conversation with Dr. Peterson and Mr. Drexler? Where
6 did you three go?

7 A We went downtown and subsequently --

8 THE COURT: Downtown where?

9 THE WITNESS: Stillwater.

10 BY MR. FISCH:

11 Q Where did you go in Stillwater?

12 A Mr. Drexler and I went to the Washington Federal Savings
13 and Loan.

14 Q Did Dr. Peterson accompany you?

15 A He did not accompany us to the bank.

16 Q All right. Not to the bank. You mean the Federal Savings
17 and Loan?

18 A Right.

19 Q What did you do after you arrived there?

20 A We withdrew the money.

21 THE COURT: Who withdrew?

22 THE WITNESS: Well, I withdrew it, yes.

23 BY MR. FISCH:

24 Q You withdrew the money?

25 A Yes.

1 Q And was there a conversation with Mr. Drexler and
2 yourself there?

3 A Yes, there was.

4 Q And when you withdrew the money what did the Federal
5 Savings and Loan people do?

6 A They wrote a check.

7 Q They issued you a check?

8 A Yes.

9 Q And was it payable to who?

10 A Dr. Peterson, upon Mr. Drexler's recommendation.

11 Q And not to you as trustee?

12 A Not to me, no.

13 MR. FISCH: Would you mark that for me, please?

14 (Defendant Halverson's Exhibit
15 4 marked for identification.)

16 THE COURT: At the time that this money
17 was withdrawn, did you, or did Mr. Drexler in your
18 presence, exhibit any court order to anybody at the
19 bank, to any officer or any official?

20 THE WITNESS: No.

21 BY MR. FISCH:

22 Q I will show you, Mr. Halverson, Halverson's Exhibit 4.
23 You look at it, if you please. Tell me what that is?

24 A This is a photostatic copy of the bank's records of the
25 trust fund.

1 Q Of the Federal Savings and Loan's record. Of the
2 account of the funds that you were trustee of with
3 Dr. Peterson?

4 A Yes.

5 Q Is that right?

6 A Yes.

7 Q And turning to the second page of that, will you tell
8 the Court how much, exactly, the check that was withdrawn
9 by Dr. Peterson, by you for Dr. Peterson, in Dr. Peterson's
10 name, on the 8th day of December, 1964, was, how much?

11 A \$8,002.63.

12 Q And that was a check of the Federal Savings and Loan?

13 A Yes.

14 Q Now, was there any conversation between you and Drexler
15 and the people in the bank as to what was to be done?

16 THE COURT: Is this being offered?

17 MR. FISCH: Yes. All of these are being
18 offered.

19 MR. DIGERT: No objection.

20 MR. FISCH: So the Court will have before it
21 all that we have.

22 THE COURT: Excuse me. Mr. Daly --

23 MR. DALY: I want the record to note an
24 objection upon the ground that it is irrelevant,
25 immaterial and incompetent, and upon the further ground

1 that the Court is without jurisdiction to hear this matter

2 THE COURT: If those are the grounds, overruled.

3 Received.

4 (Defendant Halverson's Exhibits

5 1, 2, 3 and 4 received in
6 evidence.)

7 BY MR. FISCH:

8 Q Was there some conversation about the check itself?

9 A Yes.

10 Q Will you relate it and who said what, and who answered
11 and so on?

12 A To begin with, Mr. Drexler wanted a cashier's check.

13 Q Rather than the check?

14 THE COURT: State what he said. Did he say,
15 "I want a cashier's check."

16 THE WITNESS: Yes.

17 THE COURT: To whom did he say that?

18 THE WITNESS: To me, and the girl that was
19 at the bank.

20 BY MR. FISCH:

21 Q To the girl in the Federal Savings and Loan, is that
22 correct?

23 A Yes.

24 MR. DALY: Excuse me. I want the record to
25 note an objection on the ground that this Court has no

1 jurisdiction over these funds or over the disposition
2 of them upon the ground that no writ of attachment was
3 ever served with the required bond;

4 Upon the further ground that no garnishment
5 was ever served on this man or anybody else;

6 Upon the further ground --

7 THE COURT: Garnishment served upon whom?

8 MR. DALY: On Mr. Halverson or the bank.

9 Upon the further ground, there is no
10 injunction pursuant to statute with the required bond
11 ever served upon this man or any bank, upon this witness;

12 Upon the further ground that no written order
13 was ever served on Paul Halverson not to dissipate
14 these funds;

15 And upon the further ground that the nature
16 and extent and location of these funds at this time is
17 immaterial.

18 THE COURT: Overruled.

19 BY MR. FISCH:

20 Q Now, Mr. Halverson, going back to the Federal Savings and
21 Loan -- what is the real name of the company?

22 A Washington Federal Savings and Loan.

23 Q Washington Federal Savings and Loan. There is a young
24 lady there preparing a check for Dr. Palmer Peterson
25 and Mr. Drexler and yourself?

1 A Yes.

2 Q And there is a conversation relative to this check. What
3 did anybody there, the girl, yourself and Mr. Drexler
4 say? Who said it, and to the best of your ability, relat
5 it?

6 A Mr. Drexler asked how the money would be paid, and said he
7 should have a cashier's check because the court would
8 accept only a cashier's check.

9 Q What did the girl say?

10 A Well, the girl said it would cost considerable money to
11 have a cashier's check for \$6,000, and explained to Mr.
12 Drexler that obviously their check was good and there
13 would be no question about it.

14 Q Then what was said?

15 A Well, Mr. Drexler agreed to take the check directly
16 from Washington Federal Savings and Loan.

17 Q Did he take that check?

18 A Yes, he did.

19 Q And he left with that check?

20 A Yes.

21 Q And you have never seen it again?

22 A No, haven't.

23 Q All right. What time were you at the Washington Federal
24 Savings and Loan?

25 A Between 10:00 and 11:00, somewhere in there.

1 Q How did you get back to school?
2 A They gave me a ride back.
3 Q Did you see Dr. Peterson after you left the Washington
4 Savings and Loan?
5 A Yes. He was waiting in the car.
6 Q Outside?
7 A Outside.
8 Q Of the Building and Loan?
9 A Yes.
10 Q In Stillwater?
11 A Yes.
12 Q And you were taken back to the school?
13 A Yes.
14 Q Did you then later that day see Dr. Peterson, your
15 brother-in-law, and Mr. Drexler again?
16 A Yes.
17 Q Where?
18 A At my house. They came to the house. I had just returned.
19 Q What time?
20 A This was probably 4:30.
21 Q In the afternoon of December 30th?
22 A Yes. I had just returned.
23 Q 1964?
24 A Yes.
25 Q And both of them came into the house?

1 A Well, I talked with them outside.

2 Q You met them outside?

3 A I was just outside. I just returned.

4 Q From the school?

5 A Yes.

6 Q From your day's work at school?

7 A Yes.

8 Q And was there a conversation there at that time?

9 A Yes.

10 Q What was the conversation, what did each party say, and
11 the answer, to the best of your ability, please?

12 A I think Dr. Peterson said that they had forgotten about
13 the securities that morning when they were out.

14 Q Now, by the securities, these were the ones that were
15 in this trust?

16 A That is correct.

17 Q You never had them in your possession?

18 A No.

19 Q They were in whose possession, so far as you know?

20 A The firm of Woodard-Elwood.

21 Q The stock and bond people?

22 A Yes.

23 Q And you never had them, never had control of them, never
24 had them in your possession?

25 A No.

1 Q All right. All you know was what someone had told you
2 about that?
3 A That is correct.
4 Q All right. What did they say about those?
5 A They had forgotten to bring them in the morning.
6 Q Yes. Who said this now?
7 A Dr. Peterson introduced it as such.
8 Q Then what?
9 A And then Mr. Drexler said they had to be signed.
10 Q By whom?
11 A By me.
12 Q And did you sign them then?
13 A Yes.
14 Q And they were all signed. Then after you signed them,
15 who took them?
16 THE COURT: Excuse me. Who had physical
17 possession of them when Dr. Peterson and Mr. Drexler
18 met you at the house?
19 THE WITNESS: Mr. Drexler.
20 THE COURT: Mr. Drexler?
21 THE WITNESS: Yes.
22 THE COURT: Did he indicate to you where he had
23 obtained them?
24 THE WITNESS: Yes.
25 THE COURT: What did Mr. Drexler say?

THE WITNESS: From Woodard-Elwood.

BY MR. FISCH:

Q Then they had you sign them?

A Yes.

Q And who took them?

A Drexler.

Q And then did they leave?

A Yes. Well, I might say that Mr. Drexler and I went in the house to sign these. Dr. Peterson went over to the school to see his sister, Mrs. Halverson. And subsequently then I took Mr. Drexler over to the school and he rejoined Dr. Peterson and they left.

Q And Mrs. Halverson, your wife, is his sister?

A Yes.

Q She evidently teaches school, too?

A Yes; at the elementary school.

Q I see. Now, did you ascertain --

(Defendant Halverson's Exhibit 5
marked for identification.)

Q After this 8th day of December, 1964, did you contact Woodard-Elwood and talk to -- who did you talk to?

A Mr. Haverstock.

THE COURT: When was this?

THE WITNESS: I think the date is on there,
I believe.

1 BY MR. FISCH:

2 Q I will show you this exhibit. Is this the note you
3 made from the conversation with Woodard-Elwood?

4 A Yes. On December 6.

5 Q With Mr. Haverstock?

6 A Yes.

7 Q And that was on December 8, 1964?

8 A Yes.

9 THE COURT: This was on the same day?

10 THE WITNESS: No, no. This was later. This
11 should be January 6.

12 BY MR. FISCH:

13 Q 1965?

14 A '65, yes.

15 Q You called and got this?

16 A I called Mr. Haverstock.

17 Q On January 6 you telephoned Mr. Haverstock?

18 A Yes.

19 Q January 6, 1965?

20 A Right.

21 THE COURT: What did you talk to him about?

22 THE WITNESS: I asked him for a listing of the
23 stocks that were turned over to Drexler and Peterson.

24 MR. RORRIS: May we interject. Let the record
25 show Mr. Haverstock is in the courtroom.

1 THE COURT: I appreciate that. I merely
2 want to know what you asked him for.

3 THE WITNESS: I asked him for the numbers
4 of the stocks and their value as of December 8, the day
5 they were picked up.

6 BY MR. FISCH:

7 Q Did he give you that over the phone?

8 A Yes, he did.

9 Q And you copied them down?

10 A Yes.

11 Q And this is what you copied and took down?

12 A Yes.

13 Q And as the value that Mr. Haverstock told you those shares
14 were as of December 8, is that what he gave you?

15 A The day they were removed.

16 Q Was how much money?

17 A \$27,144.62.

18 Q And this consisted of the following stocks and the value?

19 A Yes.

20 Q Would you read them, please?

21 THE COURT: Well, they will speak for themselves.
22 Are you offering them?

23 MR. FISCH: Yes. I offer it in evidence.

24 THE COURT: Same objection, Mr. Daly, will
25 apply to all of these.

1 MR. DYGERT: No objection.

2 THE COURT: Received.

3 (Defendant Halverson's Exhibit 5
4 received in evidence.)

5 (Defendant Halverson's Exhibits
6 and 7 marked for identification.)

7 BY MR. FISCH:

8 Q I will you show you, Mr. Halverson, Halverson's Exhibit
9 7, and ask you what that is -- 6, excuse me.

10 A Trust income since December 10.

11 Q This is written in your own handwriting?

12 A Yes.

13 Q And it is true and accurate and correct?

14 A Yes.

15 Q This is what you have received from and since the 8th
16 day of December?

17 A Yes.

18 Q Of 1964, in this trust; is that right?

19 A That is correct.

20 Q Now, let me show you Halvereon's Exhibit 7, and I will
21 ask you what that is?

22 A Do you want me to read?

23 Q No. What is that?

24 A They are checks and the stock certificate.

25 Q That has been received by you?

1 A Yes.

2 Q As the trustee, from and since the 8th day of December,
3 1964?

4 A Yes.

5 Q And that is the entirety of it?

6 A That is everything.

7 Q Thank you.

8 MR. FISCH: I offer this in evidence.

9 MR. DYGERT: There is no objection, Your Honor,
10 except that I trust we can make some arrangement to have
11 the checks copied, and whatever distribution the Court
12 orders as to the funds, they can be removed from evidence.

13 THE COURT: Received.

14 (Defendant Halverson's Exhibits
15 6 & 7 received in evidence.)

16 BY MR. FISCH:

17 Q Now, Mr. Halverson, let me ask you this: When you were
18 in court here at one time were you told by the Court,
19 Judge Brand, that no more funds were to be dispensed from
20 the fund?

21 A Yes.

22 Q And about when was that?

23 A Oh, I imagine about a year ago, or thereabouts.

24 Q Yes. And no funds were ever dispensed by you from that
25 fund?

1 A None.

2 Q You took only what came in?

3 A That is correct.

4 Q Except when they came and told you that this was done
5 and you could turn it over to them for audit and make
6 the net worth for Dr. Peterson?

7 A Nothing distributed until that time.

8 Q And nothing since?

9 A Nothing since.

10 Q And, Mr. Halverson, have you tried to find or locate
11 your brother-in-law, Dr. Peterson?

12 A Yes, we have.

13 Q And have you been able to locate or find him?

14 A No.

15 Q You have not?

16 A No.

17 MR. FISCH: All right. That is all.

18 MR. DYGERT: May I inquire, Your Honor?

19 THE COURT: You may.

20 CROSS-EXAMINATION

21 BY MR. DYGERT:

22 Q In the morning of December 8 when Mr. Drexler and Dr.
23 Peterson were out there, was there any mention made
24 of the stock certificates at that time?

25 A None.

1 Q Did you execute any authorization to Woodard-Elwood
2 Company or anyone else authorizing them to turn over
3 these certificates to Dr. Peterson and Mr. Drexler or
4 to anyone else?

5 A No.

6 Q Did you do anything with reference to the stock certificates
7 until Mr. Drexler arrived that afternoon and had you
8 endorse them?

9 A No.

10 Q Have you had any contact with Mr. Drexler since that
11 time?

12 A Yes.

13 Q What was the nature of that contact?

14 A I called him relative to a meeting that was called,
15 I think the 16th, which I was advised it was not
16 necessary.

17 Q That was a hearing before this Court?

18 A Yes.

19 Q And did he advise you that it was not necessary for you
20 to be present?

21 A Didn't think it was necessary; that is right.

22 Q Pardon?

23 A It would not be necessary.

24 Q I see.

25 A And subsequently, on the 31st, and offered that he act

1 as attorney and sent out papers for me to sign giving
2 him power of attorney.

3 Q Did you sign those papers?

4 A Yes.

5 Q And returned them to him by mail?

6 A Yes.

7 THE COURT: Excuse me. Just one moment.
8 When did he send papers out to you?

9 THE WITNESS: The date?

10 THE COURT: Approximately.

11 THE WITNESS: It would be a few days before
12 the holidays. I was still at Stillwater, before I
13 went.

14 THE COURT: Before the Christmas holidays?

15 THE WITNESS: Yes, before shortly.

16 THE COURT: These were papers giving him a
17 power of attorney?

18 THE WITNESS: That is correct.

19 THE COURT: Power of attorney to do what?

20 THE WITNESS: To represent me on the 31st, or
21 Mr. Daly. They were made out for one for Mr. Draxler
22 and one for Mr. Daly.

23 THE COURT: To represent you as an attorney
24 or to represent you personally?

25 THE WITNESS: Well, me, personally. Mr. Daly

1 also advised me it was not necessary to be here the 31st.

2 BY MR. DYGERT:

3 Q I take it, Mr. Halverson, that at the time these papers
4 were sent to you, you had already had notice of the
5 hearing on the 31st?

6 A Yes.

7 Q And you had made inquiry of someone as to whether it was
8 necessary for you to be there?

9 A Yes.

10 Q And that was Mr. Drexler?

11 A Yes.

12 MR. DALY: Also me.

13 THE WITNESS: Also Mr. Daly.

14 MR. DALY: You called both of them.

15 THE WITNESS: Yes.

16 BY MR. DYGERT:

17 Q How did you happen to get ahold of Mr. Daly?

18 A I don't know whether it was his office or his home.

19 Q I mean, why was it that you picked his name out to call?

20 A Well, I had been told Mr. Daly was representing Peterson.

21 Q I see. Who told you that?

22 A Well, Mr. Drexler or Mr. Peterson.

23 Q Back on December 8th?

24 A Yes. Because I questioned Mr. Drexler, whom I hadn't
25 met, and it was explained to me he was acting for Mr. Daly.

- 1 Q Was that in the morning or afternoon?
- 2 A Morning.
- 3 Q Did you have any further contact with Mr. Drexler or Mr.
- 4 Daly?
- 5 A I think I talked with Mr. Daly, I think, the evening
- 6 before, it would be the 3rd of January.
- 7 Q That was in reference to a hearing that was coming up?
- 8 A On the 4th, yes.
- 9 Q And what was that conversation?
- 10 A I inquired of Mr. Daly, what the hearing was going to be
- 11 about.
- 12 Q You had then been subpoenaed for that hearing, had you
- 13 not?
- 14 A For the 4th? Yes, I think it was mailed. Mr. Rorris
- 15 mailed out a subpoena for me.
- 16 Q And what was the substance of your conversation at that
- 17 time?
- 18 A It was very short. Mr. Daly assured me there was nothing
- 19 to be concerned about.
- 20 Q When the hearing on January 4 occurred, I believe you were
- 21 present, were you not?
- 22 A Yes.
- 23 Q And at that time Mr. Daly stated that he was not
- 24 representing you, do you recall that?
- 25 A Yes.

1 Q Do you recall when it was that he ceased to represent
2 you in the matter?

3 MR. DALY: When he recalls what?

4 THE COURT: Well, on January 4, Mr. Daly said
5 he was not representing you.

6 THE WITNESS: Yes, that is correct.

7 THE COURT: Now, prior to January 4, did you
8 have any contact with Mr. Daly or with Mr. Drexler
9 in which either advised you that this power of attorney
10 that you executed and any other authorization you gave
11 them to represent you was no longer to be recognized or
12 no longer effective?

13 THE WITNESS: Would you restate that, please?

14 THE COURT: You have indicated that you executed
15 a power of attorney to Mr. Drexler.

16 THE WITNESS: Yes.

17 THE COURT: You have also testified that
18 you had contact with Mr. Daly and Mr. Drexler regarding
19 appearance in court by you on December 15 and December 31
20 and January 4. They advised you it was not necessary
21 for you to appear on the 15th and 31st.

22 THE WITNESS: That is correct.

23 THE COURT: Or either or both advised you that.

24 THE WITNESS: Right.

25 THE COURT: Now, prior to January 4, did Mr.

1 Drexler advise you that he was not going to act on your
2 behalf?

3 THE WITNESS: No.

4 THE COURT: In connection with any power of
5 attorney that you gave him?

6 THE WITNESS: Well, this was to cover the --
7 that it wouldn't be necessary for me to be here on the
8 31st because they would take care of it.

9 THE COURT: Who said that?

10 THE WITNESS: Mr. Drexler.

11 THE COURT: He said who would take care of it?

12 THE WITNESS: Well, Mr. Drexler and Mr. Daly.

13 THE COURT: Would take care of what?

14 THE WITNESS: My appearance.

15 THE COURT: On the 31st?

16 THE WITNESS: On the 31st.

17 THE COURT: All right.

18 MR. FISCH: I think your testimony was only
19 for the 31st.

20 THE WITNESS: Yes.

21 MR. FISCH: That is all it covered, and that
22 ceased after the 31st.

23 THE WITNESS: As far as I am concerned, yes.

24 MR. FISCH: That was your understanding?

25 THE WITNESS: Yes.

1 BY MR. DYCERT:

2 Q Now, did you at any time ask Mr. Drexler for these assets
3 to be returned to you?

4 A Yes.

5 Q When did that occur?

6 A I can't tell you the day.

7 THE COURT: Approximately.

8 THE WITNESS: Well --

9 THE COURT: Was it after the January 4th hearing?

10 THE WITNESS: I really can't say. It would be
11 in that neighborhood.

12 THE COURT: Where did you see Mr. Drexler?

13 THE WITNESS: I talked to him on the telephone.

14 THE COURT: What did you say and what did he
15 say?

16 THE WITNESS: Well, I saw how things were, I
17 think it was after the 4th, that they be returned. This
18 was the definite statement.

19 THE COURT: Yes. What did Mr. Drexler say?

20 THE WITNESS: Well, he didn't know where they
21 were.

22 THE COURT: He said he did not know where they
23 were?

24 THE WITNESS: That is right.

25 THE COURT: You asked him to return what?

1 THE WITNESS: The total trust assets.

2 BY MR. DYGERT:

3 Q Have you received any information as to the whereabouts
4 of Dr. Peterson?

5 A None whatsoever.

6 Q Have you made any demand of anyone else besides Mr.
7 Drexler in reference to the return of these assets?

8 A I think the day we left the court here on the 7th I
9 suggested to Mr. Daly they better be -- they should be
10 returned, to convey it to his client.

11 MR. DYGERT: No further questions.

12 MR. FISCH: And to date you have not received
13 the assets?

14 THE WITNESS: That is correct.

15 MR. FISCH: And you have kept these that have
16 come to you by mail?

17 THE WITNESS: By mail, yes.

18 THE COURT: That you turned into the court?

19 THE WITNESS: Yes.

20 MR. FISCH: That is all that is in your possession?

21 THE WITNESS: That is all that I have.

22 MR. DALY: Let the record show that I am
23 continuing a special appearance and I want to ask this
24 witness a few questions.

25 BY MR. DALY:

1 Q Now, Mr. Halverson, you are a party to this lawsuit?

2 THE COURT: Do I understand you are appearing
3 specially, but you are nevertheless inquiring of this
4 witness.

5 MR. DALY: Yes.

6 MR. FISCH: I don't know how you can do that.

7 THE COURT: Let the record speak for itself
8 in that regard.

9 MR. DALY: It is satisfactory with me, Your
10 Honor.

11 BY MR. DALY:

12 Q Mr. Halverson, you are a party to this lawsuit?

13 MR. FISCH: Object to that. He is not a
14 party to this lawsuit. He is just a witness and the
15 trustee, but not a party to this.

16 THE COURT: He is a named defendant in the
17 case.

18 BY MR. DALY:

19 Q You are a named defendant in this case?

20 A Yes.

21 Q Now, you are not now married to Faye Peterson, are you?

22 A No.

23 Q And you never have been?

24 A No.

25 Q And you haven't had no contractual relation with her of

1 any kind?

2 A No.

3 Q She is a completely free and independent person from you?

4 A Yes.

5 Q Now, in this proceeding have you ever been served with
6 a garnishment?

7 A No.

8 Q You do know what a garnishment looks like?

9 A No, I have never seen one.

10 Q Well, you have never been served with a paper marked
11 "Garnishment," is that right?

12 A Right.

13 Q And during this proceeding have you ever been served
14 with a paper marked "Injunction"?

15 A No.

16 Q Or have you ever been served with a bond, together with
17 a paper marked "Injunction"?

18 A No.

19 Q Have you during this proceeding ever been served with
20 a paper marked "Writ of Attachment"?

21 A No.

22 Q Or a bond together with a writ of attachment?

23 A No.

24 Q And, as I understand it, when you turned these funds
25 back to Dr. Palmer Peterson, you never had been served

1 with any written order of any kind; is that right?

2 A That is right.

3 Q Now, you indicated you had some conversations with me
4 with reference to these matters from time to time?

5 A Yes.

6 Q You at no time have ever retained me to represent you
7 for any purpose?

8 A No, not other than what was incidental to what was going
9 on.

10 Q You called me over the phone for advice with reference
11 to your status as a witness on an occasion; is that
12 right?

13 A Yes.

14 Q Now, with reference to any conversation we may have had
15 with reference to any appearance which you were to make,
16 you asked me if it was necessary for you to appear; is
17 that right?

18 A That is right.

19 Q And I inquired of you if you had been served with a
20 subpoena; is that right?

21 A Yes.

22 Q And I inquired further with you if you had been served
23 with a court order of any kind; is that right?

24 A Yes.

25 Q And based upon that information, I told you that you were

1 not required to appear; isn't that correct?

2 A Yes.

3 Q And that you need not appear at any of these hearings;
4 is that right?

5 A Yes.

6 Q And I believe you indicated you had a conversation with
7 me before the hearing on the 4th of January.

8 A Yes.

9 Q And you related to me at that time you had been served
10 with an order to appear?

11 A Yes.

12 Q And, as a matter of fact, I advised you to appear and
13 tell the truth, did I not?

14 A Yes.

15 Q And you have never retained Mr. Drexler as such for any
16 purpose?

17 A No.

18 Q And you mentioned a power of attorney.

19 A Yes.

20 Q Do you have copies of these powers of attorney?

21 A I do not.

22 Q And you never sent any power of attorney to me?

23 A Mr. Drexler sent it out with your name on it. So I
24 signed one for him and one for you.

25 Q But in any event, you never sent any power of attorney to

1 me.

2 A Not to you directly, no, to Mr. Drexler.

3 Q Nor have you and I ever had any conversation with
4 reference to any power of attorney?

5 A That is right.

6 MR. DALY: I believe that is all.

7 MR. FISCH: Mr. Halverson, let me ask you
8 this question: There was some reason why you called
9 about the appearance on the 31st. Was there some
10 illness in the family?

11 THE WITNESS: My mother was ill and I felt
12 that I wanted to remain in Wisconsin until she was
13 somewhat better.

14 MR. FISCH: And you were there and spent your
15 time with your mother?

16 THE WITNESS: Yes.

17 MR. FISCH: All right. Anything further, Your
18 Honor?

19 THE COURT: I have nothing further.

20 You may step down, Mr. Halverson.

21 (Witness excused.)

22 * * *

23 MR. DYGERT: I think we better call Mr.
24 Drexler.

25 MR. DALY: Are you calling Mr. Drexler or are

1 you not?

2 MR. DYGERT: I am calling Mr. Drexler.

3 If the Court please, I take it that the record
4 now shows the fact that Mr. Drexler may have an adverse
5 interest in here and I may be permitted a certain
6 latitude in cross-examination.

7 THE COURT: Well, you may examine. I will
8 rule as we go along.

9 WILLIAM E. DREXLER

10 being first duly sworn, was examined and testified as
11 follows:

12 CROSS-EXAMINATION

13 BY MR. DYGERT:

14 Q Your name is William E. Drexler?

15 A That is correct.

16 Q You are an attorney admitted to practice in the State
17 of Minnesota?

18 A That is correct.

19 Q Where do you practice?

20 A St. Paul, Minnesota.

21 Q What address?

22 A 372 St. Peter Street.

23 Q Are you a member of any organization with other
24 attorneys at that address?

25 A I associate with other attorneys, yes.

1 Q Who are they?

2 A John J. Flanagan, John K. Scanlan, Aurelio P. Nardi and
3 William J. McGraw.

4 Q Where do you reside?

5 A 1907 Jefferson, St. Paul, Minnesota.

6 Q Are you now or have you in the past represented Defendant
7 Palmer A. Peterson?

8 A Yes.

9 Q Do you now represent him?

10 A Yes.

11 Q And when did your representation of Dr. Peterson start?

12 A I would have to --

13 MR. DALY: I am going to object to this
14 upon the ground it is privileged.

15 I want to make a record here at this point if
16 I may, Your Honor.

17 THE COURT: You may.

18 MR. DALY: Let the record show that M.S.A.
19 595.02 provides, in Subdivision 2, that an attorney
20 cannot, without consent of his client, be examined
21 as to any communication made by the client to him or
22 his advice given thereto in the course of professional
23 duty, nor can any employee of such attorney be examined
24 as to such communication or advice without the client's
25 consent; and upon the ground that even the time in which

1 Dr. Peterson contacted William Drexler for professional
2 advice in the capacity of an attorney is privileged. It
3 involves communication.

4 And upon the further ground that the witness,
5 if it were not for the attorney-client relationship,
6 would not even be here.

7 THE COURT: Well, with respect to the attorney-
8 client privilege, the fact of the attorney-client
9 relationship does not go to conversations or
10 communications between the attorney and the client
11 until there is a relationship, and when it commenced
12 does not violate the privilege statute.

13 MR. DALY: We take the position that it does.

14 THE COURT: I know the position you are taking.
15 But I am not agreeing with you. So I am directing this
16 witness to answer when he became attorney for Palmer
17 Peterson.

18 MR. DALY: Well, now, there is a --

19 THE COURT: Obviously, communications he had
20 between Dr. Peterson and himself before he became
21 attorney would not be privileged, would they?

22 MR. DALY: Before he --

23 THE COURT: Before he became his attorney, would
24 they?

25 MR. DALY: No, they would not.

1 THE COURT: How do you determine whether or
2 not communications between Dr. Drexler and Dr. Peterson
3 are privileged?

4 You determine it only when you know when the
5 attorney relationship came into being.

6 So I am directing you, Mr. Drexler, to
7 answer when you became his attorney.

8 THE WITNESS: I became his attorney when he
9 received a speeding ticket in the Village of Edina,
10 which I would guess would be approximately four or five
11 months ago.

12 THE COURT: All right.

13 BY MR. DYGERT:

14 Q You represented him in connection with that speeding
15 ticket?

16 A Yes.

17 Q Did you represent him at that time in reference to any
18 other matters?

19 A No.

20 Q Was that matter concluded with the hearing on the speeding
21 ticket?

22 THE COURT: Was the attorney-client relationship
23 concluded?

24 THE WITNESS: No.

25 BY MR. DYGERT:

1 Q Did it continue thereafter for some other purpose?

2 A For the same purpose.

3 Q That matter is still pending?

4 A Correct.

5 Q All right. Now, have you represented Dr. Peterson
6 in connection with any other matters other than the
7 matter of the speeding ticket?

8 MR. DALY: Objected to as being immaterial
9 and privileged.

10 THE COURT: Sustained.

11 BY MR. DYGERT:

12 Q Are you attorney for Dr. Peterson in connection with
13 the defense of this particular lawsuit that is now
14 before the Court?

15 MR. DALY: That is objected to as being
16 immaterial and privileged.

17 THE COURT: Well, the question is, are you
18 here in court at the present time as the attorney for
19 Dr. Peterson in connection with this hearing? I think
20 that is what he is inquiring about. Or is Mr. Daly
21 representing Dr. Peterson?

22 MR. DALY: I don't think there is any
23 question I am representing him in connection with this
24 hearing.

25 MR. DYGERT: Lets let the witness testify.

1 THE WITNESS: Would you ask it again, please?
2 I don't understand.

3 THE COURT: Are you representing Dr. Peterson
4 in connection with the hearing?

5 THE WITNESS: No.

6 BY MR. DYGERT:

7 Q Are you representing Dr. Peterson in connection with
8 the defense of this case in other aspects, other than
9 this hearing?

10 MR. DALY: Objected to upon the ground it is
11 privileged.

12 THE COURT: Sustained.

13 That is immaterial, also, because we are
14 dealing with this particular hearing.

15 I think we can save time, Mr. Dygert, if
16 the question goes not to his conversations with Dr.
17 Peterson subsequent to my order of December 4, but what
18 he did with respect to the trust assets and what he
19 did with respect to Mr. Halverson, what he said to him
20 and so forth.

21 BY MR. DYGERT:

22 Q Mr. Drexler, you have been here in this court during
23 the testimony of Mr. Halverson and Mr. Haverstock?

24 A That is correct.

25 Q And you heard some testimony in reference to your

1 activities on December 8, 1964?

2 A That is correct.

3 Q Now, I wish to do you the courtesy of permitting you to
4 tell the Court, in a narrative form, what occurred that
5 day.

6 MR. DALY: I am going to object to any
7 narration here. I think we should proceed in the proper
8 manner.

9 THE COURT: I think before we get into this
10 phase, we will recess.

11 We will recess until 2:00 o'clock this
12 afternoon.

13 (Whereupon the Court recessed at 11:55 o'clock
14 A.M. until 2:00 o'clock P.M. the same day.)

15 AFTERNOON SESSION

16 2:00 o'clock PM

17 THE COURT: Mr. Daly, and Mr. Fisch, Mr.
18 Dygert has informed me he has had scheduled a probate
19 court matter for sometime before this hearing for 3:00
20 o'clock this afternoon, in which he can't continue it.
21 So it would be necessary for us to recess if we haven't
22 completed everything by then at 3:00 o'clock.

23 MR. DALY: I am sure we will have completed it.
24 I don't have any desire to drag it out any further than
25 it has been.

1 THE COURT: All right.

2 WILLIAM E. DREXLER

3 having been previously duly sworn, resumed the stand
4 and testified further as follows:

5 CROSS-EXAMINATION (Continued)

6 BY MR. DYGERT:

7 Q What occurred on December 8th?

8 MR. DALY: I am going to object to that as
9 being too indefinite and vague.

10 MR. DYGERT: I thought as a courtesy to counsel
11 I would ask him a general question, Your Honor, but
12 if the objection is made, we will proceed.

13 BY MR. DYGERT:

14 Q Mr. Drexler, were you present in the courtroom when
15 Mr. Halverson testified?

16 A Today?

17 Q Yes.

18 A Yes, I was.

19 Q And you were also present when Mr. Haverstock testified?

20 A Yes.

21 Q Did you go out to the home of Mr. Halverson at
22 approximately 10:00 or 11:00 o'clock in the morning of
23 December 8, 1964?

24 A No.

25 Q You did not?

- 1 A No.
- 2 Q Did you see Mr. Halverson that morning?
- 3 A No.
- 4 Q You did not see him that morning?
- 5 A Not that morning.
- 6 Q Did you see him on some morning about that time?
- 7 A No.
- 8 Q Did you see him on that day?
- 9 A Yes.
- 10 Q And when was that?
- 11 A Afternoon.
- 12 Q About what time?
- 13 A 12:15, 12:30.
- 14 Q That was the first time you had seen him that day?
- 15 A Yes.
- 16 Q Did you have Dr. Peterson with you?
- 17 A Pardon me?
- 18 Q Did you have Dr. Peterson with you?
- 19 A Yes.
- 20 Q Was there anyone else with you?
- 21 A No.
- 22 Q Where did this meeting occur?
- 23 A At the high school.
- 24 Q And did you have with you a copy of the Court's Findings
- 25 of Fact, Conclusions of Law and Order for Judgment

1 dated December 7, 1964?

2 A No.

3 Q Dated December 4, 1964?

4 A No.

5 Q Did you have any document with you?

6 A My briefcase.

7 Q Did you have a document that was related to this case
8 with you?

9 A A list of the stocks.

10 Q Did you have the Court's Amended Findings of Fact,
11 Conclusions of Law and Order for Judgment?

12 A I didn't, no.

13 Q Did Dr. Peterson have it?

14 A I don't believe so.

15 Q Did you have a conversation with Mr. Halverson?

16 A Yes, I did.

17 Q Will you state what was said and by whom?

18 A Well, when we first got there we met outside and Mr. --
19 oh, pardon me. You want at the school?

20 Q I want the first meeting.

21 A All right. We met at the school at about 12:15, 12:30,
22 and talked to Mr. Halverson at that time. He invited
23 us into his office and at that time Dr. Peterson said
24 that the trust had been broken, dissolved, and that he
25 was out there to pick up the Savings book at the

1 Savings and Loan Association. And at that point Mr.
2 Halverson said, "Well, let's get it. I have got it at
3 home. Let's go down to the bank." Which we did.

4 Q Did Dr. Peterson, in your presence, show Mr. Halverson
5 any document?

6 A No.

7 Q And had you at that time seen the Amended Findings of
8 Fact, Conclusions of Law and Order for Judgment dated
9 December 4, 1964?

10 A No, I hadn't. And I don't believe that Dr. Peterson
11 had either because I don't think he received a copy of
12 that until a date later.

13 Q Well, now, if I inform you that the file reflects that
14 he was served with a notice of filing of this
15 particular order on December 7, 1964, your memory might
16 be corrected on that?

17 A I looked in the file and I couldn't find it over the
18 lunch hour, and I don't believe that at that time he had
19 it. This is my own opinion, but I could be wrong.

20 Q Is it your testimony that the fact this order had been
21 issued was completely unknown to you at that point?

22 A Absolutely.

23 Q You didn't know that any Amended Findings of Fact,
24 Conclusions of Law and Order for Judgment had been issued?

25 A I had never seen one. I had been told by Dr. Peterson.

1 Q And where did he get that information?

2 MR. DALY: Objected to as privileged.

3 THE COURT: Sustained.

4 MR. DYGERT: I will withdraw the question.

5 BY MR. DYGERT:

6 Q He knew that this order had been issued, obviously?

7 MR. DALY: Objected to as privileged information.

8 THE COURT: Sustained.

9 MR. DYGERT: All right.

10 THE COURT: Sustained on other grounds.

11 MR. DYGERT: I believe it is argumentative, too,

12 Your Honor.

13 BY MR. DYGERT:

14 Q Mr. Drexler, Defendant Halverson's Exhibit No. 1,
15 introduced this morning, is a notice of filing
16 Findings of Fact, Conclusions of Law and Order for
17 Judgment and Notice of Hearing, which attaches a copy
18 of the referred to Amended Findings of Fact, Conclusions
19 of Law and Order for Judgment. Have you seen a document
20 similar to that?

21 A I saw one this noon here in court. And I don't believe
22 I have ever seen this prior to this day, though.

23 Q And is it your testimony, Mr. Drexler, that prior to
24 today you never seen a copy of the Amended Findings of
25 Fact, Conclusions of Law and Order for Judgment attached

1 to that notice?

2 A I will correct myself. I believe I did see a copy of
3 this in Mr. Daly's office, but I wouldn't know when that
4 was.

5 Q On or prior to December 8?

6 A No. That was quite a bit after December 8. In fact,
7 possibly a week ago.

8 Q Did you make the statement to Mr. Halverson that the
9 trust had been dissolved?

10 A Did I?

11 Q Or words to that effect?

12 A Did I?

13 Q Yes.

14 A No, I didn't.

15 Q Did you make any statement in words or substance to the
16 effect that he should turn over the bank book to Dr.
17 Peterson?

18 A I will tell you what I did say: I asked if he had been
19 served with a garnishment regarding these funds. I asked
20 if he had been served with attachment or I asked if he
21 had been served with a court order; and he told me, no.
22 And then I said, is there any reason you know of you
23 can't turn these funds over to Dr. Peterson. And he
24 said, no, and that he wanted to get out of handling the
25 trust from here on in because it was a big problem to him.

1 Q And if his testimony was to the effect that he relied
2 on your advice as an attorney --

3 MR. DALY: I am going to object to that as
4 asking this witness to compare the testimony of another
5 witness.

6 MR. DYGERT: Let me finish my question.

7 BY MR. DYGERT:

8 Q Any testimony he may have given to the effect that he
9 relied upon your statement is completely erroneous.
10 then, is that your statement to us?

11 MR. DALY: Objected to upon the ground it is
12 argumentative, calling for --

13 THE COURT: Sustained.

14 Rephrase your question.

15 BY MR. DYGERT:

16 Q Did you advise him to turn over the assets to Dr. Peterson?

17 A After asking him these questions, I said that he should
18 turn them over to Dr. Peterson. I asked if they were
19 his stocks, Dr. Peterson, and he said, yes, he had
20 purchased them with Dr. Peterson's money. And I said,
21 well, then, he wants them and you should turn them over
22 to him.

23 Q I take it your testimony is that you had not seen the
24 Court's order whatsoever?

25 A Absolutely not.

1 Q And you were relying strictly on your client's statement
2 to the effect that the trust had been dissolved; is that
3 correct?

4 A That is correct.

5 Q When was that statement made to you?

6 A Approximately 10:00 o'clock that morning.

7 Q Where?

8 MR. DALY: That is objected to as being
9 immaterial.

10 THE COURT: Sustained.

11 BY MR. DYCERT:

12 Q Now, did you thereafter go to the office of Woodard-
13 Elwood?

14 A Yes.

15 Q And what time did that occur?

16 THE COURT: Excuse me. May I interrupt.

17 There was testimony by Mr. Halverson that
18 the Savings and Loan Association, in which the trust
19 monies were deposited, issued a check. Did you advise
20 the Savings and Loan Association in whose name that
21 check should be placed or should be issued?

22 THE WITNESS: Maybe I should tell the Court
23 what happened regarding this matter. The three of us
24 went down to the Savings and Loan Association. There
25 was, I believe, a 15 minute meter out in front of the

1 Savings and Loan Association. So I asked Dr. Peterson
2 and Mr. Halverson and myself, we were going to go in,
3 going to park the car and go in, and Dr. Peterson said,
4 no, that he wasn't going to go in. I said, why not?
5 And he said he didn't want to put the money in the
6 meter and go in. So he was going to sit out in the car
7 and save the nickle or the dime for the parking meter.
8 I said, all right, I will go in with him. We went in,
9 and Mr. Halverson called the girl over and told her that
10 the trust was dissolved and that he wanted a check issued
11 to that. And at that point I asked her if they could
12 issue a money order for this amount or a cashier's
13 check, pardon me, a cashier's check. And she said
14 she couldn't, but we could take their check and go
15 across the street and get a cashier's check.

16 Then she asked, whose name do you want it made
17 out to? And I believe Mr. Halverson turned to me,
18 and I don't remember what the reply was, but I think
19 it was made out to Halverson and Dr. Peterson, but I
20 am not exactly sure on that, how it was made out.

21 My recollection would be that the check was
22 made out jointly to Halverson and to Dr. Peterson.

23 BY MR. DYGERT:

24 Q Did you take the check?

25 A Yes.

1 Q What did you do with it?

2 A I gave it to Dr. Peterson.

3 Q When?

4 A Right at that time after we walked out.

5 THE COURT: Did Mr. Halverson endorse the
6 check in your presence?

7 THE WITNESS: Your Honor, I can't remember
8 whether it was made out to him and Dr. Peterson or
9 not, but if it was made out to him, he did endorse it
10 at that time. I don't remember exactly what transpired
11 at that point.

12 BY MR. DYGERT:

13 Q Did you inform any representative of the Savings and Loan
14 Association that the trust had been dissolved?

15 A No, I didn't.

16 Q You made no statement to that effect or in substance?

17 A No. Mr. Halverson knew the people at the bank and I
18 stood up in front waiting for him. Then he called me
19 over and said, how do you want to make the check out? And
20 I told him I thought we should have a cashier's check
21 if we could get it, and they said -- she said she didn't
22 have it, and I don't remember just exactly what was
23 decided between the two of us as to how to make the check
24 out. But I think the girl said, well, since that is a
25 trust account, we have to make it out to you, Mr.

1 Halverson. That is just my recollection.

2 THE COURT: Do I understand you made no
3 statement to any employee of the Savings and Loan
4 Association regarding the trust or regarding the
5 disposition of the cash deposited in the trust, the
6 cash deposited in the Savings and Loan Association?

7 THE WITNESS: No.

8 BY MR. DYGERT:

9 Q Following your exit from there where did you go?

10 A We went back into the automobile and took Mr. Halverson
11 back to school, I believe, or back to his house, I am
12 not too sure. I think we dropped him off at school.

13 Q Then where did you go?

14 A We came to Minneapolis.

15 Q Where did you go in Minneapolis?

16 A At this point I think I am going to have to inform you
17 my client has asked me to exert his privilege as to
18 any other events that have happened.

19 Q Is it your testimony you went someplace between the
20 time you arrived back in Minneapolis and the time you
21 arrived at Woodard-Elwood?

22 MR. DALY: That is objected to on the ground
23 it is privileged.

24 MR. DYGERT: I am asking what he did.

25 MR. DALY: And immaterial.

1 BY MR. DYGERT:

2 Q Did you do anything in connection with the trust assets
3 other than as attorney for Dr. Peterson, separate and
4 distinct from the attorney-client relationship?

5 A No, I didn't.

6 Q You went somewhere and did something with that check
7 I take it, Mr. Drexler.

8 A At this point I am to inform you my client has informed
9 me that I am to exert his privilege.

10 Q When did he so inform you?

11 MR. DALY: That is objected to as being
12 immaterial.

13 THE COURT: Sustained.

14 BY MR. DYGERT:

15 Q What time did you arrive back in Minneapolis?

16 MR. DALY: Objected to as immaterial.

17 THE COURT: Sustained.

18 BY MR. DYGERT:

19 Q What time did you arrive at Woodard-Elwood?

20 A Approximately 1:00 o'clock.

21 Q What occurred there?

22 A We met the gentleman that was on the stand today. Was
23 that Haverstock?

24 Q Haverstock.

25 A Haverstock. And Dr. Peterson informed Mr. Haverstock

1 that the trust had been dissolved and that we had come
2 there to pick up the securities that he was holding.

3 Q What did you say to Haverstock?

4 A Well, Haverstock and I talked about fishing and duck
5 hunting.

6 Q What did you say in reference to whether the trust
7 had been dissolved?

8 THE COURT: What did you say to Haverstock
9 about the trust or trust assets?

10 THE WITNESS: I asked Haverstock whether he
11 had been served with a garnishment, and I asked if he
12 had been served with a writ of attachment, and I believe
13 I asked him if he had been served with any order holding
14 the stocks, and if he had any court order requiring him
15 to keep the stocks and bonds, apparently, in his
16 possession. He said, no. I believe I then told him
17 that Dr. Peterson wants these, and that if, as Dr.
18 Peterson said, he is the one that paid for them, I think
19 he is entitled to them.

20 And he said he was going to get a receipt,
21 type up a receipt, and he would give them to us, and
22 he was going to go to lunch. It was 1:00 o'clock or
23 a little after.

24 BY MR. DYGERT:

25 Q Did you tell Mr. Haverstock, in words or in substance,

1 that since there had been no garnishment, no attachment,
2 no court order, that he should turn these securities over
3 to Dr. Peterson?

4 A In substance, I told him that was there any reason that he
5 was holding them, and had he been served with any of
6 these papers, and were they really Dr. Peterson's stocks
7 and bonds, and that Dr. Peterson wants them. And he said
8 he would get them. Dr. Peterson, at this time, was
9 sitting there talking with him quite a bit more than I
10 was.

11 Q In substance, did you tell him that based on inquiry
12 you had made you were of the opinion that Dr. Peterson
13 was entitled to them?

14 A I don't think we got that far. We just inquired about it,
15 and then Dr. Peterson said, can I get them; and will you
16 get them for him?

17 THE COURT: Did you tell Mr. Haverstock that
18 in view of the fact that there was no attachment or
19 garnishment, he should turn them over to Dr. Peterson
20 because Dr. Peterson wanted them? Is that what you told
21 him in substance?

22 THE WITNESS: No. We didn't get that far, Your
23 Honor. I told him that Dr. Peterson wanted them, and
24 Dr. Peterson did most of the talking as far as that goes,
25 and I just sat on the side.

1 THE COURT: Did Mr. Haverstock ask you
2 whether you were of the opinion that he should turn
3 them over to Dr. Peterson?

4 THE WITNESS: No, he didn't ask me that.

5 BY MR. DYGERT:

6 Q Did you discuss with Mr. Haverstock the Court order
7 which was part of the Amended Findings of Fact, Conclusions
8 of Law and Order for Judgment dated December 4, 1964?

9 A I did not, no.

10 Q You didn't mention it to him at all?

11 A I did not, no.

12 Q But Dr. Peterson did?

13 MR. DALY: I am going to object to this as
14 being privileged.

15 MR. DYGERT: This is not --

16 THE COURT: As to what Dr. Peterson said to
17 a third person?

18 MR. DALY: He was asking what Dr. Peterson
19 said. And this witness is incapacitated from testifying
20 to anything that Dr. Peterson said.

21 THE COURT: To third persons?

22 MR. DALY: To anybody. He can't testify as
23 to any conversation that Dr. Peterson related to anybody
24 that has come within his knowledge.

25 THE COURT: I will sustain the objection on

1 other grounds.

2 MR. RORRIS: He can still testify what he
3 heard, though.

4 MR. DALY: Not with reference to anything he
5 heard Dr. Peterson say.

6 THE COURT: Objection will be sustained.

7 You appreciate the fact, gentlemen, that
8 this Court at this juncture is not concerned with
9 the liability of Mr. Drexler as an attorney or his account-
10 ability as an attorney or as an officer of this court
11 with respect to frustrating the orders of this Court.
12 That matter will have to be explored before some other
13 tribunal and before some other agency, if it is to be
14 explored at all, or before the Supreme Court.

15 BY MR. DYGERT:

16 Q Mr. Drexler, who took physical possession of these
17 stock certificates?

18 A Dr. Peterson.

19 Q Did you have them in your possession at that time?

20 A At which time?

21 Q At Woodard-Elwood?

22 A No.

23 THE COURT: Did you have possession of the
24 stock certificates at any time subsequent to their
25 release by Woodard-Elwood?

1 MR. DALY: That is objected to as privileged
2 and immaterial.

3 THE COURT: Overruled.

4 THE WITNESS: I didn't have sole possession
5 of them at any time, probably with Dr. Peterson, either
6 he was carrying them or I was carrying them, but as far
7 as being with them alone --

8 THE COURT: Were they turned over to you by
9 Woodard-Elwood, to you personally?

10 THE WITNESS: No.

11 THE COURT: Did you have physical possession
12 of them?

13 THE WITNESS: No, I didn't. They were given
14 to Dr. Peterson and he signed the receipt for them.

15 BY MR. DYGERT:

16 Q Where did you go when you left Woodard-Elwood?

17 MR. DALY: Objected to as immaterial and
18 privileged?

19 THE COURT: Overruled insofar as it relates
20 to matters in which Mr. Halverson were involved.

21 Rephrase your question in terms of contact
22 with Mr. Halverson.

23 BY MR. DYGERT:

24 Q Did you go immediately from Woodard-Elwood back to
25 Stillwater to see Mr. Halverson?

1 A Not immediately.

2 Q Other than stopping for lunch, did you make any stops in
3 the meantime?

4 MR. DALY: I am going to object to this as
5 being immaterial and privileged.

6 THE COURT: Sustained.

7 MR. DALY: I am willing to let the witness --

8 THE COURT: I sustained your objection.

9 MR. DALY: Ask him when he next saw Halverson.

10 MR. DYGERT: I will conduct the examination
11 as I see fit, counsel.

12 BY MR. DYGERT:

13 Q At Woodard-Elwood did you have any written authorization
14 of any kind from Paul Halverson for the release of
15 these securities?

16 A Did I? No.

17 Q Did Dr. Peterson?

18 A I don't know.

19 Q You don't know of any?

20 A I don't know of any.

21 THE COURT: What was that last question?

22 (Whereupon the question beginning on Line 13
23 was read by the Reporter.)

24 BY MR. DYGERT:

25 Q Prior to the time Dr. Peterson picked up these certificates

1 at Woodard-Elwood, to your knowledge had Halverson in any
2 way authorized Woodard-Elwood to release them to him?

3 A To my knowledge?

4 Q Yes.

5 A No.

6 Q Eventually, sometime that day, you got back to Halverson?

7 A That is correct.

8 Q What time was that?

9 A It was after school let out, and I am not sure whether
10 it was 3:00 or 3:30.

11 Q Where did you meet him?

12 A At his home.

13 Q Outside his home, as he mentioned?

14 A Yes.

15 Q What occurred there?

16 A He informed us that he was just going to pick up his
17 wife, who is Dr. Peterson's sister, who had just
18 finished teaching school at another school and that he
19 was just moving his car out of the garage, or moving his
20 car so he could drive to pick her up. And Dr. Peterson
21 said that he needed the certificates signed on the back,
22 and that he would go pick up his sister, or Halverson's
23 wife, and if he would stay here and sign the certificates.

24 Q Did you have some conversation with Mr. Halverson about
25 signing these certificates outside the house there?

1 A Outside of the house?

2 Q Yes.

3 A Other than the fact that I told him that they had to
4 be signed. By that I mean --

5 Q Had you at that time seen the Court order?

6 A No.

7 Q And you had not seen the copy of the Court order
8 attached to our notice of filing?

9 A I hadn't seen it, no.

10 Q And you were relying in your statement to Mr. Halverson
11 solely on what Dr. Peterson had told you?

12 A In what statement?

13 Q In your statement that he should sign the certificates?

14 MR. DALY: That is objected to as being
15 immaterial.

16 THE COURT: Overruled.

17 THE WITNESS: No. I believe what we did, we
18 just asked him to sign the backs of the certificates and --

19 BY MR. DYGERT:

20 Q These certificates were made out to Paul Halverson, as
21 trustee, were they not?

22 MR. DALY: May I inquire of the Court as to
23 the purpose of this hearing here today? As I understand,
24 it is to determine the nature and extent of the trust
25 assets.

1 THE COURT: And their location. How they
2 happened to get out of the hands of the trustee.

3 MR. RORRIS: We still don't know where they
4 are. We are still trying.

5 MR. DALY: Well, I am going to continue
6 objecting to any questions that don't go right directly
7 to the point.

8 This man isn't on trial for any purpose.

9 MR. RORRIS: I would say he is, Your Honor.
10 He lent authority, I might say, to these two inter-
11 ventions.

12 THE COURT: The particular matter before
13 the Court now is not whether Mr. Drexler, as an officer
14 of this court, frustrated the order of this court by going
15 with Dr. Peterson to the Savings and Loan Association
16 and to the stock brokerage company.

17 That is not before the Court at this time.

18 MR. DALY: Dr. Peterson has a constitutional
19 right to take a lawyer with him.

20 THE COURT: I say, Mr. Drexler, if he is to
21 account for his actions as an officer of the court, as
22 a member of the Bar of this State, will have to account,
23 if he has to account, ultimately to the Supreme Court
24 of Minnesota. And if he frustrated the order of this
25 court knowingly --

1 MR. DALY: There is no court order in
2 existence with reference to tying them up.

3 THE COURT: What there was, Mr. Daly, you and
4 I disagree about.

5 MR. DALY: I know.

6 THE COURT: But the point is, I am not
7 concerned about the accountability at this point as an
8 officer of the court and as a member of the Bar of this
9 State. I am not concerned with the accountability of
10 Mr. Drexler at this time. So those questions are not
11 really germane.

12 MR. DALY: The point I am raising is these
13 Findings of Fact, Conclusions of Law and Order for
14 Judgment do not restrain the disposition of these trust
15 assets, so any reference to them is immaterial.

16 THE COURT: Well, Mr. Daly, that is your view.

17 MR. DALY: Well, it is a fact. Where in these
18 orders does it show any restraining order?

19 THE COURT: There was no restraining order,
20 that is true.

21 But do I understand, Mr. Daly, that your
22 position as the attorney for the defendant Palmer Peterson
23 is that the Court having concluded that the trust should
24 be set aside and the Court having determined that it
25 would decide what distribution should be made of the trust

1 assets, that Dr. Peterson was free to take the trust
2 assets from the trustee?

3 MR. DALY: Free agent, absolutely.

4 THE COURT: Well, Mr. Daly, then you and I do
5 disagree. There is no point in belaboring the matter.

6 MR. DALY: In this country --

7 THE COURT: I don't want to hear anything
8 further from you in that regard, Mr. Daly, because
9 you and I disagree, and you obviously do not understand
10 the order of this Court and never will understand the
11 order of this Court.

12 MR. DALY: Well, now, Your Honor, I object
13 to and resent any remarks -- I am well able to read and
14 I understand an order of a court when I see one, and
15 I understand from reading when there is no order --

16 THE COURT: What did you understand by my
17 finding that the trust should be set aside and that
18 I would make an order of distribution? What did you
19 understand by that?

20 MR. DALY: Just exactly what that says, that
21 it is set aside and you make an order of distribution.

22 THE COURT: Yes. Well, there is no point
23 in going into the matter, Mr. Daly.

24 BY MR. DYGERT:

25 Q Mr. Drexler, following this conversation outside the

1 house, you and Mr. Halverson went inside and Mr. Halverson
2 then endorsed the certificates; is that correct?

3 A That is correct.

4 Q And then turned them over to you?

5 A No, he didn't.

6 Q Did he endorse them in your presence?

7 A Yes, he did.

8 Q Now, did you witness his endorsement?

9 A By writing on it?

10 Q By writing on these certificates?

11 A I don't believe so.

12 Q Did you secure any bank guarantee or any stock broker
13 to guarantee this signature?

14 A I think at this time I would have to exert the attorney-
15 client privilege again.

16 Q Is this something your client has also instructed you
17 to do?

18 A Yes, he has.

19 MR. DALY: I have instructed him to do it
20 as a representative of Palmer Peterson, also.

21 BY MR. DYGERT:

22 Q Now, as you left the home after having Mr. Halverson
23 sign these documents, who had them at that point?

24 A Mr. Halverson.

25 Q And to whom were they handed over?

- 1 A To Dr. Peterson.
- 2 Q When and where?
- 3 A About five minutes later at the school where Mrs. Halverson
- 4 teaches.
- 5 Q And were you present?
- 6 A Yes, I was.
- 7 Q And had you been with Mr. Halverson during all that
- 8 period of time?
- 9 A All that period of time was just the amount of time
- 10 it took him to write his name on the back of them.
- 11 Q But you had gone, then, with Mr. Halverson to the school?
- 12 A Yes.
- 13 Q And gave the certificates to Dr. Peterson?
- 14 A I didn't, no.
- 15 Q But he did?
- 16 A Yes; as I remember he did.
- 17 Q Now, as you remember it, they did not bear your signature
- 18 as a witness?
- 19 A Pardon me?
- 20 Q Your recollection is that they did not bear your signature
- 21 as a witness?
- 22 A That is my recollection, yes.
- 23 Q They did not bear any guarantee by any bank or stock
- 24 broker as to the authenticity of Mr. Halverson's signature?
- 25 A At that point, yes.

1 Q So that if any such was supplied, it was supplied in
2 Mr. Halverson's absence at a later time?

3 A That I don't know.

4 Q Now, have you handled these stock certificates since
5 that point of time that they were turned over to Dr.
6 Peterson?

7 MR. DALY: Objected to as privileged and
8 immaterial.

9 BY MR. DYGERT:

10 Q Other than as the attorney for Palmer Peterson?

11 A No, I have not.

12 Q Other than in connection with any communication you
13 may have received from Dr. Peterson?

14 A No, I have not.

15 Q I take it, you may have handled them as attorney for
16 Dr. Peterson?

17 MR. DALY: Objected to as immaterial and
18 calling for privileged information.

19 THE COURT: Sustained.

20 BY MR. DYGERT:

21 Q Where are they now?

22 MR. DALY: Objected to as calling for
23 privileged information.

24 THE COURT: Do you know where the stock
25 certificates are now, apart from any information that

1 you may have received from Dr. Peterson?

2 THE WITNESS: From Dr. Peterson?

3 MR. DALY: Apart from that.

4 THE COURT: Apart from any information, do
5 you know where the stock certificates are, as of your
6 own observation and your own knowledge?

7 MR. DALY: Of your own knowledge, apart
8 from any information you have received from Dr. Peterson
9 by any way, shape or form?

10 THE WITNESS: No.

11 BY MR. DYGERT:

12 Q You don't know where they are?

13 A Not apart from any information that I received from Dr.
14 Peterson.

15 Q Let me ask you this: Do you or someone in your office
16 have physical custody of these stock certificates at
17 this point of time?

18 A Absolutely not.

19 Q Have you had since December 8?

20 A No.

21 MR. DALY: Objected to as calling for
22 privileged information.

23 MR. DYGERT: Well, he has already answered.

24 BY MR. DYGERT:

25 Q Not in any way?

1 MR. DALY: Objected to as calling for
2 privileged information.

3 THE COURT: Sustained.

4 MR. DYGERT: I have no further questions.

5 MR. FISCH: No questions.

6 REDIRECT EXAMINATION

7 BY MR. DALY:

8 Q Mr. Drexler, you were acting as agent and attorney for
9 Dr. Palmer Peterson at all times in these transactions?

10 A That is correct.

11 Q Now, how long have you been a practicing lawyer?

12 A Since October 13, 1961.

13 Q And you have handled divorce cases, have you, from time
14 to time?

15 A Yes, I have.

16 Q And you have handled matters in collecting from time
17 to time?

18 A Yes, I have.

19 Q And you are aware of the fact that there was no garnishment
20 served in this case, in this matter, and no writ of
21 attachment and no injunction; is that right?

22 A That is what the parties tell me, yes.

23 Q Now, what is your opinion with reference to the value
24 of the services rendered by these attorneys for the
25 plaintiff to the plaintiff in this case?

1 THE COURT: Objection will be sustained, as
2 there is no foundation for this.

3 MR. DALY: There is no objection, Your Honor.

4 THE COURT: I am making the objection.

5 MR. DALY: Let the record note an exception
6 to the Court making an objection in this case.

7 THE COURT: The Court will disregard any
8 testimony that may be elicited from this witness concerning
9 his opinion concerning the reasonable value of the
10 services rendered by the attorneys for the plaintiff.

11 MR. DALY: As I understand it, Your Honor,
12 they are making claim for attorneys' fees which they
13 rendered here today against Faye Peterson; is that
14 right?

15 THE COURT: And, in fact, this testimony is
16 beyond the scope of the examination made by the attorney
17 for the plaintiff.

18 MR. DALY: Your Honor, I am objecting that the
19 Court --

20 THE COURT: Mr. Daly, let me advise you that
21 the Court is not a mere umpire in a ball game. The Court
22 is here to see to it that justice is done. And the
23 Court, on its own motion, is making the objection to
24 this testimony, which the Court has the inherent power
25 to do.

1 MR. DALY: No, Your Honor. You have no
2 right to make an objection to any testimony.

3 THE COURT: Mr. Daly, I am telling you that
4 I have that power, and I have the power to not listen
5 to any evidence which I regard as inadmissible, and to
6 disregard any evidence which I regard as inadmissible.

7 MR. DALY: I believe that is all.

8 Just one further question.

9 BY MR. DALY:

10 Q It came to your knowledge through questioning that
11 there was no garnishment served in this case; is that
12 right?

13 A That is right.

14 Q And it came to your knowledge through questioning that
15 there was no writ of attachment; is that right?

16 A That is right.

17 MR. DYGERT: Objected to as completely
18 immaterial. I have made an objection as to what his
19 knowledge was through, I take it, through the questioning
20 in this case today as to whether there was any attachment
21 or garnishment.

22 THE COURT: Are you talking about questioning
23 of his client?

24 MR. DYGERT: If this relates to the questioning
25 of his client, then I have no objection.

1 BY MR. DALY:

2 Q From questioning these various people, Haverstock and
3 Halverson, you ascertained there were no garnishments
4 served; is that right?

5 A That is right.

6 MR. FISCH: I will object because it is
7 repetitious and has already been answered.

8 THE COURT: He can answer.

9 BY MR. ~~DYERT~~? DALY:

10 Q You understand that through legal process personal
11 action has a right to be controlled, do you not?

12 MR. DYERT: Objected to as calling for a
13 conclusion.

14 THE COURT: Sustained as immaterial.

15 MR. DALY: All right. That is all.

16 RECROSS-EXAMINATION

17 BY MR. DYERT:

18 Q Do you presently represent Dr. Peterson?

19 A Yes, I do.

20 Q You are aware he has been ordered to appear before this
21 Court?

22 A Yes, I have been made aware of that.

23 Q You are aware the Court has issued a bench warrant for
24 his appearance?

25 A I have been told that, yes.

1 Q Do you know where he is presently?

2 MR. DALY: Objected to as privileged information.

3 THE COURT: Sustained.

4 MR. DYCERT: As to this man's knowledge of where
5 he is? I haven't asked where he is. I asked whether
6 he knows.

7 THE COURT: Objection will be sustained.

8 BY MR. DYCERT:

9 Q Did you inform your client a bench warrant was outstanding
10 for him?

11 MR. DALY: Objected to as privileged information.

12 THE COURT: Sustained.

13 MR. DYCERT: Nothing further.

14 MR. DALY: That is all.

15 (Witness excused.)

16 * * *

17 February 12, 1965

18 I hereby certify that the foregoing is a true and
19 correct transcript of the proceedings had transcribed by
20 me in the above-entitled matter.

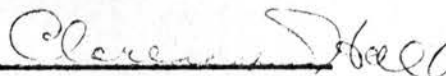
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Clarence D. Hall

Official Court Reporter

LAW OFFICE

Jerome M. Daly

406 DEGREE OF HONOR BUILDING

ST. PAUL, MINNESOTA

TELEPHONE - 222-7451

23

890-2274

Box 644
Savage, Minnesota

February 25, 1965

PLP/8 27, SS
Holt School, Rochester

Mr. George Engwald
9324 Harriet Avenue South
Minneapolis, Minnesota

Dear Mr. Engwald:

Kindly be advised that I am the attorney for Dr. Palmer A. Peterson. Notice of your garnishment has been served upon me.

A garnishment is prohibited unless at the time of the service of the Summons the amount is due absolutely and unequivocally and without depending upon any contingency.

As Dr. Peterson's attorney this is to notify you that Dr. Peterson takes the position that any amount owed by you to him is not due absolutely and without depending upon any contingency.

Do not cooperate with these lawyers for Dr. Peterson's ex-wife.

You are further notified that I as Dr. Peterson's attorney claim a lien upon Dr. Peterson's accounts receivable in the sum of \$1,500.00. This lien comes ahead of any claim or judgment asserted by either Dr. Peterson's former wife or her attorneys according to Minnesota Statutes 481.13.

If you have any questions, please call me at 890-2274. Also, if you have any mail or want any information directly with Dr. Peterson or want to make any payments to Dr. Peterson, address it in an envelope to me, Jerome Daly, Box 644, Savage, Minnesota, and I will see to it that it is forwarded to the doctor.

Very truly yours,

Jerome Daly
(dy)
Jerome Daly

PETITIONER'S EXHIBIT

2/1/70

L.M.F.

42174

JD:dg

*Must phone be
done about this?
Mrs Geo Engwall*

PETITIONER'S EXHIBIT 21
2/12/70 L.M.F.

42174

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT I, PAUL L. HALVERSON, do hereby make, constitute and appoint PALMER A. PETERSON as my true and lawful attorney in fact, for me and in my name, place and stead, to sign my name to any and all legal documents in connection with PALMER A. PETERSON TRUST FUND

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of DECEMBER, 1964.

x Paul L. Halverson

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I, PAUL L. HALVERSON, do hereby make, constitute and appoint WILLIAM E. DREXLER ATTORNEY as my true and lawful attorney in fact, for me and in my name, place and stead, to sign my name to any and all legal documents in connection with PALMER A. PETERSON'S TRUST FUND

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of DECEMBER, 1964.

x Paul L. Halverson

42174

No. 566244

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Faye V. Peterson,

Plaintiff,

vs.

Palmer A. Peterson, and Paul
L. Halverson, individually and
as Trustee,

Defendants,

and

William E. Drexler, Jerome Daly,
and Jan Achman,

Respondents.

)
) FINDINGS OF FACT AND
) ORDER OF CONVICTION
) FOR CRIMINAL CONTEMPT
) NOT COMMITTED IN THE
) PRESENCE OF THE COURT.
)
)
)
)
)
)

On February 11, 1965, the Hon. Stanley D. Kane, one of the judges of this Court, made and filed an order directed to the above Respondents to show cause on February 17, 1965, at 9:30 A. M., why the Court should not enter its order adjudging them and each of them in contempt of court and that they be punished accordingly as and for such contempt for the reasons set forth therein. Said order to show cause was made and based upon the attached notice of motion and the attached affidavits of Joe A. Walters, Esq., Receiver, and Robert W. Dygert, Esq., attorney for plaintiff. Said order to show cause with attached motion and affidavits was duly served upon each Respondent on February 15, 1965. On February 23, 1965, at 9:30 A. M., said contempt proceedings came on before the undersigned as a consequence of a re-assignment occasioned by affidavits of prejudice dated and filed February 17, 1965, executed by the respective Respondents against Judge Kane.

Appearances were: Robert W. Dygert, Esq., and James P. Morris, Esq., for plaintiff in support of said motion; William E. Drexler appeared in person and by James P. Miley, Esq.; Jan Achman appeared in person and by Jerome Daly, and Jerome Daly appeared in person in behalf of himself and to protect the interests of defendant Peterson ; all in opposition to said motion.

3. That Respondents William Drexler of St. Paul, Minnesota, and Jerome Daly of Savage, Minnesota, are and have been at all times pertinent and are now duly licensed attorneys authorized to practice in this state.

4. Respondent Jan Achman is and has been at all times pertinent an employee of, and office girl, receptionist and bookkeeper of defendant Peterson at his medical office located in the city of Minneapolis, Minnesota.

5. This divorce action was commenced on February 1, 1961. On the initial hearing for temporary relief on July 6, 1961, James Morris, Esq., appeared for plaintiff, and Kermit A. Gill, Esq., and Samuel Saliterman, Esq., appeared for defendant Peterson. About the time of service of the Amended Complaint herein on June 11, 1962, Robert W. Dygert, Esq., became associated with Mr. Morris as counsel for plaintiff. On April 17, 1963, Desmond F. Pratt, Esq., was substituted as attorney of record for defendant Peterson and remained such until his withdrawal ^{some time prior to} ~~at about the time of~~ the making and filing of the Amended Findings of Fact, Conclusions of Law, and Order for Judgment herein on December 4, 1964, which supplemented the Amended Judgment and Decree herein dated and filed on August 19, 1964.

6. On October 24, 1963, Hon. Irving R. Brand, presiding at the trial of this case, made an oral order in open court requiring defendant Palmer A. Peterson to set up an accurate system of accounting (Pl. Exh. AA).

7. On January 14, 1964, Judge Brand orally ordered defendant Peterson in open court to have all charges made to patients, to and including December 31, 1963, posted to appropriate accounts receivable and to bill out all accounts receivable as of December 31, 1963, as promptly as possible (Pl. Exh. BB).

8. On February 4, 1964, Judge Brand by order filed the same day appointed W. T. Harmon, a Certified Public Accountant, as a Referee of the Court, directing him to audit the books and records of the defendant Palmer A. Peterson and to prepare and file certain financial statements and a statement as to the defendant's accounts receivable. Mr. Harmon testified that he examined the accounts receivable of the defendant and made his report to the Court, and he described the manner in which the accounts receivable records were kept.

9. On August 14, 1964, Judge Brand filed an Order requiring the defendant Palmer A. Peterson to make available to the plaintiff for inspection all his books and records, including his records pertaining to accounts receivable (one of two orders dated and filed 8-14-64).

10. On August 17, 1964, the Court entered its (original) Findings of Fact, Conclusions of Law and Order for Judgment, including the following Order in respect to accounts receivable, the trust assets, and other property:

"11. With respect to the accounts receivable as of December 31, 1963, in connection with defendant Palmer A. Peterson's practice of medicine, the Court reserves jurisdiction to make a disposition of the amounts collected thereon, either by way of an allowance of additional alimony to plaintiff and additional support money for the children of the parties or by way of an award of property to plaintiff, or both.

"12. The Court reserves jurisdiction to make further orders concerning any other property which defendant Palmer A. Peterson may own which was not proven at the trial of this matter.

"13. The Court makes no findings of fact, conclusions of law or order, but reserves jurisdiction, with respect to the following:

A. The validity of the trust agreement entered into by defendant Palmer A. Peterson and defendant Paul L. Halvorson, mentioned hereinabove, and whether said trust agreement was executed with an intent to defraud plaintiff or her rights in the corpus of the trust created under said agreement.

B. The allowance of reasonable attorney fees for plaintiff."

11. Based upon an affidavit of plaintiff's counsel showing that adequate records had not been produced by the defendant, Judge Brand issued and filed on November 5, 1964, an Order to Show Cause, returnable November 17, at 9:30 A. M., requiring defendant Palmer A. Peterson to show cause why he should not be held in contempt for failure to sign authorizations in reference to certain Swiss bank accounts, for failure to set up an accurate system of accounting, for failure to bill out his accounts receivable to his patients and in other respects, and also requiring him to show cause why all of his accounts receivable should not be sequestered and administered and collected by a receiver. Said order further ordered that defendant bring with him at the time of the hearing all of his financial records, including his daily log and all records of his receipts and expenditures, together with all records of accounts receivable, paid or unpaid, as they existed on December 31, 1963, and since that time.

The Court's Order to Show Cause of November 5, 1964, was served upon Palmer A. Peterson on November 9, 1964, by delivering a copy to him, personally, and by exhibiting the Court's signature on the original. It was also served upon his then attorney, Desmond F. Pratt, by mail. It was about this time that the accounts receivable records disappeared from the office.

12. At the outset, Respondent Drexler's representation of Peterson was completely secret. The Court was informed that Dr. Peterson was sick and could not attend the hearing on November 17, 1964, (Pl. Exh. CC). Desmond F. Pratt, having furnished Dr. Peterson a Substitution of Attorneys in blank, did not appear at the hearing on November 17, 1964. The Court ordered a Bench Warrant to be issued, but stayed it pending a determination of whether Dr. Peterson was in fact sick. It is clear that at this time Respondent Drexler was counselling defendant Peterson and had been his attorney

since some time in September of 1964 as evidenced by Respondent Drexler's affidavit of February 22, 1965, filed herein on February 23, 1965, wherein he stated among other things that he had "been retained to protect defendant Peterson's interest in the trust and accounts referred to in this proceedings".

Meanwhile, according to testimony of Mr. Reim, Assistant Cashier of Commercial State Bank, Respondent Drexler in the early part of November, 1964, opened up an account in the name of All State Collection Agency, which account, so far as Mr. Reim knew, was only used for the collection of accounts of Dr. Peterson.

Also in November, 1964, as Sandra Holden (part time employee of defendant Peterson) testified, the accounts receivable records disappeared from the office. She claimed that she did not know where they were, nor where defendant Peterson was.

13. On December 4, 1964, the Court made and filed Amended Findings of Fact, Conclusions of Law and Order for Amended Judgment, the terms of which were identical with the original Findings, etc., and Judgment thereon, except that Findings, Conclusions and Orders were made in respect to the trust assets, concerning which the Court had previously reserved jurisdiction. The new Finding as to the Trust reads as follows:

"15. By a written instrument dated January 30, 1961, defendant Palmer A. Peterson as settlor created an inter vivos trust, with defendant Paul L. Halverson as trustee, and the parents, brothers and sisters, and children of defendant Palmer A. Peterson as the beneficiaries of said trust. The settlor transferred to the trustee the sum of \$10,000 in cash and securities of the approximate market value of \$21,600, these assets constituting the trust estate. The creation of this trust and the transfer of assets to the trustee were without the knowledge or consent of plaintiff. By the creation of this trust defendant Palmer A. Peterson intended to defraud and deprive plaintiff of any interest or rights that she might have in the assets constituting the trust estate and to place said assets beyond the control of this Court in the event of a divorce action commenced by plaintiff."

On this matter the Court also made the following new Conclusion of Law:

"10. Plaintiff is entitled to have the trust hereinabove referred to set aside and to have the trustee distribute the trust assets in accordance with the directions of this Court."

The Court's Order therein also provided as follows:

"14. The Court hereby orders that a hearing be held before the undersigned on December 15, 1964, at 11:00 A.M. or as soon thereafter as the matter can be heard, with respect to the following:

a. The nature and value of the trust assets now held by defendant Paul L. Halverson and the distribution to be made thereof.

b. Attorney fees to be allowed to the plaintiff."

In addition to the foregoing, the Court repeated its previous findings that, as of December 31, 1963, the defendant Peterson had accounts receivable in excess of \$75,000.00 and reserved jurisdiction to make a disposition of the amounts collected from accounts receivable and to make further orders concerning any property that the defendant Peterson might own.

14. Up to this time, plaintiff had not had any opportunity for a hearing on her motions for sequestration of Dr. Peterson's accounts receivable, the appointment of a receiver, and for an order adjudging him to be in contempt of court. When the Notice of Filing the Court's Amended Findings of Fact, Conclusions of Law and Order for Judgment was prepared on December 7, 1964, it was combined with a Notice of Hearing restating plaintiff's motion for sequestration of the accounts receivable, appointing of a receiver of all of Dr. Peterson's property, and for an order adjudging him to be in contempt of court. This Notice, together with a copy of the Amended Findings of Fact, Conclusions of Law and Order for Judgment, was served upon defendant Palmer A. Peterson on December 7, 1964, and upon Paul L. Halverson on December 11, 1964. The copy served on Dr. Peterson is in evidence as Daly's Exhibit 2, and contains

handwriting identified as that of Respondent Drexler on the bottom. The copy served on Mr. Halverson is in evidence as defendant Halverson's Exhibit 2 and contains some markings he made showing what portions were read to him by Mr. Drexler on December 8, 1964.

15. Respondent Daly, as Peterson's attorney, had knowledge of the Amended Findings of Fact, Conclusions of Law and Order for Judgment shortly after it was filed. His very function was to represent Dr. Peterson in the hearing ordered by this document, and in connection with the notice of plaintiff's motions which were attached thereto. Further, Respondent Daly caused to be served upon plaintiff's counsel under date of December 26, 1964, a motion dated December 21, 1964, for Amended Findings of Fact, Conclusions of Law and Order for Judgment which obviously were prepared with knowledge of the Amended Findings, Conclusions and Order dated December 4, 1964. It should be noted here that Halverson testified that his last contact with Dr. Peterson was December 8, 1964. Later, however, when he wanted to find out whether it was necessary for him to appear at the hearing on December 15th as provided in said Amended Findings etc. dated December 4, 1964, he called Daly. *Daly told Halverson it wasn't necessary for him to appear.* On December 8, 1964, as hereafter more fully set out, Respondent Drexler had in his possession the Amended Findings of Fact, Conclusions of Law and Order for Judgment, and the attached Notice of Motion and Notice of Filing which had never been removed therefrom up to the time that Daly's Exhibit 2 was introduced into evidence. His handwriting appears on Daly's Exhibit 2.

16. From said Amended Findings, etc., both of these Respondents, Daly and Drexler, knew as early as December 8, 1964, that the Court had ordered as follows:

- a. The Court was reserving jurisdiction over the accounts receivable to make a disposition of the amounts collected thereon.

- b. The Court was reserving jurisdiction over any other property of the defendant Palmer A. Peterson.
- c. The Court was reserving jurisdiction, and had set a hearing, on how the trust assets were to be distributed.

Notwithstanding this knowledge, and with the Order itself in his hands, Respondent Drexler, who had already set up a separate collection agency for the purpose of collecting Dr. Peterson's accounts, and who had established an account for that purpose in Commercial State Bank, set about to secure the trust assets and remove them from the jurisdiction of the Court.

On the forenoon of December 8, 1964, Drexler, with Peterson, sought out Paul L. Halverson at his office and told him the trust had been set aside and that it was necessary that all trust assets be turned over to Dr. Peterson, in order that Dr. Peterson's accountant might prepare a complete statement of his net worth so that the Court could make a distribution of his assets.

Halverson, relying on Drexler's statement as an attorney, and believing that Drexler was correctly informing him as to what the Order contained, and not knowing that Drexler was reading only portions of the Findings and Order, cooperated and turned over all of the trust assets.

17. The first step in making such transfer was the securing of the Trust's funds remaining on deposit at Washington Federal Savings & Loan Association, Stillwater, Minnesota. Drexler, Peterson and Halverson went to Washington Federal Savings & Loan Association on December 8, 1964, and secured a check of the Association in the sum of \$8,002.63 (Defendant Halverson's Exh. 1). When this check was obtained, defendant Peterson remained in the car and Drexler went in with Halverson. As soon as the check was obtained from Washington Federal Savings & Loan Association, Drexler and defendant Peterson took it to First National Bank of Minneapolis where they converted it to three cashier's checks payable to William E. Drexler, dated December 8, 1964, in the sum of \$2,500.00, \$2,500.00 and \$3,002.63, respectively (Pl. Exh. A, B and C).

18. Drexler and defendant Peterson on the afternoon of December 8, 1964, went to Woodard-Elwood & Co., in Minneapolis, and secured all of the securities in the name of Paul L. Halverson as Trustee, which had been physically held by the brokerage firm since the inception of the trust. James Haverstock, an officer of the firm, relying on Respondent Drexler's statement that he had finally gotten an order of the court releasing these assets, turned over the securities to Dr. Peterson.

Directly from Woodard-Elwood & Co. Drexler and defendant Peterson went back to Stillwater and secured Halverson's endorsement on all of the securities, which endorsements were in blank. At this time Drexler and defendant Peterson represented to Halverson that it was necessary to turn the securities over to the accountant so that he could prepare a statement of Dr. Peterson's net worth.

At the time of the endorsement of the securities, Drexler was alone with Halverson, Dr. Peterson having gone to see his sister, Mrs. Halverson.

19. Sometime during this December 8, 1964, Drexler was able to find time to go to Minnesota State Bank of St. Paul where he cashed two of the Washington Federal Savings & Loan checks, receiving \$5,000.00 in cash, and to the Northwestern National Bank of St. Paul, where he cashed the third check (Pl. Exh. C) receiving \$3,002.63.

20. On December 10, 1964, Respondent William E. Drexler opened up a post office box, No. 1503, in the Metropolitan Airport Sub-station of the St. Paul Post Office. He paid the box rent on that date until December 31st (Pl. Exh. MM). He also signed an application on that date showing that the only person authorized to enter said box would be Palmer A. Peterson, M.D. (Pl. Exh. NN).

On December 16, 1964, there was deposited in the account of All State Collection Agency in Commercial State Bank

a certain check from Harold A. Bahner to Dr. Palmer A. Peterson which was dated December 4, 1964. This was in furtherance of a program under which Dr. Peterson's payments on accounts receivable were being deposited in this account and his bills were being paid out of it by Drexler, according to the testimony of Mr. Rein.

Sandra Holden later testified that she received payment of one or two of her salary checks as secretary out of this account.

21. On December 14, 1964, the very day that Respondent Daly announced his appearance in the case and asked Judge Brand for a continuance of the hearing, Respondent Drexler and a man identified as Dr. Peterson appeared at the office of Caldwell-Phillips, Inc., stockbrokers in St. Paul, and requested Joseph Sampair, one of the officers of the firm, to sell all of the securities. Something was said by Drexler as to a pending divorce. Mr. Sampair in behalf of Caldwell-Phillips, Inc. gave a receipt for the securities turned over to him on December 14, 1964 (Pl. Exh. P) which receipt was made out to "Paul L. Halverson as Trustee U/A with Palmer A. Peterson" and delivered to William E. Drexler and Palmer A. Peterson. At this time Mr. Sampair asked that he be provided with copies of the Trust Agreement of January 30, 1961, sufficient in number so that one could be sent to each transfer agent. After it was determined that the brokerage firm's copy machine would not copy the Trust Agreement satisfactorily, Drexler agreed to furnish additional copies, and they were later brought in to the brokerage firm's office.

It is to be noted that while Respondent Drexler had represented to Paul L. Halverson, the trustee, and to James Haverdick of Woodard Elwood & Co. that the trust had been set aside on December 4, 1964, he made just the reverse representation to Caldwell-Phillips, Inc. by stating that the Trust was in effect and that the trustee had authority to transfer the securities. Drexler also guaranteed the signature of Paul L. Halverson on the endorsement, and base on this the brokerage firm in turn guaranteed the signature to the transfer agents.

22. Caldwell-Phillips, Inc. set up an account under the name of "Paul L. Halverson as Trustee for Palmer A. Peterson c/o William Drexler, 372 St. Peter Street, St. Paul, 55102", and proceeded to sell all of the securities.

23. Meanwhile, on December 16, 1964, there was no appearance by Peterson, Halverson, nor by Jerome Daly who had telephonically requested of Judge Brand a continuance to familiarize himself with the matter. Although Daly was to have appeared, Judge Brand nonetheless ordered that the matter be continued to December 31, 1964, as he had previously indicated to Mr. Daly he would (Transcript Pl. Exh. DD).

Under date of December 16, 1964, Judge Brand also wrote a letter to Jerome M. Daly, Paul L. Halverson and the other interested parties and counsel, continuing all matters until Thursday, December 31, 1964. This letter specifically stated:

"All parties and their respective counsel are requested to appear before the Court at that time for a full hearing on the above-mentioned matters, and the parties are hereby required to comply with any previous orders of this Court."
(Pl. Exh. Z).

After receiving the above letter, Mr. Halverson again attempted to reach Daly to determine whether it was necessary for him to appear on December 31, 1964. Not being able to reach Daly, he called Drexler and was informed by Drexler that he did not need to be there. Drexler also stated that he would send to Mr. Halverson a "Power of Attorney" which would permit Drexler or Daly to appear for him at the hearing. In this telephone conversation, Halverson informed Drexler that he intended to be in Cashton, Wisconsin, for Christmas and until New Year's and that it would not be convenient for him to come back on December 31st.

Subsequently, but before Christmas, Halverson received from Drexler a sheet of paper with three forms for "Power of Attorney", the top two being filled in with the names

of William E. Drexler and Jerome Daly respectively, and the bottom being completely blank. Halverson signed all three forms and returned them to Drexler.

24. During the last two weeks of December, 1964, Lawrence Karls, Assistant Secretary of Caldwell-Phillips, Inc., received several telephone calls from Drexler asking when the money from the securities sale would be available. In these conversations, Drexler stated that the money had to be received by the end of the year.

25. Under date of December 21, 1964, Daly ^{served} ~~filed~~ a Motion and Notice of Motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment, which was signed personally by Palmer A. Peterson, the defendant, and also by Jerome Daly. On the same date Daly acted as Notary on an Affidavit of Prejudice signed by Palmer A. Peterson against Judge Brand in which Affidavit Daly, as Notary, represented that Peterson had signed the Affidavit in Scott County, Minnesota, before him. It is to be noted that at a later hearing on January 4, 1965, Daly told Judge Brand that he had no authority to disclose the whereabouts of Dr. Peterson (Pl. Exh. FF).

Although Judge Brand's letter of December 16th had specifically requested the attendance of the parties and their counsel, neither Daly, Drexler nor Palmer A. Peterson were present at the hearing on December 31, 1964, and Halverson, relying on his telephone conversation with Drexler wherein he told Halverson he didn't need to appear, was also absent. It should be noted, however, that Respondent Daly had sent his brother, Robert Daly, an attorney, to court with a letter dated December 26, 1964, filed January 4, 1965, specifically limiting the authority of the brother to submit the previous Motion for Amended Findings of Fact, and informing Judge Brand that he was without jurisdiction to hear any other matter by reason of the Affidavit of Prejudice filed against him. Both Daly and Drexler knew that the purpose of

the hearing was to act on distribution of the trust assets and also on plaintiff's Motion for sequestration of the accounts receivable, appointment of a receiver, and other relief.

26. On December 28, 1964, Caldwell-Phillips, Inc. issued two checks representing the first proceeds from the sale of securities. These checks are in evidence as Defendant Halverson's Exh. 3 and 4. They are made out to "Paul L. Halverson, Tr. for Palmer A. Peterson". Halverson's Exhibits 3 and 4 were taken by Drexler to Commercial State Bank of St. Paul on December 20, 1964, having been endorsed "Paul L. Halverson Tr. for Palmer A. Peterson". Drexler represented to John Durenberger, an officer of Commercial State Bank, that this was "a correct endorsement". The facts are that the endorsement was not by Halverson, that Halverson had never seen the checks, that he had no knowledge that securities had been sold by Caldwell-Phillips, Inc., or what had happened to them.

Based on the representations of Respondent Drexler, Commercial State Bank issued cashier's checks on December 30, 1964, in payment for the Caldwell-Phillips check presented that day. Plaintiff's Exhibits K and L in the sum of \$2,000.00 and \$2,219.05 respectively were issued in payment of Halverson's Exhibit 3; Plaintiff's Exhibits M, N, O, and P, totaling \$9,511.46, were issued in payment of Halverson's Exhibit 4. The requisitions for these cashier's checks issued on December 30, 1964, are in evidence as Plaintiff's Exhibits R and S.

27. On December 31, 1964, Caldwell-Phillips, Inc., issued its check for the balance of the Paul L. Halverson account, amounting to \$13,167.86 (Halverson's Exhibit 5). This check was delivered personally to Respondent Drexler in the presence of Lawrence Karls of Caldwell-Phillips, Inc. It was made payable to "Paul L. Halverson, Tr. for Palmer A. Peterson".

Halverson's Exhibit 5 was taken by Drexler to Commercial State Bank on December 31, 1965, bearing an endorsement

reading, "Paul L. Halverson, Tr. for Palmer A. Peterson. Here again Drexler represented to Mr. Victor Reim, Jr., in the office of the bank, that the endorsement was "valid". Based on this representation, Commercial State Bank issued five more cashier's checks, being Plaintiff's Exhibits F, G, H, I and J, totaling \$13,167.86. The bank's requisition for these checks is in evidence as Plaintiff's Exhibit Q.

Again, the endorsement on the Caldwell-Phillips check was not made by Halverson. Obviously, Drexler knew this, as he knew that Halverson was in Cashton, some 170 miles away, and that there would have been insufficient time for him to have endorsed the check. Both the plaintiff and defendant Halverson identified the handwriting on the endorsement of the Caldwell-Phillips checks as that of Palmer A. Peterson.

28. The cashier's checks issued by Commercial State Bank on December 30 and 31, 1964, have all been traced through their endorsements and the testimony of various bank officials. With the exception only of Plaintiff's Exhibit P, all ultimately resulted in cash delivered to William E. Drexler or deposited in his savings account.

Plaintiff's Exhibits G, I and J, three checks in the amount of \$3,000.00 each, were cashed by Drexler at Commercial State Bank, and Drexler was given cash.

Plaintiff's Exhibit F, K and L were deposited by Drexler in his checking account in Northwestern National Bank, St. Paul, Minnesota. He at first had attempted to cash them, but was required by Axson Nystrom, a Northwestern Bank officer, to deposit the checks in his account and draw his own check for \$7,070.13, being the total of the Commercial Bank's checks presented. The deposit ticket showing the deposit of these three cashier's checks in Drexler's account is in evidence as Plaintiff's Exhibit X and a photocopy of Drexler's check to himself dated January 4, 1965, in the same amount is in evidence

as Plaintiff's Exhibit W. This check was cashed on that date at Northwestern National Bank, St. Paul, and the proceeds were received by Drexler in cash.

Plaintiff's Exhibits H and O in the amount of \$1,316.78 and \$1,373.00, respectively, were deposited in Drexler's savings account in Commercial State Bank of St. Paul on January 4, 1965.

Plaintiff's Exhibits M and N, two cashier's checks in the sum of \$3,000.00 each, were cashed by Drexler at Minnesota State Bank in St. Paul on January 4, 1965, Drexler receiving the proceeds in cash.

Plaintiff's Exhibit P, a cashier's check in the sum of \$2,138.46, was converted to two other cashier's checks payable to certain doctors on January 5, 1965. These latter cashier's checks totaled \$1,712.00 and the balance was paid Drexler in cash.

29. On December 31, 1964, since there was no appearance by Daly, Drexler, Halverson or Peterson, Judge Brand continued the hearing until January 4, 1965. Plaintiff's counsel located Halverson at Cashton and arranged that he would make himself available to be subpoenaed, which was accomplished on January 2, 1965, in Stillwater, Minnesota. On January 4, 1965, this matter came on before Judge Brand. Appearances were Mr. Rorris and Mr. Dygert for plaintiff, Mr. Daly for defendant Peterson, and Halverson appeared in person. It was then for the first time disclosed that Halverson had been persuaded to turn over the trust assets (Pl. Exh. GG). At said hearing Judge Brand advised Halverson to secure his own attorney to protect his interests. The Court permitted counsel an additional three days continuance to file memoranda concerning the effect of the Affidavit of Prejudice, indicating that he felt the matter of distribution of the trust assets had proceeded far enough so that he could not recognize the Affidavit of Prejudice in respect to that matter (Pl. Exh. FF).

On January 7, 1965, Judge Brand ruled that he would retain jurisdiction of the matter of distribution of the trust assets, and on that date took testimony from Respondent Drexler and Paul Halverson, which testimony was later transcribed and became a part of the court file by Order of Judge Kane. Judge Brand also ruled that although the Affidavit of Prejudice did not strictly comply with the Court Rules, he would recognize it insofar as it applied to the motions of the plaintiff for sequestration of Palmer Peterson's accounts receivable and other property, the appointment of a receiver, and the pending contempt proceedings against Palmer Peterson. All of these matters were referred back to the assignment clerk and by him to Judge Stanley Kane, who conducted a hearing on January 7, 1965, in respect to the matter of appointment of a Receiver and sequestration of accounts receivable and other property.

On said date Judge Kane sequestered all of the accounts receivable and other property of Palmer Peterson and ordered that a receiver, to be later named by him, would be appointed, the Order however to take effect immediately.
(Pl. Exh. II)

30. On January 11, 1965, Joe A. Walters was appointed Receiver and Referee and filed his Oath as such. On January 21, 1965, the Receiver went to the office of Palmer Peterson, where he interviewed Respondent Jan Achman and made a search for records. Jan Achman told him that there were no accounts receivable records or other records in the office and that she did not know where they were. She also called Respondent Daly, and the Receiver talked to Daly from Dr. Peterson's office, making a further demand upon Daly for all records or property of Dr. Peterson. In this conversation, Daly informed the Receiver that the personal property in the office had been sold to another Doctor, and that he had a copy of the Bill of Sale, which he would send to the Receiver. The Bill of Sale has never been received by the Receiver.

31. In the meantime, the collection of Dr. Peterson's accounts receivable was going forward, as indicated by the testimony of various patients who testified. A check of Myrtle Kargell, dated January 19, 1965, in the sum of \$612.50 was endorsed by Palmer A. Peterson and deposited in First National Bank of Hudson, Wisconsin, on February 8, 1965.

On January 21, 1965, when the Receiver asked Jan Achman as to what she did with the checks that came into the office, she stated that she simply left them on the desk and that in her absence, "someone would come in and take them".

On January 19, 1965, William Drexler was issued a receipt for payment on the box rent of P. O. Box No. 1503 for the period ending June 30, 1965 (Pl. Exh. MM).

In January, 1965, Sandra Holden, a part time secretary for Dr. Peterson, received a letter from him with instructions as to billing out accounts receivable and a letter over his signature which he asked be copied and inserted in the billings. This letter (Pl. Exh. RR) asked that payment be made to P. O. Box No. 1503, St. Paul, Minnesota.

Sandra Holden testified that she sent out 300 to 350 billings to patients sometime in the latter part of January, 1965, and in each enclosed a copy of Dr. Peterson's letter and an envelope addressed to Dr. Peterson and P. O. Box 1503, St. Paul, Minnesota.

32. Under date of February 3, 1965, the Receiver sent letters to all patients of Dr. Peterson represented by the accounts receivable as of December 31, 1963, requiring the patients to make payment to him. Upon receipt of this letter, Mrs. Bruce Sanden called Dr. Peterson's office and talked to the girl answering the phone, who told her to disregard it and tear it up. She later received a Garnishment Summons from the attorneys for the plaintiff and when she called the office was told to tear that up too and disregard it.

The Receiver later talked to Jan Achman and informed her that he understood patients were being told to disregard his letter and to make payments direct to the office. She did not deny making such statements.

On February 17, 1965, Judge Kane ordered that all mail contained in P. O. Box 1503 be turned over to the Receiver, to await disposition pursuant to further orders of the Court. Pursuant to Judge Kane's Order, this mail was opened in the court room and the Receiver deposited the checks in his Receiver-ship Account, noting which ones were received through the post office box.

On or about February 20, 1965, Sandra Holden talked to Dr. Peterson by telephone and arranged to leave the accounts receivable records, which she still had, in her garage so that someone could pick them up. She made this arrangement so that she would not know who it was that had received the records from her. Sandra Holden also testified that while she had possession of the accounts receivable records of Dr. Peterson there were six or ten instances when Jan Achman called her asking what should be done about a particular account. Mrs. Holden denied that she had ever specifically told Jan Achman that she had the accounts receivable records.

33. On March 2, 1965, an action was started by Respondent Drexler with Respondent Daly as his attorney against Judge Kane and the attorneys and Postmaster, alleging damages for invading his post office box and attaching a motion for an order directing the defendants to deliver to Respondent Drexler as "agent for Doctor Palmer A. Peterson" all mail and other materials sequestered from said box. That action was subsequently dismissed without prejudice.

34. On and about February 24, 1965, Jerome Daly, by his secretary, Doris Guintire, wrote approximately 100 letters to patients of Dr. Peterson stating that garnishments served by the attorneys for the plaintiff were not effective for the reasons therein given, and directing the patients not to cooperate with the attorneys for Dr. Peterson's ex-wife, and inviting them to make payment to Dr. Peterson through his (Daly's) office (Pl. Exh. KK and SS).

35. The evidence in this proceeding clearly establishes beyond a reasonable doubt that Respondents William E. Drexler and Jerome Daly are guilty of Criminal Contempt in that they and each of them wantonly, nefariously, reprehensibly and unlawfully disobeyed lawful orders, Judgments and mandates of this court, and that they, the said William E. Drexler and Jerome Daly, wantonly, nefariously, reprehensibly and unlawfully made resistance to and interfered with lawful process, Orders, Judgments, mandates and proceedings of this court.

As to Respondent Jan Achman, the evidence in this proceeding falls short of establishing her guilt of ^{criminal} contempt beyond a reasonable doubt.

O R D E R

Now therefore, upon the evidence adduced in this proceeding, and upon the Findings of Fact herein made, it is ordered and Adjudged:

1. That you, William E. Drexler, be and you are hereby found guilty of Criminal Contempt of this Court.
2. That you, Jerome Daly, be and you are hereby found guilty of Criminal Contempt of this Court.
3. That you, Jan Achman, be and you are hereby found not guilty of Criminal Contempt.

4. That you, William E. Drexler, as punishment for the offense of Criminal Contempt of which you have been convicted by a finding of guilty by this Court, be and you are hereby sentenced to imprisonment in the workhouse for the City of Minneapolis, Minnesota, for a term of six months and to pay a fine of \$250.00. Should you fail to pay said fine prior to completion of said imprisonment you shall be committed to said workhouse until your fine is paid, but not to exceed ten days.

5. That you, Jerome Daly, as punishment for the offense of Criminal Contempt of which you have been convicted by a finding of guilty by this Court, be and you are hereby sentenced to imprisonment in the workhouse for the City of Minneapolis, Minnesota, for a term of six months and to pay a fine of \$250.00. Should you fail to pay said fine prior to completion of said imprisonment you shall be committed to said workhouse until your fine is paid, but not to exceed ten days.

LET A COMMITMENT ISSUE ACCORDINGLY.

By the Court,

ROLF ARSBERG,

Judge of District Court.

Dated: March 19, 1965.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Faye V. Peterson, on her own behalf
and as mother and natural guardian
of Palmer Brent Peterson, Sheri Faye
Peterson and Bradford Lee Peterson,
minors, and Faye V. Peterson as
Guardian ad Litem of Sheri Faye
Peterson and Bradford Lee Peterson,
minors,

Plaintiff,

vs.

Marcia Bartels (Mrs. Larry Bartels),
Jan Achman, Sandra Holden (Mrs.
Michael C. Holden), Paul L. Halverson,
Lillian Halverson, Woodard-Elwood &
Company, a Minnesota corporation,
William E. Drexler, Jerome Daly,
Caldwell Phillips, Inc., a Minnesota
corporation, Commercial State Bank,
a Minnesota corporation, Victor P.
Reim, Jr., John Durenberger, St.
Paul Fire & Marine Insurance Company,
Lois M. Peterson (Mrs. Palmer A.
Peterson, formerly Lois M. Kuenzel),
John Doe, Lester Roe, Mary Doe,
Mary Roe, the Doe Company and the
Roe Corporation,

Defendants

and

William E. Drexler,

Third Party Plaintiff

vs.

Palmer A. Peterson, James P. Rorris,
Robert W. Dygert, and Dygert & Gunn,

Third Party Defendants

FILE NO. 632581
CAL NO. 61823

DECISION AND
ORDER FOR JUDGMENT

FILED
MAY 10 1970
GERALD R. NELSON
CLERK OF DIST. CT., HENN. CO.
E. J. Smith
Deputy

DECISION AND ORDER

The above entitled matter came duly on before the undersigned, one of the Judges of the District Court in and for Hennepin County, Minnesota, on Friday, April 26, 1968, pursuant to a Calendar Order duly made and served by mail upon all counsel of record by the Hon. Eugene Minenko, Judge of this Court, dated and mailed to counsel on March 25, 1968.

Plaintiff appeared through her attorneys, James P. Rorris, Esq., and Robert W. Dygert, Esq., of the firm of Dygert & Gunn. Defendant Marcia Bartels appeared personally, pro se. Defendants Paul L. Halverson and Lillian Halverson appeared through their attorney, Paul Fisch, Esq. Defendant Woodard-Elwood & Company, a Minnesota corporation, appeared through its attorney, Henry W. Haverstock, Jr., Esq. Defendant William E. Drexler appeared personally, pro se. Defendant Caldwell Phillips, Inc., a Minnesota corporation, appeared through its attorney, James Geraghty, Esq., of the firm of Altman, Geraghty, Leonard & Mulally. Defendants Commercial State Bank, a Minnesota corporation, Victor P. Reim, Jr., and John Durenberger appeared through their attorney, R. D. Blanchard, Esq., of the firm of Meagher, Geer, Markham & Anderson. Defendant Lois M. Peterson and third party defendant Palmer A. Peterson appeared through their attorney, Seth Phillips, Esq. Third party defendant James P. Rorris, present in Court, appeared through his attorney, Harold J. Carroll, Esq., of

the firm of Carroll, Cronan, Roth & Austin. Third party defendants Robert W. Dygert and Dygert & Gunn, Mr. Dygert being present in Court, appeared through their attorney, Melvin D. Heckt, Esq., of the firm of Richards, Montgomery, Cobb & Bassford.

There was no appearance at the outset by defendants Jan Achman or Jerome Daly, but the Court was later informed by Affidavit of Jerome Daly that he had instructed William E. Drexler to appear and act as attorney for him at said calendar call.

There was no appearance by defendant Sandra Holden, but prior to the commencement of the trial in the matter the Court was informed that Seth Phillips, Esq., was appearing for said defendant.

At the outset of the proceedings a motion was asserted by Seth Phillips, Esq., on behalf of third party defendant Palmer A. Peterson to consolidate with the trial of this matter a certain action brought by Palmer A. Peterson against Robert W. Dygert, attorney, and James P. Rorris, attorney. After argument of counsel, said motion was denied.

Motions were thereupon made by Melvin D. Heckt on behalf of Robert W. Dygert and Dygert & Gunn, third party defendants, and by Harold J. Carroll on behalf of James P. Rorris, a third party defendant, to dismiss the third party

actions against said defendants with prejudice, based upon the pleadings and the Statement of the Case filed by the third party plaintiff William E. Drexler. Mr. Drexler argued against said motion. After arguments of counsel, said motions to dismiss the third party complaint against the said defendants, with prejudice, were granted.

The Court thereupon inquired as to whether all counsel were ready to start picking a jury for the trial of the case at 2 o'clock P.M. that afternoon. Affirmative responses were heard from the attorneys for the plaintiff and from defendant William E. Drexler and from Paul Fisch, Esq., on behalf of defendants Halversons. There were no objections registered to commencement of the trial at 2 o'clock P.M., said date. The Court thereupon ordered all parties and their counsel back at 2 o'clock P.M. for the purpose of selecting a jury.

Sometime after 1:30 P.M. on the same day, the Court received an Affidavit of Prejudice filed by William E. Drexler, which the Court thereupon disallowed on the grounds that it was not timely, Mr. Drexler having appeared before the Court and argued the aforesaid motions, without objection.

Selection of a jury in this matter thereupon proceeded during the afternoon of Friday, April 26, 1968. The

Court was informed by Seth Phillips, Esq., that he was now appearing for defendant Marcia Bartels as well as defendants Sandra Holden and Lois M. Peterson and third party defendant Palmer A. Peterson. A motion by Seth Phillips, Esq., to dismiss the action on the grounds that an indispensable party, Palmer A. Peterson, was not a party to the action was denied. During the trial a motion by Mr. Phillips to withdraw as counsel for all defendants he represented was denied.

During the afternoon of Friday, April 26, 1968, the jury panel was examined on voir dire by Seth Phillips, Esq., on behalf of defendants Marcia Bartels, Sandra Holden and Lois M. Peterson and third party defendant Palmer A. Peterson. The jury panel was also examined during said afternoon by defendant William E. Drexler.

On Monday, April 29, 1968, the voir dire examination of the jury panel by William E. Drexler continued. During the morning session defendant Jerome Daly appeared and filed with the Court a document entitled "Motion and Notice of Motion and Affidavit of Prejudice against Tom Bergin, District Judge Henn. Co." Mr. Daly announced that he was making a special appearance for the purpose of his motion to disqualify the undersigned on the grounds of bias and on the basis of his affidavit of prejudice. There being no showing of actual bias, and the record showing that the case had previously been transferred from Judge Theodore B. Knudson on the basis of an affidavit of prejudice filed by said defendant and that Judge Eugene Minenko had disallowed a subsequent affidavit of prejudice naming the undersigned and numerous other judges, the Court

denied said motion and disallowed said affidavit of prejudice.

Defendant Jerome Daly then announced to the Court that he was making a special appearance only. The Court informed Mr. Daly that examination of the jury panel and participation in the trial of the matter would be considered to be a general appearance. Mr. Daly thereupon left the courtroom and did not re-appear at any time the Court was in session in connection with this matter.

Mr. Drexler continued with examination of the jury panel during the morning of Monday, April 29, 1968, and at the conclusion of the morning session informed the Court that he, too, wished to make a special appearance. His motion was denied. Mr. Drexler did not appear at the afternoon session on Monday, April 29, nor at any subsequent sessions of the Court in the trial of this matter, although during the afternoon of Monday, April 29, someone purporting to represent him served upon the Court and counsel copies of the affidavit of prejudice delivered by him to the Court during the afternoon of April 26.

Impaneling of the jury and the opening statements of counsel were completed during the afternoon of April 29, 1968. Testimony was taken in the matter on April 30, May 1, May 2 and May 3, 1968. During the trial of the case, the counterclaims of William E. Drexler and Jerome Daly against the plaintiff were dismissed with prejudice. The plaintiff also moved for dismissals of the action as to defendants

Marcia Bartels, Jan Achman and Sandra Holden. Said motions were granted without prejudice as to defendant Marcia Bartels and with prejudice as to defendants Jan Achman and Sandra Holden. After a showing in respect to defendant Lois M. Peterson that a trial might have an adverse physical and emotional effect upon her, on motion of plaintiff the action was also dismissed without prejudice as to said defendant Lois M. Peterson. Also during the trial of the matter, the Court granted a motion of the third party defendant Palmer A. Peterson for dismissal of the third party action as to him, with prejudice.

At the conclusion of plaintiff's testimony, the Court granted a motion of Woodard-Elwood & Company for dismissal as to said defendant with prejudice.

Motions by defendants Commercial State Bank, Victor P. Reim, Jr., and John Durenberger and defendant Caldwell Phillips, Inc., for dismissal of the action or a directed verdict on the ground that plaintiff had failed to establish a cause of action and on the further ground that the plaintiff was not a proper party plaintiff were denied. Defendants Paul L. Halverson and Lillian Halverson also moved for dismissal or directed verdict and their motions were also denied.

No further testimony was adduced by any of the defendants, each defendant moving to adopt the testimony adduced by his respective representatives on the cross-examination as part of the plaintiff's case. After all parties had

rested, each of the defendants renewed the motions made at the close of the plaintiff's case. Said motions were denied.

On Monday, May 6, 1968, prior to submission of the matter to the jury, the Court was informed by counsel for the plaintiff that he was withdrawing his opposition to the motions for dismissal of the action as to defendants Commercial State Bank, defendant Victor P. Reim, Jr., defendant John Durenberger, and defendant Caldwell Phillips, Inc., insofar as said motions were based upon the ground that the plaintiff was not the proper party to bring the action, and provided that such dismissal was without prejudice to any action that might be brought by the defendant Paul L. Halverson as Trustee against any of said defendants. Plaintiff's counsel requested that counsel for said defendants consent to a determination in the pending action of any rights that might exist between Paul L. Halverson and said defendants. Counsel for defendants refused to consent to such procedure. The Court thereupon, on plaintiff's motion, dismissed the action as to defendants Caldwell Phillips, Inc., Commercial State Bank, Victor P. Reim, Jr., and John Durenberger, with prejudice. The Court at the same time informed counsel that the Court did not thereby intend to prejudice any cause of action that Paul L. Halverson as Trustee might have against said defendants.

The Court was further informed that an agreement had been made between plaintiff and the defendants Halverson that the action would be dismissed with prejudice as to both of said defendants upon the agreement of defendant Paul L.

Halverson that he would pay into Court at this time the sum of Eight Thousand (\$8,000.00) Dollars in partial restitution of the trust assets as required in an Order of the Honorable Irving R. Brand, then a Judge of this Court, dated January 26, 1965, in the case of Peterson vs. Peterson, et.al., Hennepin County District Court File No. 566224, and that said defendant Halverson would bring an appropriate action in his own name as Trustee for damages against the Commercial State Bank and such other defendants as might be requested by plaintiff's attorneys. Pursuant to such agreement, and upon motion of the attorneys for the plaintiff, the action was thereupon dismissed with prejudice as to defendants Paul L. Halverson and Lillian Halverson.

The matter then was submitted to the jury in reference to the liability of the remaining defendants, Jerome Daly and William E. Drexler.

At 2:15 P.M., Monday, May 6, 1968, the jury returned (1) a separate verdict in favor of the plaintiff and against the defendant Jerome Daly, in which the jury assessed the damages due from said defendant to the plaintiff in the sum of \$35,500.00; (2) a separate verdict in favor of the plaintiff and against the defendant William E. Drexler, in which the jury assessed the damages due from said defendant William E. Drexler to the plaintiff in the sum of \$35,500.00; and (3) gave affirmative answers to each of the following special interrogatories as follows:

1. Were the damages that you have assessed against Jerome Daly created by his fraud or misappropriation while acting as an Officer of the Court? Answer Yes or No
YES.
2. Are the damages that you have found against Jerome Daly based upon a liability for

obtaining money or property by false pretenses or false representations?
Answer Yes or No YES.

3. Were such false pretenses or representations made knowingly and fraudulently or recklessly? Answer Yes or No YES.
4. Were the damages that you have assessed against William E. Drexler created by his fraud or misappropriation while acting as an Officer of the Court?
Answer Yes or No YES.
5. Are the damages that you have found against William E. Drexler based upon a liability for obtaining money or property by false pretenses or false representations?
Answer Yes or No YES.
6. Were such false pretenses or representations made knowingly and fraudulently or recklessly? Answer Yes or No YES.

Upon said proceedings and upon said verdicts, and upon all the files, records and proceedings herein, the Court being fully advised in the premises, on motion of Dygert & Gunn, attorneys for the plaintiff, the Court makes the following Decision and Order for Judgment:

DECISION

A. The parties are entitled to the Entry of Judgment as follows:

1. The third party actions by William E. Drexler against Palmer A. Peterson, James P. Rorris, Robert W. Dygert and Dygert & Gunn shall be and are hereby dismissed with prejudice.
2. The counterclaims of William E. Drexler and Jerome Daly against the plaintiff shall be and are hereby dismissed with prejudice.

3. The action as to defendant Marcia Bartels (Mrs. Larry Bartels) shall be and hereby is dismissed without prejudice.

4. The action as to defendants Jan Achman and Sandra Holden (Mrs. Michael C. Holden) shall be and hereby is dismissed with prejudice.

5. The action as to defendant Paul L. Halverson and Lillian Halverson shall be and is hereby dismissed with prejudice.

6. The action as to Woodard-Elwood & Company, a Minnesota corporation, shall be and hereby is dismissed with prejudice.

7. The action as against defendant Caldwell Phillips, Inc. shall be and hereby is dismissed with prejudice as to the claims of the plaintiff, but without prejudice to any rights which may be asserted by Paul L. Halverson as Trustee against said defendant.

8. The action as against defendants Commercial State Bank, a Minnesota corporation, Victor P. Rein, Jr., and John Durenberger, and each of them, shall be and is hereby dismissed with prejudice as to the claims of the plaintiff, but without prejudice as to any cause of action that may be asserted by Paul L. Halverson as Trustee against said defendants or any of them.

9. The action as against defendant Lois M. Peterson (Mrs. Palmer A. Peterson, formerly Lois M. Kuenzel) shall be and hereby is dismissed without prejudice.

10. Judgment shall be and hereby is entered in favor of the plaintiff and against defendant Jerome Daly in the amount of \$35,500.00. It is hereby adjudged and decreed that said damages assessed against Jerome Daly were created by his fraud or misappropriation while acting as an Officer of the Court and are based upon a liability for money or property obtained by false pretenses or false representations, which false pretenses or false representations were made knowingly and fraudulently or recklessly.

11. Judgment shall be and hereby is entered in favor of the plaintiff and against defendant William E. Drexler in the amount of \$35,500.00. It is hereby adjudged and decreed that said damages assessed against William E. Drexler were created by his fraud or misappropriation while acting as an Officer of the Court and are based upon a liability for money or property obtained by false pretenses or false representations, which false pretenses or false representations were made knowingly and fraudulently or recklessly.

B. A thirty-day stay of entry of Judgment is granted in respect to the Judgments against Jerome Daly and William E. Drexler.

ORDER FOR JUDGMENT

Let Judgment be entered accordingly.

BY THE COURT:

[Signature]
Judge of the District Court

Dated: May 13, 1968.

-12-

FILED

MAY 13 1968

GERALD R. NELSON
CLERK OF DIST. CT., HENN. CO.

E. H. Smith
Deputy

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the
original on file and of record in my office.

DEC 29 1969
GERALD R. NELSON, Clerk of District Court
BY *R. J. Anderson* Deputy

No. 70

Hennepin County

Sheran, J.

Faye V. Peterson,

Respondent,

39893 vs.

Palmer A. Peterson and Paul
L. Halverson, individually
and as trustee,

Respondents,

Jerome Daly and Jan Achman,

Respondents,

William E. Drexler,

Relator.

Endorsed
Filed October 27, 1967
Mae Sherman, Clerk
Minnesota Supreme Court

SYLLABUS

1. A person charged with a criminal contempt not committed in the presence of the court held entitled to a jury trial.

2. The prosecution of a constructive criminal contempt should not be conducted by the attorney for one of the parties in the proceedings out of which the contempt arose.

Reversed and remanded for a new trial.

OPINION

SHERAN, Justice.

Certiorari to the District Court of Hennepin County.

Relator was convicted of constructive criminal contempt before the District Court of Hennepin County and sentenced to 6 months' imprisonment and a \$250 fine. On certiorari, he contends

that the conviction must be set aside because the trial court denied his request for a trial by jury and because the prosecution was conducted by the private attorney of the plaintiff in the civil action out of which the alleged contempt arose.

The principal questions here presented are whether in constructive criminal contempt¹ cases the alleged contemnor is entitled to a trial by jury and whether in such cases prosecution may be by an attorney other than one representing the State of Minnesota.

1. In 1877, *State ex rel. Warfield v. Becht*, 23 Minn. 411, was decided. In that case, relator, who had been adjudged in contempt for his disobedience of an order directing him to deliver up certain property to a receiver in proceedings supplementary to execution, and who had been sentenced to 1 month in jail plus a fine of \$25, brought a habeas corpus proceeding, claiming that his commitment was contrary to the Minnesota Constitution's guarantee of a jury trial. This court rejected his claim on the basis that "[t]here was no criminal prosecution

¹ "Constructive" contempts are those which are "not committed in the immediate presence of the court, and of which it has no personal knowledge," Minn. St. 588.01, subd. 3, as opposed to "direct" contempts, which occur "in the immediate view and presence of the court." § 588.01, subd. 2. Regarding direct contempts, Minn. St. 588.03 provides: "A direct contempt may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the court or officer, and adjudging the person proceeded against to be guilty of a contempt, and that he be punished as therein specified."

"Criminal" contempt is that which is prosecuted to maintain and vindicate the authority of the court, as opposed to "civil" contempt, which is prosecuted to make effective the remedy given to a private party. See, *State ex rel. City of Minneapolis v. Minneapolis St. Ry. Co.* 154 Minn. 401, 191 N. W. 1004; *Campbell v. Motion Picture Machine Operators*, 151 Minn. 238, 186 N. W. 787. Criminal contempt is prosecuted for the purpose of punishment; civil contempt, for the purpose of coercing performance by the contemnor. See, *Zieman v. Zieman*, 265 Minn. 190, 121 N. W. (2d) 77; *State ex rel. Eder v. Searles*, 141 Minn. 267, 170 N. W. 198; *State v. Leftwich*, 41 Minn. 42, 42 N. W. 598; *In re Fanning*, 40 Minn. 4, 41 N. W. 1076.

here, nor was the relator held to answer for a criminal offense, in the meaning of the constitution," and that "[t]rial by jury in such proceedings would not only be a thing without precedent, but intrinsically inappropriate. It would seem to be a necessity that a court should have in its own hands the power to punish contempts of its authority." 23 Minn. 413.

Notwithstanding the Warfield case and dicta in State ex rel. Russell v. Ives, 60 Minn. 478, 480, 62 N. W. 831, 832, that "[w]hen the accused is brought before the court, or appears in response to the order, the court proceeds to hear the case without a jury," a district court in 1948 accorded a jury trial to one charged with constructive criminal contempt. See, Swift & Co. v. United Packing House Workers of America, 228 Minn. 571, 37 N. W. (2d) 831.

We have heretofore held that a number of criminal procedural safeguards are applicable to constructive criminal contempt cases. See, State ex rel. Sandquist v. District Court, 144 Minn. 326, 175 N. W. 908 (self-incrimination); State v. Binder, 190 Minn. 305, 251 N. W. 665 (proof beyond reasonable doubt); State ex rel. Fischer v. District Court, 65 Minn. 146, 67 N. W. 796 (same); Richardson v. Richardson, 218 Minn. 42, 15 N. W. (2d) 127 (proof must conform to accusation); French v. French, 236 Minn. 444, 53 N. W. (2d) 218 (same); State v. Smith, 116 Minn. 228, 133 N. W. 614 (double jeopardy--no appeal of acquittal).

Minn. Const. art. 1, § 6, provides: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury * * *." The language is identical with that in U. S. Const. Amend. V.

In Green v. United States, 356 U. S. 165, 78 S. Ct. 632, 2 L. ed. (2d) 672, it was held that the Federal Constitution does

not compel a jury trial in contempt cases.²

But in *United States v. Barnett*, 376 U. S. 681, 695, note 12, 84 S. Ct. 984, 992, 12 L. ed. (2d) 23, 33, the United States Supreme Court said by way of dictum: "Some members of the Court are of the view that, without regard to the seriousness of the offense, punishment by summary trial without a jury would be constitutionally limited to that penalty provided for petty offenses."

In *Cheff v. Schnackenberg*, 384 U. S. 373, 86 S. Ct. 1523, 16 L. ed. (2d) 629, the court applied this principle to the Federal courts by exercising its supervisory power, ruling that Federal courts may not impose sentences greater than 6 months for contempt unless a jury trial has been had or waived and that sentences in excess of that period could be revised on appeal to comply with this rule.

There has been considerable dispute as to whether the new United States Supreme Court rule is constitutionally based.³ The statement in *Barnett* was specifically labeled dictum, and the *Cheff* decision was specifically termed one in the exercise of the

² Mr. Justice Frankfurter concurred in the *Green* decision despite his belief that the traditional reliance upon an "immemorial usage" of jury-less contempt adjudications was historically inaccurate. See, Frankfurter and Landis, Power of Congress Over Procedure in Criminal Contempts in "Inferior" Federal Courts--a Study in Separation of Powers, 37 Harv. L. Rev. 1010, 1042 to 1052.

³ Although one state court has rejected the notion that the new rule is constitutionally based, see, *People v. Bloom*, 35 Ill. (2d) 255, 220 N. E. (2d) 475; *People ex rel. Stollar v. Ogilvie*, 36 Ill. (2d) 261, 222 N. E. (2d) 496, another state court believes that the possibility it is so based is a real one. See, *State ex rel. Buckson v. Mancari*, ___ Del. ___, 223 A. (2d) 81. In one case it is suggested as an alternative ground that the new rule has not been made applicable to the states. See, *Ford v. Boeger* (8 Cir.) 362 F. (2d) 999, 1007. A commentator has stated, "It would seem to be inevitable that the Court will apply the same [*Cheff*] rule to the States under the due process clause of the 14th Amendment." See, Burdick, Problems in Contempt, 43 N. D. L. Rev. 237, 241.

Supreme Court's supervisory power over Federal courts.⁴

It is realistic to think that the United States Supreme Court's new rule, although now stated to be in the exercise of its supervisory power, may be extended to the Sixth Amendment of the Federal Constitution and made applicable to the states under the Fourteenth Amendment.

There are persuasive reasons to believe that State ex rel. Warfield v. Becht, supra, should be overruled and that the right of a defendant to trial by jury in cases of constructive criminal contempt should be declared. Our State Constitution confers the right to trial by jury in all criminal prosecutions, regardless of gravity. 10 Dunnell, Dig. (3 ed.) § 5235; see, State ex rel. Erickson v. West, 42 Minn. 147, 43 N. W. 845; see, e. g., State v. Everett, 14 Minn. 330 (439).

The cases in which this court has held that a jury trial is not available in municipal ordinance prosecutions, State v. Hartman, 261 Minn. 314, 112 N. W. (2d) 340; State v. Ketterer, 248 Minn. 173, 79 N. W. (2d) 136; see, 10 Dunnell, Dig. (3 ed.) § 5235, are not entirely in point in that they are grounded upon the fact that an ordinance violation is not an offense against the state as a whole. See, State v. Hoben, 256 Minn. 436, 98 N. W. (2d) 813.

Constructive criminal contempt is, in one sense, conduct offensive to the dignity of the state as a whole and is punishable by up to 6 months' imprisonment and a \$250 fine.⁵ The punishment

⁴ See, Note, 8 William & Mary L. Rev. 76.

⁵ Minn. St. 588.10. It should be noted that § 588.02 limits the power to punish constructive contempts by imprisonment or by a fine exceeding \$50 to cases where it appears that a party's right or remedy was defeated or prejudiced; and that § 588.20, making certain contempts misdemeanors, apparently limits the punishment for such contempts to 90 days or \$100. § 609.02, subd. 3. The present relator was charged with contemptuous conduct not falling

is imposed as a deterrent to others. See, *Gardner v. Conway*, 234 Minn. 468, 48 N. W. (2d) 788; *Campbell v. Motion Picture Machine Operators*, 151 Minn. 238, 186 N. W. 787; *State ex rel. Works v. Langum*, 125 Minn. 304, 146 N. W. 1102; *State v. Smith*, 116 Minn. 228, 133 N. W. 614; *State v. Leftwich*, 41 Minn. 42, 42 N. W. 598; *In re Fanning*, 40 Minn. 4, 41 N. W. 1076.

It is also a fact that in a case such as this, a constructive criminal contempt is an affront to the jurist whose orders are evaded and to the judicial system as an institution. But the urgent and immediate necessity of maintaining order in the courtroom which justifies the summary disposition of direct contempts does not apply where the offensive conduct is committed out of the presence of the court. In such cases, formal proceedings are needed in any event to establish the contumacious conduct involved and to give the person accused notice and opportunity to be heard. We have often held that the trial judge, in deciding constructive contempt cases, is limited to the evidence adduced at the contempt trial and may not rely upon knowledge obtained elsewhere. See, *Clausen v. Clausen*, 250 Minn. 293, 84 N. W. (2d) 675; *State v. Binder*, 190 Minn. 305, 251 N. W. 665; *State ex rel. Russell v. Ives*, 60 Minn. 478, 62 N. W. 831.

Constitutional mandates aside, practical considerations suggest the desirability of a jury trial in cases of constructive criminal contempt. Jury trials foster public understanding and acceptance of the administration of justice and bring public attention and interest to disputes which are not and should not be the exclusive concern of the bench and bar. The use of a jury

(footnote 5 continued)
within the descriptions of § 588.20.

According to a table published in 8 William & Mary L. Rev. 90, 30 states limit the penalty which may be imposed for contempt without a jury trial. The lowest imprisonment limit is 1 day, the highest, 6 months, which obtains in 7 states. The average maximum imprisonment is 58 days; and the average maximum fine is \$313.

to insulate the alleged offender and the offended jurist may very well serve the interest of fairness without adversely affecting judicial procedures.

The considerations of necessity upon which others have previously based the denial of a right to trial by jury in constructive criminal contempt cases (see, e. g., *In re Debs*, 158 U. S. 564, 595, 15 S. Ct. 900, 910, 39 L. ed. 1092, 1106; *People v. Bloom*, 35 Ill. (2d) 255, 220 N. E. (2d) 475) do not seem compelling to us. Eminent authorities have argued that there is no necessity for depriving one charged with constructive criminal contempt of a jury trial. Beale, Contempt of Court, Criminal and Civil, 21 Harv. L. Rev. 161, 172; cf. *Toledo Newspaper Co. v. United States*, 247 U. S. 402, 425, 38 S. Ct. 560, 566, 62 L. ed. 1186, 1195 (Mr. Justice Holmes dissenting). This view is expressed in Goldfarb, *The Contempt Power*, p. 182:

** * * [T]hough courts may have a right of self-defense, only society as a whole has the right to punish offenses. Once the interruption to the court's proceeding ceases, the sovereign should be the only one to punish, and then only according to the procedures set out in the Constitution. It is not for the individual or for the incorporeal body that is wronged to punish. * * * [P]ractices in contempt cases [may be compared] with the right of individuals to defend themselves against assault. Certainly an individual may defend himself. But once having defended himself, he cannot punish his assailant other than through the orderly processes of law. * * * [C]ontempt is less a necessity for the exercise of a legal power than an engine for its abuse; and though courts should have the right to dispel interference with the performance of their functions, that power should go no further."⁶

It has been argued that it would be demeaning for a judge who has offered evidence against an alleged contemnor to have the defendant acquitted by a jury. This contention has not

⁶ Paraphrasing 1 Livingston, *Complete Works on Criminal Procedure*, pp. 258 to 267. See, Goldfarb, The Constitution and Contempt of Court, 61 Mich. L. Rev. 283.

been urged in the present matter. And, in any event, the assumption of the argument (i. e., that the jurist against whom the contumacious conduct is directed has an interest in the outcome of the case) militates in favor of rather than against submission to a jury.

Although the preceding discussion leads logically to the conclusion that the defendant in constructive criminal proceedings is entitled to a trial by an impartial jury by virtue of Minn. Const. art. 1, § 6, our decision in *State ex rel. Warfield v. Becht*, 23 Minn. 411, decided almost 100 years ago, remains authority to the contrary unless overruled. As of this time, we do not have sufficient experience with jury trials in constructive criminal contempt cases to know whether the considerations of necessity to which reference is made in that opinion still apply so as to justify the treatment of some constructive criminal contempt cases in a way different than that common to "criminal prosecutions" as those words are used in our constitution. For the present at least, we deem it the better course to hold that although this defendant may not have been entitled to a jury trial as a matter of constitutional right, he should have been afforded the privilege in this case as the authority of the judicial system was not in jeopardy and the punishment imposed involved imprisonment.

2. We also believe that constructive criminal contempts should not be prosecuted by attorneys other than those representing the state. As noted above, we have often stated that criminal contempts are offenses against the dignity of the state as a whole. We have held that criminal contempt is not a proceeding in the action out of which the alleged contempt arose, but is collateral to it, and the parties to the action out of which the alleged criminal contempt arose have no interest in it. See, *State v.*

Leftwich, 41 Minn. 42, 42 N. W. 598. This being the case, the private attorney for one of the parties to the proceeding out of which the alleged contempt arose has no status which authorizes him to prosecute. The offense being against the state, due and orderly process is better assured if the prosecution is conducted by an attorney for the state.

Different considerations apply in cases of direct and civil contempt. Our decision here is limited to cases of indirect contempt where criminal sanctions are to be imposed. It is not necessary to consider other points raised by relator.

Reversed and remanded for a new trial.

my 2/2/70

42174

No. 130

Hennepin County

Otis, J.

Faye V. Peterson, et al,

Respondents,

41514 vs.

Marcia Bartels, et al,

Defendants,

Jerome Daly and William E.
Drexler,

Appellants.

Endorsed
Filed September 5, 1969
John McCarthy, Clerk
Minnesota Supreme Court

S Y L L A B U S

1. The fact a party participates in pretrial motions at a calendar call on the morning to which a case has been continued on a "non-readiness" basis does not prevent his filing during the noon hour an affidavit of prejudice which is effective to disqualify the judge to whom the case has been assigned for trial that afternoon.

2. The fact a party does not appear at a calendar call on the morning to which his case has been continued on a "non-readiness" basis does not foreclose his right to be notified that the case has been assigned for trial in the afternoon.

Reversed and remanded.

O P I N I O N

OTIS, Justice.

Jerome Daly and William E. Drexler appeal from an order denying them a new trial in an action brought by Faye V. Peterson, in which she has recovered damages of \$35,500 against each appellant. The only issues are (1) whether it was error for the trial court not

to recognize an affidavit of prejudice filed by Drexler; and (2) whether it was error for the court to commence trial without notifying Daly that the matter was proceeding, and without affording him an opportunity to be present when the jury was selected.

This action is the aftermath of protracted litigation involving a divorce between Faye V. Peterson and Dr. Palmer Peterson. Peterson v. Peterson, 274 Minn. 568, 144 N. W. (2d) 597; Peterson v. Peterson, 278 Minn. 275, 153 N. W. (2d) 825; Peterson v. Peterson, 278 Minn. 432, 153 N. W. (2d) 830; Peterson v. Peterson (8 Cir.) 400 F. (2d) 336. In the present litigation Mrs. Peterson alleges that Daly and Drexler, the attorneys who represented Dr. Peterson, were guilty of fraudulently concealing and diverting his assets to prevent her from receiving alimony and the property division to which she was entitled.

Drexler's Appeal

On March 21, 1968, this case was placed on a calendar call before Judge Eugene Minenko of the District Court of Hennepin County. Both Daly and Drexler answered the call and made a number of motions. At the conclusion of the hearing, the following discussion occurred between court and counsel:

"THE COURT: Gentlemen, I'm going to place this case, for the moment - I don't know that it is in actually a readiness status at this time - but I'm going to continue it in a non-readiness status until April 26th. In other words, this calendar call in this matter is continued to April 26th.

"MR. FRISCH: Does that mean there's going to be another calendar call at that time?

"THE COURT: Yes.

* * * * *

"MR. DYGERT: May I say, so far as the intent of the Court's order, do I understand that any motions shall be put on for hearing before April 24th so that the Court - -

"THE COURT: (Interposing) They should be concluded prior to that time. In other words, they should be filed and concluded prior to that time. In other words, I am in hopes by this and with that length of

time that these matters that are still hanging shall be accomplished so that essentially to that extent - and not being able, of course, to foresee everything - to that extent that the matter then perhaps at that time can definitely schedule for trial."

On April 26, Drexler appeared at Judge Minenko's courtroom and found a notice on the door directing interested parties to report to the assignment clerk for the calendar call to be conducted by Judge Tom Bergin. In response, he appeared before Judge Bergin, together with other parties and their counsel, and after a discussion of various motions advised the court that he was ready to go to trial. Judge Bergin concluded the calendar call by asking counsel, including Drexler, whether they were ready to draw a jury at 2 o'clock, to which Drexler and the others answered in the affirmative. The court then said, "Very well. 2:00 o'clock this afternoon." At 1:30 Drexler filed an affidavit of prejudice against Judge Bergin which the judge refused to honor, assigning the following reasons in so doing:

"* * * The Affidavit of Prejudice is disallowed for the reason that after assignment to this Court Mr. Drexler participated in argument on a legal motion which was determined adversely to him, and that subsequent to his appearance and argument on the motion the affidavit was filed. For that reason it is disallowed."

In response, Drexler stated that he had no notice Judge Bergin would be presiding until immediately before the noon hour on that day.

We find nothing in Drexler's participation in the motions before Judge Bergin inconsistent with his right to file an affidavit of prejudice. The transcript of the proceedings before Judge Minenko and Judge Bergin do not indicate that Drexler knew which judge would preside at the trial until shortly before noon that day. Although Drexler took part in selecting a jury, he withdrew from further participation in the case on the second day of the trial.

Rule 63.03, Rules of Civil Procedure, permits a party or his attorney to file an affidavit of prejudice in a multiple-judge district within 1 day after it is ascertained which judge will preside

at the trial. The statement of policy adopted by the judges of the Hennepin County District Court provides in part, 27B M. S. A. p. 144:

"* * * Counsel will be allowed 10 days during which to file an Affidavit of Prejudice, after notification of assignment of a case to a Judge."

Since Drexler complied with these rules, it was error for the trial court not to disqualify himself. For that reason Drexler is entitled to a new trial.

Daly's Appeal

Because he was engaged in a trial of a criminal matter on the morning of April 26, 1968, Daly did not appear at the hearing before Judge Bergin. The court at the calendar call noted that he was not present. Although Daly subsequently asserted to the court that he had instructed Drexler to act as his attorney at the calendar call, Drexler, by affidavit, confirms the fact that he did not so advise the court. Daly was not apprised of the fact that the case would be immediately sent out for trial and did not learn that it was in progress until 10 p. m. that night. The following Monday he attempted to invoke a blanket affidavit of prejudice against most of the Hennepin County bench, which the trial court properly rejected because Daly had filed a prior affidavit of prejudice and made no showing of actual bias. Thereafter, Daly attempted to make a special appearance and at the same time take part in the hearing. This the court correctly refused to allow. Consequently Daly withdrew from further participation.

The only question is whether the order of Judge Minenko and his remarks in open court which prefaced it constituted sufficient notice to Daly that the case would go to trial at the hearing April 26. We think it did not. Significantly, Judge Minenko continued the matter for a further calendar call on a "non-readiness status." To be sure, the court expressed the hope that the case would be

scheduled for trial on April 26, but his remarks fell far short of setting a day certain for hearing. Under Rules 4, 5, and 28, Special Rules, Fourth Judicial District, it appears that only when a case is placed on an "alert status" may it be sent out for trial on short notice. Rule 5(a)(2) provides as follows (Minn. St. 1967, p. 5444):

"(a) The following phrases as used in these rules shall have these meanings:

* * * * *

"(2) 'Alert status' means that a judge, a referee or the assignment clerk has notified the parties that the case is subject to being assigned out for trial on one hour notice."

There is no showing that after Judge Bergin set the case for trial at 2 o'clock following the morning calendar call any attempt was made to notify Daly of that fact. Having failed to appear at the calendar call, Daly was in no position to object to the time designated by the court. Nevertheless, that did not deprive him of his right to notice that the matter would be heard the same afternoon. There is no claim that the assignment clerk or anyone else tried to reach him or his office until late that evening. Under these circumstances it was error for the trial court to deny Daly the opportunity to participate in selecting the jury and he is entitled to a new trial.

Reversed and remanded.

February 9, 1970

William E. Drexler
1602 Selby Avenue
St. Paul
Minnesota

Dear Mr. Drexler:

I am advised by the Ramsey County Sheriff's office that the Subpoena directed to you in the matter of In re Jerome Daly was left with Mrs. Drexler on February 4, 1970.

This letter is to advise you that I require your presence in Room 722, Flour Exchange Building, Minneapolis, Minnesota, on Friday morning, February 13, 1970, at 9:30 o'clock.

Thank you for your cooperation in this matter.

Very truly yours,

Herbert C. Davis, Counsel
State Board of Law Examiners

HCD/drr
cc - Mr. Drexler
1907 Jefferson Avenue
St. Paul, Minnesota

Petterson's Ex 96
2/13/70 emg

42174

February 3, 1970

Ramsey County Sheriff's Office
Ramsey County Court House
St. Paul
Minnesota

Gentlemen:

Enclosed please find original and copy of Subpoena in the matter of In re Jerome Daly. Will you please serve the copy on William Edward Drexler at 1602 Selby Avenue, St. Paul, Minnesota, his office address, or at 1907 Jefferson Avenue, St. Paul, Minnesota, his residence address?

Draft in the sum of \$10.00 is enclosed to apply on the travel and service fee. If there is an adjustment to be made, please advise at the time you return the original document with your Affidavit of Service.

Thank you for your cooperation in this matter.

Very truly yours,

Herbert C. Davis

HCD/err
encls. 3

RECEIVED OF SHERIFF OF RAMSEY COUNTY

\$ 4.50

DOLLARS

Unexpended as per following statement:

Fees 3.50 Herbert C. Davis
Refundment 4.50 6100 Cyclopedia Blvd
St Louis Pk 16
Total \$ 8.00 Check No. 26735 Date 2-5 1970

B 7116 Feb 5, 1970

Received of Herbert C Davis

\$ 8.00 \$ 8.00 DOLLARS

Case No. 382748 KERMIT HEDMAN, Sheriff

JPH
Cashier.

State of Minnesota }
COUNTY OF RAMSEY } ss.

I Hereby Certify and Return, That at said County and State

on the 4th day of Feb. A. D. 19 70, I served the within
subpoena on the within named witness William Edward Drexler

by reading the same to said witness _____ and by handing to and leaving with Mrs. Drexler

a true and correct copy thereof then and there; and that at the time and place aforesaid, I paid to said
Mrs. Drexler

the sum of \$ 2.00 his fees for one day's attendance and mileage as such witness.

Dated Feb. 4 19 70

My Fees - - - - \$ 2.00

Copy - - - - \$ _____

Travel - - - - \$ 1.50

Total - - - - \$ 3.50

KERMIT HEDMAN
~~THOMAS J. GIBBONS~~

Sheriff of Ramsey County, Minn.

By J. P. Byrne Deputy

State of Minnesota, }
SUPREME COURT

THE STATE OF MINNESOTA

To William Edward Drexler

Greeting:

You are hereby commanded that laying aside all and singular your business and excuses, you be and appear before The Hon. Donald C. Odden Referee appointed by said court, Room 722, Flour Exchange Building, at Minneapolis on the 9th day of February 19 70 Minnesota at 2:00 o'clock in the after noon, then and there to give evidence.

In re Jerome Daly

Hereof fail not, on pain of the penalty that will fall thereon.



WITNESS the Honorable Chief Justice of the Court aforesaid,

at St. Paul, this 12th

day of January in the year 19 70

John McCarthy Clerk.

By Wayne Tschirpke Deputy Clerk.

382748
800

SUPREME COURT
STATE OF MINNESOTA

SUBPOENA

RECEIVED
FEB 4 3 16 PM '70
KERRIT HEDMAN
SHERIFF RAMSEY COUNTY
BY

F
B

MEMO-LETTER

WILLIAM E. DREXLER, ATTORNEY AT LAW
1602 SELBY AVENUE • 2nd LEVEL • ST. PAUL, MINN. 55104
Phone 645-5829

MESSAGE

REPLY

TO Mr. Herbert C. Davis, Attorney
6100 Excelsior Boulevard

St. Louis Park, Minnesota 55416

DATE February 11, 1970

Dear Mr. Davis:

Our office is in receipt of your letter of Feb. 9, 1970. Mr. Drexler has been out of town all week and I do not know where to reach him. I am his new secretary and have been working only a short time. I do not know how to contact him in this matter.

If Mr. Drexler call, I will relay the information in your letter on to him.

sb

Yours very truly,

Susan Brown

Susan Brown

Secretary for

William E. Drexler

DATE

42174

Petitioner's 2/13/70 E97 emy

SIGNED

SIGNED

Petitioner's Ex 98
2/17/70 lmf

42174

STATE OF MINNESOTA
COUNTY OF SCOTT

IN JUSTICE COURT
MARTIN V. MAHONEY, JUSTICE
TOWNSHIP OF ~~BARREXERRE~~
CREDIT RIVER

First National Bank of Montgomery,
vs.
Jerome Daly,

Plaintiff,
DEFENDANT'S REQUESTED INSTRUCTIONS
Defendant.

Defendant requests the Court to instruct the Jury as follows:

1. Plaintiff, hereinafter referred to herein as BANK filed a Complaint herein for the recovery of the possession of Lot 19, Fairview Beach, according to the recorded Plat in the Register of Deeds Office in Scott County, Minn., which Plaintiff claims that Defendant was the owner of on May 8, 1964 at which time Defendant Daly made, executed and delivered a promissory Note in the sum of \$14,000.00 and a mortgage on the premises to secure the payment of the Note.

2. Bank claims that Daly defaulted in the payment of the principal and interest on the Note and Mortgage and that the Bank duly foreclosed the Note and mortgage by advertisement on June 26, 1967 in conformance with the law and that the Sheriff delivered his certificate of Sale on that date, June 26, 1967. Bank claims that more than one year has elapsed since the date of the sale by the Sheriff and that no redemption has been made therefrom and that the time for redemption has expired; that by reason thereof Bank claims that it is the owner in fee and is entitled to the immediate possession of the premises.

3. Defendant ^{therein} ~~Daly~~ has answered ~~therein~~ and denies generally the allegations in the Complaint except that he claims that he is on and Since May 8, 1964 the fee owner of the premises in question. Daly admits that on or about May 8 he delivered a promissory Note and a mortgage to secure the payment of the Note to the Bank but alleges that the Note and Mortgage rest upon an illegal and unlawful consideration and that the Note is null and the Mortgage is void. Daly further contends that he made this known to the public by recording a Notice of these facts in ~~the~~ Register of Deeds office on June 14, 1968 and advised the public at that time that the money or credit with which the Bank used as a attempted consideration for the note was created upon the books of the Bank by ledger book entry. Daly claims that this creation of money by bookkeeping entry is unlawful and does not provide a lawful and valuable consideration for the support of the Note and Mortgage in question.

Daly in short claims that the Note is without consideration and invalid; that therefore the mortgage is invalid and void and that the Sheriff's sale is likewise illegal and of no effect.

4. Daly further claims that the Federal Reserve Banking Act and the National Banking act are unconstitutional and that these private Banks, The Federal Reserve and the National Banks can acquire no rights in the law by their practice of creating money and credit upon their books which he claims is the practice generally.

5. Plaintiff admits that the Federal Reserve and National Banks extinguish or create money and credit upon their books by which they expand or reduce the economy's supply of money.

6. Plaintiff admits that the money or credit by which they claim is the lawful consideration to support the Note here in question was created in whole or in part by bookkeeping entry.

7. Members of the Jury, I CHARGE YOU, it is the law that the Federal Reserve Banks and the National Banks are private corporations organized and created and existing by virtue of United States Law. That these Banks and the Plaintiff Bank in this case are subject to the Constitution of the United States and all laws passed pursuant thereto and the Constitution and laws of the State of Minnesota not in conflict with the United States Constitution.

The specific provisions of the United States Constitution which are applicable here are as follows:

a) The Congress shall have the power to borrow money on the credit of the United States.

b) The Congress shall have the power to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

c) No state shall coin money; emit bills of credit; make any thing but gold or silver Coin a Tender in Payment of Debts.

d) No person shall be deprived of life, liberty or property without due process of law

Section 13 of Article 9 of Minnesota Constitution is as follows:

The legislature may pass a general banking law with the following restrictions and requirements:

a) The legislature shall have no power to pass any law sanctioning in

any manner, directly or indirectly, the suspension of specie payments (payments in gold or silver coin) by any person, association or corporation issuing bank notes of any description.

You are further charged that the law will not recognize or enforce, or hesitate to condemn, contracts resting upon an illegal consideration. Illegal Consideration consists of any act or forbearing, or a promise to act or forbear with is contrary to law or public policy. The Consideration essential to a valid contract must not only be valuable, but it must be lawful, not repugnant to law or sound policy or good morals.

When, on May 8, 1964 Daly delivered to Plaintiff First National Bank of Montgomery, Minnesota the Note for \$14,000.00 and the Mortgage to secure the Note the Bank impliedly in law agreed to tender Daly \$14,000.00 in legal tender. This was the Contract between the parties.

If you find that the First National Bank of Montgomery, in whole or in part created the money and credit or any part of the money and credit upon their books with which the Bank used as a consideration to support the Note in question, Then I charge you that this creation of money or credit by bookkeeping entry, which money and credit came into existence at the time of the entry upon the Banks books, is unlawful and contrary to law and does not constitute a sufficient legal consideration with which to support the Note and Mortgage. If you so find then the Note and Mortgage is void and the Sheriff's sale is a nullity and of no effect and the Plaintiff Bank is not entitled to the possession of the Premises in question.

If, however you find that the Bank tendered to Daly \$14,000.00 in legal tender, which was at that time gold dollars consisting of 25.8 grains, 9/10 fine of gold or silver Dollars containing 412.5 grains of Silver 9/10 fine, or had that amount on hand and set aside to tender to Daly as the consideration to support this loan, then you must find that there was a sufficient consideration for the Note and Mortgage and that the Sheriff's sale is valid and Plaintiff is entitled to the possession of the premises in question.

You are further charged that the creation of money and credit upon the Books of the Federal Reserve and National Banks is unlawful. Further, if the Note in question was in any way, directly or indirectly based upon or supported

with this ~~size~~ unlawfully created money or credit upon the books of the said Banks, either acting individually or in combination or jointly, and if you so find, then the activity of these Banks is premised outside the law and there is no lawful consideration for the said Note.

The law leaves wrongdoers where it finds them.

You may take into consideration the law I have given you, the evidence and all reasonable inference to be drawn from the evidence and matters of common knowledge. You are the sole and exclusive judges of the witnesses and their credibility and the evidence in this case.

I give you the form of verdict which is attached to these instructions.

The first form of verdict is " We the Jury find that Plaintiff, First National Bank of Montgomery on May 8, 1964 tendered \$14,000.00 in lawful money of the United States to Jerome Daly; that no part of the tender was money or credit created upon the books of the Bank or in Combination with the Federal Reserve Banks; that the Note is supported by a lawful and valuable consideration and is valid and legally binding; that the Mortgage given to secure the Note is valid and that the Sheriff's sale on foreclosure of the Note and Mortgage is valid; that the First National Bank of Montgomery has good title in fee to the premises in question and that ~~the Bank is~~ entitled to possession.

The second form of verdict is " We the Jury find that the Plaintiff, First National Bank of Montgomery on or about May 8, 1964, either by themselves or in combination and acting with the Federal Reserve Banks created, in whole

or in part, the \$14,000.00 on the books of said Bank with which the used as consideration for the Note in question; That the Bank made or tendered no lawful consideration for the Note, that the Note is void and the Mortgage resting on the Note is void; that the Mortgage foreclosure is invalid; that the Sheriff passed no title to said Bank at the Sheriff's sale and that the First National Bank of Montgomery is not entitled to recover the possession of the premises described in the Complaint known as Lot 19, Fairview Beach, Scott County, Minn. according to the plat on file with the register of Deeds.'

I give you a copy of these instructions and two forms of verdict which you take with you along with the evidence received in this trial to the Jury room during your deliberations. You are first to select a foreman. Your verdict must be unanimous if reached within 6 hours. After 6 hours 10 out of 12 may return a verdict.

Martin V. Mahoney
Justice of the peace
Credit River Township
Scott County, Minn.

Dependents' W AAAA-
JJJJ

A denied

B "

C "

D "

42174

~~E~~

~~E~~

~~B~~

~~G~~

H denied

I denied

~~J~~

Respondents' Exhibits AA through ZZ
except for:

FF

GG

HH

~~II~~

~~IIII~~ ~~deleted~~

OO 2

~~SS~~

~~SS~~

WW

XX

YY

ZZ

} ~~deleted~~ to be sent by Sally

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF SCOTT FIRST JUDICIAL DISTRICT
3 - - - - -
4 First National Bank
5 of Montgomery,
6 Plaintiff, PARTIAL TRANSCRIPT
7 -vs-
8 Jerome Daly,
9 Defendant.
- - - - -

10 The above entitled matter came duly on before the
11 Hon. Arlo E. Haering, one of the judges of the First Judicial
12 District, without a jury, in the Court House in the City of
13 Glencoe, County of McLeod and State of Minnesota on the 24th
14 day of January in the year 1969.

15 A P P E A R A N C E S

16 For the Plaintiff - - - - - Mr. Theodore Mellby
17 Attorney at Law
Montgomery, Minnesota
18 For the Defendant - - - - - Mr. Jerome Daly(Pro Se)
19 Attorney at Law
Savage, Minnesota

20 --ooOoo--

21 (Whereupon the following excerpted portions of
22 testimony and proceedings are taken from within the testimony
23 taken from Justice Martin V. Mahoney:)
24
25

1 Whereupon,

2 MARTIN V. MAHONEY,

3 having been first duly sworn, took the stand and testified
4 on his oath as follows:

5 D I R E C T E X A M I N A T I O N

6 BY MR. MELLBY:

7 Q Justice Mahoney, on or about January 6th, 1969, a notice
8 of refusal to allow appeal was prepared. What is the basis
9 for your refusing to transfer the file that is now in the
10 hands of the Justice Court to the District Court?

11 A Would you repeat that?

12 Q What is the basis for your refusing to transfer the file
13 presently in your possession to the District Court?

14 A Well, I got a notice from you and I got a notice from the
15 Clerk of Court in Shakopee, Scott County for my return of
16 the file and there was two dollars there, two Federal
17 Reserve Notes that I was to get when I turned the papers
18 over to his desk in the Court House and I refused to keep
19 the two dollars because they are Federal Reserve Notes.
20 They are not -- I wanted two dollars either in silver or
21 gold.

22 Q Was this notice of refusal to allow appeal prepared by you,
23 Mr. Mahoney?

24 A It was my own idea on the basis of Constitutional Laws of
25 the United States.

1 Q Did you draft the notice of refusal to allow the appeal?

2 A I drafted most of it.

3 Q Did you draft the memorandum that is attached thereto?

4 A No, I did not.

5 Q But that memorandum is your memorandum as Justice of the
6 Peace of Credit River?

7 MR. DALY: To clear up anything, I drew the instrument.

8 MR. MELLBY: Did you also draw the memorandum?

9 MR. DALY: To clear up any of your questions, after
10 discussing it with the Justice I drew the instrument and
11 the memorandum and he read it over before he signed it.

12 BY MR. MELLBY:

13 Q Was the notice and memorandum prepared on your typewriter,
14 Justice Mahoney?

15 A No.

16 MR. DALY: That is immaterial. It was prepared on
17 my typewriter.

18 THE COURT: I want to inquire, Mr. Mahoney, your sole
19 reason for not transferring the original file to the Clerk
20 according to the appeal statute is because of these two
21 dollar bills which were Federal Reserve Notes, is that the
22 sole reason for not transferring it?

23 THE WITNESS: That is true.

24 THE COURT: If these had been silver you would have
25 transferred it?

ERASABLE
PAC CONTENT

Martin V. Mahoney

4

1 THE WITNESS: Silver or Gold.

2 THE COURT: I don't know if we can get ahold of gold
3 nowadays.

4 THE WITNESS: Have to go over to France to get it.

5 MR. MELLBY: I have no further questions.

6 (Whereupon arguments in support of the motions were
7 heard by the Court.)

8 --ooOoo--

9

10 REPORTER'S CERTIFICATE

11

12 I, James E. Benson, Official Court Reporter of
13 the District Court, First Judicial District, State
14 of Minnesota, do hereby certify that I reported the
15 foregoing proceedings in Stenotypy on the 24th day
16 of January, 1969, at the Court House in the City of
17 Glencoe, County of McLeod and State of Minnesota,
18 and thereafter transcribed the requested portion
19 thereof into longhand as evidenced by the preceeding
20 four pages of transcript and that the same is true
21 and correct of the proceedings requested to be
22 transcribed, heard before the Hon. Arlo E. Haering,
23 one of the judges of the First Judicial District,
24 without a jury.

19 Dated this 6th day of February, 1970.

20


21


22

23

24

25


James E. Benson
District Court Reporter
210 Court House
Glencoe, Minnesota 55336

 Petitioner's
Exh 48 thru 62

STATE OF MINNESOTA

COUNTY OF ISANTI

IN DISTRICT COURT

TENTH JUDICIAL DISTRICT

Stanley A. Teeman,

Plaintiff,

v.

AFFIDAVIT OF
CHARLES A. GEER

People's State Bank of Cambridge
Minnesota, Elgin F. Gunderson,
Gertrude Gunderson, Arden E.
Hayes, Gordon E. Bostrom,
Roger D. Larson, Robert S.
Gunderson, A. W. Johnson,

Defendants.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

CHARLES A. GEER, being first duly sworn on oath, deposes and says
as follows:

That he is a member of the law firm of Dorsey, Marquart, Windhorst,
West & Halladay, 2400 First National Bank Building, Minneapolis, Minnesota.

That he has represented the First National Bank of Minneapolis,
the First Stock Corporation and the Wayzata State Bank in the several law-
suits referred to below.

That the complaint in the above action attempts to challenge the
legality and constitutionality of the ordinary banking activities of de-
fendant People's State Bank of Cambridge, Minnesota, by alleging that said
bank is "creating money and credit by bookkeeping entry" and by alleging
that said bank is passing Federal Reserve Notes "as lawful money whereas
they are not."

That plaintiff's counsel, Jerome Daly, has made precisely the
same allegations against other banking institutions and their officers and
directors of the State of Minnesota in at least five (5) other lawsuits,

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to wit: W. Frank Horne, et al., v. Federal Reserve Bank of Minneapolis, et al., No. 3-63 Civil 332, dismissed March 5, 1964; William Wildanger, et al., v. Federal Reserve Bank of Minneapolis, et al., No. 4-66 Civil 83, dismissed July 18, 1966; Leo Zurn, et al., v. Federal Reserve Bank of Minneapolis, et al., No. 4-66 Civil 399, dismissed March 5, 1967; Bernard E. Koll v. Wayzata State Bank, et al., No. 4-67 Civil 106, dismissed September 11, 1967; Alfred M. Joyce v. Northwestern State Bank of Appleton, et al., 3-68 Civil 32, dismissed June 21, 1968. The Horne dismissal was affirmed by the Eighth Circuit in Horne v. Federal Reserve Bank of Minneapolis, 344 F.2d 725 (8th Cir. 1965) in an appeal brought by Jerome Daly. The Koll dismissal was appealed to the Eighth Circuit by Jerome Daly and has not yet been acted on by said court. In the Joyce case, Roy L. Stephenson, Chief Judge, United States District Court, Southern District of Iowa, was assigned to the District Court, District of Minnesota, to hear the matter and to avoid any claim of bias or prejudice by Jerome Daly. In addition to dismissing the matter, as above mentioned, Judge Stephenson, on June 20, 1968, entered a permanent injunction affirming a temporary injunction issued on May 3, 1968, which is discussed below.

That each of the above suits included verbatim the allegations concerning the alleged illegality and unconstitutionality of the ordinary conduct of banking business. Thus, the complaint in the Wildanger case alleges that the defendant banks "are circulating what is perversely labeled as Federal Reserve Notes... as opposed to the retired lawful money in the form of a Silver Certificate", that said banks "are unlawfully uttering, issuing and circulating unlawful money in the deluding and deceiving form of authentic U.S. Currency", that the bank defendants "are by their joint and combined activity creating money and credit on their own books without the slightest consideration therefor"; the Zurn complaint alleges that the defendant banks "are circulating what is perversely labeled Federal Reserve Notes, and are holding them out as lawful money ... [when in fact they are]

fiat money", that the defendant banks are "unlawfully uttering, issuing and circulating unlawful money in the deluding and deceiving form of authentic U.S. Currency", that the defendant banks are "by their joint and combined activity creating money and credit on their own books without the slightest consideration therefor, by bookkeeping entries"; the Koll complaint alleges that the defendant banks are "issuing and obtaining of property and property rights by false tokens to wit: their false and fraudulent bookkeeping entries and their worthless Federal Reserve Notes", that the defendant banks are "engaged in the creation of money and credit by bookkeeping entry"; the Joyce complaint alleges that the defendant banks "pass out ... for the purposes of swindle, fraud, theft and forgery ... Federal Reserve Notes which are not redeemable in either gold or silver coin", that the defendant banks are "by their joint and combined activity creating money and credit on their own books without the slightest consideration therefor."

That said allegations have been made in different factual contexts all attempting to show that the plaintiff has standing to raise the questions of the legality and constitutionality of the ordinary banking activities of the defendant banks because of receipt of Federal Reserve Notes as loan proceeds or in exchange for hard currency and because of other activities of said banks, such as calling loans and foreclosing mortgages, which allegedly become illegal because no real consideration was paid to the plaintiff.

That in the Joyce case, supra, Judge Stephenson granted defendants' motions to dismiss and for summary judgment, and in addition to entering the injunctions discussed below, assessed attorneys' fees and costs against Jerome Daly personally under Title 28, Section 1927, U.S. Code. In so doing, Judge Stephenson stated "the litigation here brought by counsel was unreasonable, and that these proceedings have been brought unreasonably in such a manner as to increase the costs of litigation herein unreasonably and vexatiously ... on Mr. Daly's own statement ... he has prepared pleadings in this case and the other cases [the above cases which were called to the at-

tention of Judge Stephenson by the undersigned] ... that a sufficient case [has been] made out of the bringing of frivolous litigation and harrassment of these defendants [to justify the dismissal, assessment of costs and injunction.]" (Transcript, hearing, May 3, 1968.)

That the suit now before the court was instituted on or about April 29, 1968, and that defendants were served with process on or about May 1, 1968; that in the Joyce case, supra, on May 3, 1968, Judge Stephenson temporarily enjoined Jerome Daly, and the plaintiff, Alfred M. Joyce, "from continuing, commencing or prosecuting any suit, action or proceeding, either in this Court, or any court, state or federal, upon any claim arising out of any claimed transaction between the parties hereto ... or an attempt to relitigate the same cause of action...." (Transcript, hearing, May 3, 1968, emphasis added.) In explaining his temporary restraining order, Judge Stephenson stated to Jerome Daly "you are restrained -- you and your client -- from bringing any further litigation in connection with this lawsuit or any other subject of the lawsuit...."

That in the Joyce case, supra, on June 21, 1968, Judge Stephenson filed a permanent injunction, a copy of which is attached hereto, ordering, inter alia, that Jerome Daly is "permanently enjoined and restrained from continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim ... regarding unlawful creation of money and credit, or an attempt to relitigate [the subject matter of the Joyce case]." (Emphasis added.)

FURTHER AFFIANT SAYETH NOT.

Dated: June 28, 1968.

151 Charles A. Geer
Charles A. Geer

Subscribed and sworn to before me

this 28th day of June, 1968

151 Rose Ann Bedell

(Notarial Seal)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
No. 3-68 Civil 32



ALFRED M. JOYCE,

Plaintiff,

vs.

NORTHWESTERN STATE BANK
OF APPLETON, et al.,

Defendants.

PERMANENT INJUNCTION

The above entitled and numbered cause coming on to be heard on the 3rd day of May, 1968, upon the motion of the defendants to dismiss and for a restraining order, and all the parties thereto having appeared by counsel and the Court having heard the pleadings, the evidence and arguments of counsel, and upon due consideration thereof, it appearing to the Court that the defendants should be granted the relief prayed for in their motions,

It is therefore, on this 20th day of June, 1968,

ORDERED, ADJUDGED AND DECREED that the preliminary injunction heretofore granted and issued orally by this Court herein on the 3rd day of May, 1968, and affirmed in memorandum and order of the Court dated June 17, 1968, be and the same hereby is made perpetual and permanent and that the plaintiff Alfred M. Joyce and his attorney, Jerome Daly, are permanently enjoined and restrained from continuing, commencing or prosecuting any suit, action or proceeding, either in this Court or in any court, state or federal, upon any claim arising out of any claimed transaction between the parties hereto at and prior to

the date of this Order, or any claims regarding unlawful creation of money and credit, or an attempt to relitigate the same cause of action, and matters previously determined in respect to the same subject matter, or based upon any right, question or fact previously decided by this Court on March 16, 1967, and by the decision of the State District Court, Eighth Judicial District, at Montevideo, Minnesota, decided on March 14, 1966.

Dated this 20th day of June, 1968.

/s/ Roy L. Stephenson

CHIEF JUDGE, UNITED STATES DISTRICT
COURT, SOUTHERN DISTRICT OF IOWA,
(By assignment to the United States
District Court, District of
Minnesota, Third Division)

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Linda Bosshart, being first duly sworn, on oath deposes and states that on the 28th day of June, 1968, she did deposit in the United States mails an envelope properly sealed and with postage prepaid thereon, addressed to

Mr. Jerome Daly
Attorney at Law
28 East Minnesota Street
Savage, Minnesota

the last known address of said addressee, in which envelope she had first placed a true and correct copy of the attached Affidavit of
Charles A. Geer.

/s/ Linda L. Bosshart

Subscribed and sworn to before me

this 28th day of June, 1968.

15/ Rose Ann Bedell

(Notarial Seal)

PETITIONER'S EXHIBIT 49

2/11/70 L.M.F.

CA6



STATE OF MINNESOTA

COUNTY OF CHISAGO

DISTRICT COURT

42174

TENTH JUDICIAL DISTRICT

Stanley A. Teeman,

Plaintiff,

vs.

File No. 7265

People's State Bank of

Cambridge, Minnesota,

Elgin F. Gunderson,

Gertrude Gunderson, Arden E.

Hayes, Gordon E. Bostrom,

Roger D. Larson, Robert S.

Gunderson, A.W. Johnson,

Defendants.

ORDER

The motion of the defendants for a summary judgment came on for hearing before this court on July 2, 1968, Charles A. Geer representing the defendants and Jerome Daly representing the plaintiff.

Upon said hearing it was agreed by counsel for plaintiff that any issue raised in Paragraph 9 of the Complaint should be dismissed and not considered by this court.

Now therefore, the Court, having reviewed the file herein and upon the arguments and briefs of counsel, hereby grants the petition herein and orders judgment entered in favor of the defendants and against the plaintiff, including costs and disbursements of defendants herein.

Dated at Chambers,
Cambridge, Minnesota,
this 30th day of

STATE OF MINNESOTA August, 1968.
COUNTY OF ISANTH

1/s/ Robert B. Gillespie

Robert B. Gillespie
Judge of the District Court

CERTIFIED TO BE A TRUE AND CORRECT COPY OF
THE ORIGINAL FILED AND RECORDED IN MY OFFICE,

DATED:

7/11/1968

George Lawand
SIGNED

Memorandum

CLERK OF DISTRICT COURT The Complaint herein does not state a cause of action against defendants as it amounts to a challenge of the

legality and constitutionality of the right of the defendants to engage in usual and ordinary banking practices. Plaintiff in effect claims the defendants "emit Bills of Credit" in loaning money to plaintiff wherein plaintiff was credited on the books of the bank the amount of the notes he signed payable to the bank. Plaintiff alleges fraud but admits that such issue is to be considered here only insofar as it applies to the charge of issuing Bills of Credit. This Court is of the opinion that no act of the bank set forth or charged in the Complaint was unlawful, fraudulent or unconstitutional.

Plaintiff refers to the alleged unconstitutional character of Federal Reserve Bank notes but this Complaint does not raise such issue and furthermore the issue has been found to be without merit in a myriad of cases wherein counsel for the plaintiff has heretofore appeared in Federal Court, the latest being Koll vs. Wayzata State Bank, et al, Fourth Division, No. 4-67 Civil 106, where the order of dismissal has been upheld by the U.S. Court of Appeals for the Eighth District, case number 19080.

Article I, Section 10 of the U.S. Constitution provided that no states shall "emit bills of credit." This contemplates something far removed from the banking practice herein complained about. As a matter of fact, our U.S. Supreme Court has stated that Bills issued by State Banks are not "bills of credit," even where the State is the sole stockholder of the bank, or where the officers of the bank were elected by the state legislature or where the capital of the bank was raised by the sale of state bonds. Briscoe vs. Bank of Kentucky, 11 Peters 257; Darrington vs. Bank of Alabama, 13 Howard 12; Curran vs. Arkansas, 15 Howard 304; Woodruff vs. Trapnall, 10 Howard 190. Any doubt raised by the said court in Craig vs. Missouri, 4 Peters 410 as to this issue has been effectually erased by the later cases herein cited.

To hold this Complaint to state a cause of action would set commerce back hundreds of years and reduce our commercial transactions to the use of wampum and beads.

STATE OF MINNESOTA } SS
COUNTY OF ISANTI

CERTIFIED TO BE A TRUE AND CORRECT COPY OF
THE ORIGINAL FILED AND RECORDED IN MY OFFICE.

DATED

Sept 14 1948

CLERK OF DISTRICT COURT

1 STATE OF MINNESOTA IN DISTRICT COURT
 2 COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT
 3
 4 Oscar J. Husby, Receiver of Ridge
 Lutheran Home, Inc. et al., Plaintiff
 5
 6 vs.
 7 Carl A. Anderson, Defendant.
 8
 9 - - - - -

9 The above entitled matter came on for a hearing before the
 10 Court, the Honorable John B. Friedrich, Judge of said court,
 11 without a jury, at a special term of said court held on the 4th
 12 of October, 1968, at the court house, in the City of Hastings,
 13 Dakota County, Minnesota.

14 Hyman Edelman appeared for and on behalf of Oscar J. Husby.
 15 Leonard Bentson appeared for and on behalf of the Carnishee.
 16 Jerome Daly appeared for and on behalf of Carl A. Anderson.

17 WHEREUPON the following proceedings were had:

18 THE COURT: Gentlemen, I have been advised that an
 19 affidavit of prejudice has been filed against me in this
 20 matter.

21 MR. BENTSON: It is our position, Your Honor, that the
 22 affidavit was not filed timely pursuant to statute and is of
 23 no effect.

24 THE COURT: Has the proposed matter here got anything
 25 to do with this case as to the matter of the Receivership?

1 MR. BENTSON: Perhaps you should decide whether
2 you are going to hear the case before we explain the case.

3 MR. DALY: Let the record show we object to these
4 claims as being unconstitutional.

5 THE COURT: That objection is specifically over-
6 ruled. The matter has been specifically before the Supreme
7 Court on a number of occasions, so the court at this time
8 overrules that objection.

9 MR. DALY: Let the record note an exception.

10 MR. BENTSON: The Court will note that this is a
11 general motion. The motion was set specifically to be heard
12 before this particular Judge, Judge Friedrich, our motion
13 for today.

14 MR. DALY: I wonder if, before we proceed, if I
15 might not be heard on the affidavit of prejudice.

16 THE COURT: Let's take that up. When was the
17 motion filed here? You served the motion --

18 MR. DALY: I think it was noted in the file.

19 MR. BENTSON: September 24th. I would assume that
20 it was filed at least by September 25th.

21 MR. DALY: I think there was a separate affidavit
22 or prejudice in this file also previous to this hearing,
23 which I filed. And in view of the fact that I had no word
24 from the Clerk with reference to the disposition of it, I
25 have made a new affidavit here today, and it is my own af-

1 fidavit, and if there is any question about it, why I
2 want to-- I want to make--

3 MR. BENTSON: Well, Your Honor --

4 MR. DALY: --a complete record in any event.

5 THECOURT: Well, the motion was apparently filed
6 on September 25th. Notice of motion was mailed on the
7 24th.

8 MR. DALY: Before we proceed on that I would like
9 to have the record show that Mr. Conrad Carr received no-
10 tice of this. He represents the finance company, and he
11 advised me this morning that he couldn't be present and
12 that Mr. Edelman^{is}/representing the plaintiffs, and I am
13 representing the defendant Carl R. Anderson and A. & J.
14 Builders, Incorporated, and Burnsville Plumbing and Heating,
15 and that Mr. Bentson is representing as I understand it, the
16 Garnishee **Robert Laddusaw**.

17 MR. BENTSON: Yes.

18 MR. DALY: And I have served a copy of this af-
19 fidavit of mine dated October 3rd, 1968, on Mr. Edelman and
20 on Mr. Bentson here this morning, and I was not advised
21 until yesterday that you -- I believe it is the --

22 MR. BENTSON: I believe it is the 4th, to make it
23 right, but you said today. It is on the 4th.

24 MR. DALY: It would have to be today.

25 MR. BENTSON: You said on the 3rd today.

1 MR. DALY: Well, I did not have knowledge that
2 this matter had been assigned to you until I got a letter
3 from Mr. Edelman yesterday, which arrived at the United
4 States Post Office at Savage, Minnesota, indicating that
5 the hearing was to be before you and it was to be held this
6 morning at 11:00 o'clock, and Mr. Edelman and I talked over
7 the telephone and I agreed that I would be here and I agreed
8 to the time set out in his letter, but there was no other
9 agreements, and by the way, the letter that arrived at the
10 United States Post Office had no postage on it. I had to
11 pay 6¢ postage.

12 MR. EDELMAN: I will reimburse you.

13 THE COURT: Well, Mr. Daly, the rules require that
14 you serve the affidavits of prejudice at least five days
15 before the hearing.

16 MR. DALY: Well, I wasn't aware of who, what judge
17 was going to hear this matter. For all I knew, Judge Haer-
18 ing or Judge Flynn would be here today.

19 THE COURT: The notice of motion was not specific-
20 ally set to be heard before me.

21 MR. DALY: Well, I previous to that had an af-
22 fidavit of prejudice, there is an affidavit of prejudice
23 previously filed before that in the file.

24 MR. BENTSON: This is a shotgun affidavit to hit
25 every Judge in the District.

1 THE COURT: You are entitled to one affidavit of
2 prejudice.

3 MR. DALY: Well, the one filed is an affidavit
4 for Judge Breunig.

5 THE COURT: You represent one defendant, Carl
6 A. Anderson.

7 MR. DALY: That isn't one. The corporation filed
8 an affidavit of prejudice against you, and no corporation
9 filed an affidavit of prejudice against Judge Fitzgerald.

10 THE COURT: I have not been involved in this mat-
11 ter until today.

12 MR. DALY: Oh, you were involved with Carl Ander-
13 son before today, and he indicated you he wouldn't want.

14 THE COURT: Only in the matter of, in a private
15 suit between someone and the Ridge Lutheran Church. He
16 was not involved. He was a corporation director who was
17 compelled to make disclosures.

18 MR. DALY: All right. Well, I want to make a
19 record. I made and filed the following affidavit which I
20 filed here this morning.

21 THE COURT: Well, all right now. Who filed the
22 affidavit against me?

1 MR. DALY: Well, --

2 THE COURT: Who?

3 MR. DALY: One of the three defendants that I
4 represent.

5 THE COURT: Which one? If it is Mr. Anderson I
6 will acknowledge it and not hear the case.

7 MR. DALY: It is either him or one of them that
8 signed the affidavit.

9 THE COURT: I think I held Mr. Anderson in contempt
10 of court for failure to obey the order.

11 MR. DALY: This was on the previous matter.

12 MR. BENTSON: The motion we are hearing today is
13 a motion directed specifically to you as a court and I think
14 there is a rule that requires now the affidavit of prejudice
15 should announce the judge.

16 THE COURT: Anderson and Vinge were two in this
17 case, in matters of making disclosures as corporate officers
18 of Ridge Lutheran Home. I believe this was Anderson.

19 MR. EDELMAN: If the Court please, I am Mr. Edel-
20 man, and I am appearing for the plaintiffs in this case and
21 I do not believe anything came before Your Honor in this
22 case up to today. The hearings on the motion to compel dis-
23 closures with respect to property covered by the garnishment
24
25

1 I believe in all instances were conducted by Judge Breunig,
2 and so I think Your Honor's statement that this was the
3 first connection you had with this case in the way of hear-
4 ing anything is correct. Now Mr. Daly makes reference to
5 a previous motion which came up before Judge Breunig on or
6 about August 12th, 1968. That was a motion similar to the
7 motion which is here today, made by the Garnishee, Mr.
8 Robert Laddusaw for an order directing that the impounded
9 machinery be moved elsewhere. In response to that motion,
10 we will call that the August 1968 motion, Mr. Anderson filed
11 an affidavit of prejudice directed at three judges, Judge
12 Breunig, Judge Fitzgerald and Your Honor, Judge Friedrich.
13 The reason this was done, I imagine, was that the August
14 motion did not specify what particular judge the motion was
15 to be argued before, and consequently we have this shotgun
16 affidavit. That motion has not been formally disposed of
17 by any order by reason of Mr. Daly's generalized affidavit
18 directed at three judges. That motion is in the state of
19 being undecided or undisposed of.

20 Now, as I understand it, Mr. Laddusaw served this
21 motion returnable today, which can be called the October 4th
22 motion, by mail on September 24th. That motion is specific-
23 ally directed to be heard before Judge Friedrich, and the
24 purpose of Mr. Laddusaw was to avoid being put in a position
25 where there would be multiple affidavits of prejudice.

1 Now, on this motion, which is the only motion be-
2 fore the Court, we have a specific Judge named, a specific
3 time, and a failure to comply with Rule 63.03. So there-
4 fore, it seems to us that the affidavit of prejudice is
5 not timely.

6 I won't go on to say anything more about our posi-
7 tion involving Mr. Laddusaw's motion because at the outset,
8 obviously the matter of Mr. Daly's affidavit of prejudice
9 must be disposed of.

10 THE COURT: Well, as I have indicated before, Mr.
11 Daly is correct that Mr. Anderson has been involved in
12 previous litigation which involved the Ridge Lutheran Church,
13 an out-of-state corporation, that were in a dispute.
14 Mr. Anderson was, I believe, at that time a director of the
15 Ridge Lutheran Church, or Ridge Lutheran Home. And I did
16 make a number of orders compelling a disclosure which they
17 were unwilling to do, and threatened them with contempt of
18 court for failure to obey it. That is the history of that,
19 and that case has never come up for trial, and I presume has
20 fallen by the wayside because of this Receivership that now
21 exists. The Court notices that it is Anderson who is indi-
22 vidually making an affidavit of prejudice against my handling
23 any of the matters, although it was made before the motion
24 was served and I am wondering whether I ought to in that
25 event, take jurisdiction of the matter.

1 MR. BENTSON: But then in that event, the Court
2 would be recognizing that this motion is proper in every
3 respect and the affidavit of prejudice is untimely and
4 therefore the Court would be, as a separate item, entirely
5 disqualifying himself. In that way this motion would still
6 be before the Clerk to reassign before another Judge.

7 THE COURT: That would be the situation.

8 MR. BENTSON: The reason I ask this is because if
9 the Court decides to disqualify itself, we don't want to be
10 in a position of having to reserve the motion, that this
11 motion would still be before the court. If the Court de-
12 cides to disqualify himself, and recognize himself, that
13 this affidavit of prejudice is untimely.

14 THE COURT: Well, all right, this particular Court
15 will rule that the affidavit was not timely or proper. The
16 Court has jurisdiction to hear the matter and we will pro-
17 ceed.

18 MR. DALY: Well, I want to complete my record then.

19 THE COURT: Well, Mr. Daly, the record is complete
20 as far as it goes. There is nothing further that needs to
21 be added. The papers have to either be served upon the op-
22 posing parties and returned and filed with the Court or the
23 matter fails and is done.

24 MR. DALY: Well, there are two, the record shows
25 affidavits filed. The one that has been filed previously,

1 before this motion was to be heard, and that is on file
2 with the Court, and then there is one on file today. I
3 would think that I --

4 THE COURT: The Court does not necessarily accept
5 the affidavit today. It requires that they be filed a day
6 ahead of the time and not at the date of the trial. The
7 Rules specifically provide that under the circumstances.

8 MR. DALY: Are you going to tell me that I cannot
9 take an exception for the purpose of the record?

10 THE COURT: I never said that.

11 MR. DALY: May I state the grounds for my objec-
12 tion?

13 THE COURT: You can state the grounds, but it will
14 stand and you can take it to the Supreme Court there.

15 MR. DALY: All right. Let the record note an
16 exception upon the following grounds.

17 THE COURT: You don't have to note an exception.
18 It is taken by the court's ruling in opposition. And you
19 will have to file a notice of appeal, if it is appealable,
20 within the proper time.

21 MR. DALY: May I state my grounds for objection
22 here today?

23 THE COURT: Oh, just a minute. Let me read this
24 affidavit. You don't feel that I would give you a fair
25 trial? Is that the situation, Mr. Daly?

1 MR. DALY: I am satisfied you couldn't. And you
2 couldn't give my client a fair trial.

3 THE COURT: The Court reverses its ruling. I
4 don't want you back in this court room again, Mr. Daly.

5 MR. DALY: It isn't what you want, it is what
6 you --

7 THE COURT: That is my order. The door is there.
8 Depart through it now.

9 (Mr. A. M. Joyce who has been sitting in the
10 court room, says: Take an exception, Jerry.)

11 MR. DALY: Just let the record note an exception.

12 MR. BENTSON: The Court is disqualifying itself?

13 THE COURT: I am.

14 MR. EDELMAN: You will direct that the matter be
15 heard?

16 THE COURT: I will have to direct that the matter
17 be heard before either Judge Flynn or Judge Haering, whom-
18 ever the Clerk chooses in this matter.

19 MR. BENTSON: Very good, Your Honor.

20 MR. EDELMAN: Thank you, Your Honor.

21 * * * * *

22

23

24

25

2/11/70 L.MF.

42174

STATE OF MINNESOTA
COUNTY OF DAKOTA

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

Holman Erection Company,

Plaintiff,

vs.

AFFIDAVIT OF PREJUDICE

A & J. Builders Inc.,

Defendants.

STATE OF MINNESOTA
COUNTY OF SCOTT SS

Carl R. Anderson, being first duly sworn deposes and states that he is President of Defendant A & J. Builders Inc., That he has good reason to believe, does believe and so states that because of bias and prejudice on the part of Robert J. Breunig, one of the Judges of the above named Court in that he is now of formerly was a Bank Director and is in sympathy with the Papal-Jewish hegemony in active aid and concert with the fraudulent Federal Reserve and National Banking System. That he is otherwise bias and prejudiced against Defendant A & J and that a fair trial of any kind cannot result before said Judge Breunig.

That Judge John B. Friedrich, one of the Judges of the above named Court has demonstrated a prejudice against Carl R. Anderson in open Court in the Past and further a violent outburst against Jerome Daly, Attorney for Carl Anderson on October 4, 1968 in open Court in which Friedrich told Daly never to come back into his Court again when Daly at all times conducted himself in a gentlemanly manner.

That he is informed and believes that Judge John Fitzgerald is similarly biased and prejudiced and is on the board or Directors or was on the Board of Directors of a State Bank at New Prague, Minnesota, which Bank is engaged in conduct contrary to the Constitution of the United States. That affiant is informed and believes that all three Judges above named have a bias and prejudice against the

Constitutions of the United States and of the State of Minnesota in respects material to this case and have a sympathy toward that element in our society actively engaged in treason against the Constitutions of the United States and of the State of Minnesota, which prejudice disqualifies said Judges for all purposes.

The parties above named are hereby notified that in the event that the Clerk ^{does} not assign this case to another Judge of the District motion will be made before any Judge that this case comes before, who is above named that he disqualify himself. Statment of October 13, 1968 of Jerome Daly is attached hereto and made a part hereof.

A & J. BUILDERS INC.,

Carl R. Anderson
Carl R. Anderson

Subscribed and sworn to before me
this 17th day of October, 1968

Jerome Daly
Jerome Daly, Notary Public
Dakota County, Minnesota
My Comm. Exp. 1-15-73

The prohibitions in the Constitution of the United States upon the States of the Union are as follows:

No State shall enter into any Treaty.

No State shall enter into any alliance.

No State shall enter into any Confederation .

No State shall grant Letters of Marque or Reprisal.

No State shall coin money.

No State shall emit Bills of Credit.

No State shall make any Thing but Gold and Silver Coin a Tender in Payment of Debts.

No State shall pass any Bill of Attainder.

No State shall pass any ex post facto Law.

No State shall pass any Law impairing the obligation of Contracts.

No State shall grant any Title of Nobility.

No State shall without the consent of Congress, lay any Imposts or Duties on Imports or Exports, excet what may be absolutely necessary for executing its inspection laws: and the net Produce of all duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States and all such laws shall be subject tot the revision and control of Congress.

No State shall, without the Consent of Congress; (1) Lay any duty of Tonnage
(2) Keep Troops or ships
of War in time of peace
(3) Enter into any agreement
or compact with another State
(4) Enter into any agreement
or Compact with a foreign
Power
(5) No State shall without
the Consent of Congress
engage in War, unless actually
invaded, or in such imminent
Danger as will not admit of
delay.

No State shall make or enforce any law which shall abridge the Privileges of citizens of the United States.

No State shall make or enforce any law which shall abridge the Immunities of citizens of the United States.

No State shall deprive any person of life, liberty, or property, without due process of law.

No State shall deny to any person within its jurisdiction the equal protection of the laws.

These are prohibitions upon the activity of the States. A State cannot directly take any step in any degree to directly invade or violate any of these provisions. A State cannot lend its aid in any degree to any person or corporation to effectuate a violation indirectly or obliquely lest a mockery be made of the Constitution of the United States.

A more serious and obvious question arises. Can the Legislative branch or the Executive Branch or the Judicial Branch of the Government of the United States authorize a State to invade the absolute prohibitions against the States found in the Constitution, or are the three departments of the U.S. Government incompetent to authorize such an invasion. The answer is obvious. The absolute prohibitions in the Constitution of the United States are impregnable. The Constitution is ordained and established in the name of the people. It is a law for the Governments of the States and the United States. The people said what they meant and they mean what they said.

Assume that Congress by attempted enactment would pass a law authorizing a State to deprive a person of Life, Liberty or property without due process of law. It would obviously be unconstitutional. The same is true of any other provision set out. Any attempt by Congress to authorize any State to invade any of the prohibitions is void. See *Edwards v. Kearzey* U.S. Supreme Court, 6 Otto 795.

No amount of perverted thinking or skullduggery can justify the fatal magnitude of the consequences which are to follow to total destruction of the Constitution of the United States by the Clergy, the Money Changers and those subversives in public office engaged in active treason against the Constitution.

The honest administration of Justice is gone. The whimsical anarchy which is pressing upon us with ever increasing effect is characterized with all the relics of ancient barbarism. Our Republic is gone.

Jerome Daly October 13, 1968

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of
Mortgage Deed filed, recorded and preserved in the
Office of the Register of Deeds of Scott County, Minnesota, recorded ~~in Book~~
~~on pages~~ Doc. # 113751

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott
County Register of Deeds, on this 9TH day of FEBRUARY, 1970.

Paul W. Weimerskirch
Register of Deeds

By _____ Deputy

This Indenture, Made this 8th day of May, 1964,

between Jerome Daly

of the County of Scott and State of Minnesota, Mortgagor
and The First National Bank of Montgomery, Minnesota

a corporation under the laws of the ~~State of~~ United States of America, Mortgagee,
Witnesseth, That the said mortgagor, in consideration of the
sum of Fourteen Thousand and no/100ths ----- DOLLARS,
to him in hand paid by the said Mortgagee, the receipt whereof is hereby acknowledged,
do hereby Grant, Bargain, Sell, and Convey unto the said Mortgagee, its successors and assigns,
Forever, all the tract or parcel of land lying and being in the County of Scott
and State of Minnesota, described as follows, to-wit:

Lot Nineteen (19), Fairview Beach, Scott County, Minnesota

42174

PETITIONER'S EXHIBIT 52

2/4/70 L.M.F.

To Have and to Hold the Same, Together with the hereditaments and appurtenances
thereto belonging, to the said mortgagee, its successors and assigns, forever. And the said mortgagor
for themselves, their heirs, administrators, executors and assigns, do covenant
with the said mortgagee, its successors and assigns, as follows: That he is lawfully seized of
said premises and has good right to sell and convey the same; that the same are free from all
incumbrances, no exceptions

that the mortgagor, its successors and assigns, shall quietly enjoy and possess the same; and that the
mortgagor will Warrant and Defend the title to the same against all lawful claims not herein-
before specifically excepted.

Provided, Nevertheless, That if the said mortgagor, his heirs,
administrators, executors or assigns, shall pay to the said mortgagee, its successors or assigns, the
sum of Fourteen Thousand and no/100ths ----- DOLLARS,
according to the terms of one principal promissory note of even date here-
with due and payable, as per note

with interest thereon at the rate of 6 per cent per annum.

executed by the said mortgagor, and payable to said mortgagee, at its office in Montgomery, Minnesota

and shall repay to said mortgagee, its successors or assigns, at the times and with interest as hereinafter specified, all
sums advanced in protecting the lien of this mortgage, in payment of taxes on said premises, insurance premiums covering
buildings thereon, principal or interest on any prior liens, expenses and attorney's fees herein provided for and sums
advanced for any other purpose authorized herein, and shall keep and perform all the covenants and agreements herein
contained then this deed to be null and void, and to be released at the mortgagor's expense.

AND THE MORTGAGOR, for himself, his heirs, administrators and executors, do hereby
hereby covenant and agree with the mortgagee, its successors and assigns, to pay the principal sum of money and interest
as above specified, to pay all taxes and assessments now due or that may hereafter become liens against said premises
at least ten days before penalty attaches thereto; to keep any buildings on said premises insured by companies approved
by the mortgagee against loss by fire for at least the sum of insurable value Dollars
and against loss by windstorm for at least the sum of insurable value Dollars,
and to deliver to said mortgagee the policies for each insurance with mortgage clause attached in favor of said mortgagee

or its assigns; to pay when due, both principal and interest of all prior liens or incumbrances, if any, above mentioned and to keep said premises free and clear of all other prior liens or incumbrances; to commit or permit no waste on said premises and to keep them in good repair; to complete forthwith any improvements which may hereafter be under course of construction thereon; and to pay any other expenses and attorney's fees incurred by said mortgagee, its successors or assigns, by reason of litigation with any third party for the protection of the lien of this mortgage.

In case of failure to pay said taxes and assessments, prior liens or incumbrances, expenses and attorney's fees as above specified, or to insure said buildings and deliver the policies as aforesaid, the mortgagee, its successors or assigns, may pay such taxes, assessments, prior liens, expenses and attorney's fees and interest thereon, or effect such insurance, and the sums so paid shall bear interest at the highest rate permitted by law from the date of such payment, shall be impressed as an additional lien upon said premises and be immediately due and payable from the mortgagor.

his heirs or assigns, to said mortgagee, its successors or assigns, and this mortgage shall from date thereof secure the repayment of such advances with interest.

In case of default in any of the foregoing covenants, the mortgagor confer upon the mortgagee the option of declaring the unpaid balance of said principal note and the interest accrued thereon, together with all sums advanced hereunder, immediately due and payable without notice, and hereby authorize and empower said mortgagee, its successors and assigns, to foreclose this mortgage by judicial proceedings or to sell said premises at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the moneys arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees the mortgagor herein agree to pay.

In Testimony Whereof, The said mortgagor ha. hereunto set his hand the day and year first above written.

In Presence of

John J. Daly, Jr.
Mortgagor

Jerome Daly
Mortgagee

State of Minnesota,

County of DAKOTA

On this 8th day of May, 1964, before me, a notary public within and for said County, personally appeared Jerome Daly

to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

John J. Daly, Jr.
Notary Public Dakota County, Minn.

My commission expires February 1965



Doc. No. 113751

MORTGAGE DEED

Individual to Corporation

TO

Office of Register of Deeds,
STATE OF MINNESOTA,
County of Scott

I hereby certify that the within Mortgage was filed in this office for record on the 21st day of April, 1967, at 11:20 o'clock A. M., and was duly recorded in Book of Mortgages.

page 1
Book 113751
Register of Deeds

By Mary Ann Smith Deputy

April 24, 1967, No. 113751

Registration tax hereon of \$1.00
Twenty One and No/100 Dollars Paid

By M. M. Hirschler
County Treasurer

By Deputy

Countersigned:

Joseph J. Rice
County Auditor

By Deputy

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of
Power of Attorney filed, recorded and preserved in the
Office of the Register of Deeds of Scott County, Minnesota, recorded ~~in Book~~
~~on pages~~ Doc # 113810

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott
County Register of Deeds, on this 9TH day of FEBRUARY, 1970.

Paul W. Wernerski
Register of Deeds

By _____ Deputy

STATE OF MINNESOTA)
) ss
COUNTY OF LESUEUR)

POWER OF ATTORNEY

IN PRESENCE OF:

by:

L. V. Morgan

Paul G. Hendrickson

Its Assistant Vice-President
and Cashier

42174

PETITIONER'S EXHIBIT 53

2/11/70 L.M.F.

STATE OF MINNESOTA)

) ss

COUNTY OF LESUEUR)

On this 21st day of April, 1967, before me, a notary public within and for said County, personally appeared L. V. Morgan and Ralph G. Hendrickson to me personally known, who, being each by me duly sworn they did say that they are respectively the Executive Vice-President and the Assistant Vice-President and Cashier of the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said L. V. Morgan and Ralph G. Hendrickson acknowledged said instrument to be the free act and deed of said corporation.



Wilma V. Fortney

Wilma V. Fortney, Notary Public
LeSueur County, Minnesota

my commission expires, November 23, 1971

Office of Register of Deeds
Scott County, Minn.

I hereby certify that the within instrument
was filed in this office for record on

the 3rd day of May
A.D. 1967 at 10 o'clock A.M.

and duly re-ordered as 113810

Document No.

Paul W. Wernerscheider
Register of Deeds

By _____ Deputy

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of
Notice of Mortgage Foreclosure Sale.....filed, recorded and preserved in the
Office of the Register of Deeds of Scott County, Minnesota, recorded ~~in Book~~.....
~~on pages Doc. #~~ *113811*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott
County Register of Deeds, on this *9TH* day of *FEBRUARY*, 19 *70*.

Paul W. Wernersbuecker
Register of Deeds

ByDeputy

NOTICE IS HEREBY GIVEN, that default has occurred in the conditions of that certain mortgage, dated the 8th day of May, 1964, executed by Jerome Daly, a single person, as mortgagor, to First National Bank of Montgomery, Minnesota, as mortgagee, filed for record in the Office of the Register of Deeds in and for the County of Scott, State of Minnesota on the 21st day of April, 1967, at 11:20 o'clock A.M., and recorded as Document #113751; that no action or proceeding has been instituted at law to recover the debt secured by said mortgage, or any part thereof; that certain installments in the amount of \$476.38 remain unpaid; that pursuant to the provisions of said mortgage, said mortgagee has elected to declare the whole debt secured thereby to be now due and payable; that there is due and claimed to be due upon said mortgage including interest to date hereof, the sum of Thirteen Thousand Three Hundred Eighty Eight and 71/hundredths (\$13,388.71) Dollars and pursuant to the power of sale therein contained, said mortgage will be foreclosed and the tract of land lying and being in the County of Scott, State of Minnesota, described as follows; to-wit:

Lot 19, Fairview Beach, according to the recorded Plat thereof

will be sold by the sheriff of said County at public auction on the 26th day of June, 1967, at 11:00 o'clock A.M., in the lobby of the Sheriff's main office located in the Public Safety Building in the City of Shakopee in said County and State, to pay the debt then secured by said mortgage and taxes, if any, on said premises

42174

PETITIONER'S EXHIBIT. 54

2// /70 L.MF.

and the costs and disbursements allowed by law, subject to redemption within twelve months from said date of sale.

Dated: April 21, 1967

FIRST NATIONAL BANK OF MONTGOMERY,
MINNESOTA, a corporation,
MORTGAGEE

MCGUIRE & MELLBY

Theodore R. Mellby
Theodore R. Mellby
Attorneys for Mortgagee
First National Bank Building
Montgomery, Minnesota 56069

Office of Register of Deeds
Scott County, Minn. }

I hereby certify that the within instrument
was filed in this office for record on

the 2nd day of May
A.D. 1967 at 10 o'clock A.M.

and duly recorded as 113811

Document No.

Paul W. Warmeschnider
Register of Deeds

By _____ Deputy

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of
Notice of Pendency filed, recorded and preserved in the
Office of the Register of Deeds of Scott County, Minnesota, recorded ~~in Book~~
as Doc. # 113840
~~on page~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott
County Register of Deeds, on this *9TH* day of *FEBRUARY*, 19 *70*.

Paul W. Wemmeskircher
Register of Deeds

By Deputy

STATE OF MINNESOTA)
COUNTY OF SCOTT) ss

First National Bank of Montgomery,
Minnesota,

Mortgagee

-vs-

Jerome Daly, a single person,

Mortgagor

NOTICE OF PENDENCY
OF PROCEEDINGS TO FORECLOSE
MORTGAGE UPON UNREGISTERED
LAND BY ADVERTISEMENT

NOTICE IS HEREBY GIVEN of the pendency of the proceedings
to foreclose by advertisement that certain mortgage dated the 8th
day of May, 1964, executed by Jerome Daly, a single person, as
mortgagor, to First National Bank of Montgomery, Minnesota, as
mortgagee, filed for record in the office of the Register of Deeds
in and for the County of Scott, and State of Minnesota, on the 21st
day of April, 1967, at 11:20 o'clock A.M. and recorded as Document
#113751, said mortgage covering the following described tract of
land, to-wit:

Lot 19, Fairview Beach, according to the recorded
plat thereof on file and of record in the office
of the Register of Deeds in and for said County of
Scott and State of Minnesota.

Notice is further given that the object of said action
is to foreclose by advertisement of the above described tract of land
by judicial sale on the 26th day of June, 1967, at 11:00 o'clock A.M.,
at the lobby of the Scott County Sheriff's office in the Public Safety
Building in the City of Shakopee in said County and State.

DATED: April 21, 1967

MCQUIRE AND WELBY

BY: *Theodore R. Wellby*
Theodore R. Wellby
Attorney for Mortgagee
First National Bank of Montgomery
Montgomery, Minnesota, 56069

42174
PETITIONER'S EXHIBIT 55

2/11/70 L.M.F.

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of
Notice to the Public filed, recorded and preserved in the
Office of the Register of Deeds of Scott County, Minnesota, recorded ~~in Book~~
as Doc. # 114109
~~on page~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott
County Register of Deeds, on this *9TH* day of *FEBRUARY*, 19 *70*

Paul W. Wamerschieber
Register of Deeds

By Deputy

Office of Register of Deeds }
Scott County, Minn. }

ss

I hereby certify that the within instrument
was filed in this office for record on

the 14th day of JUNE
A.D. 1967 at 9:15 o'clock A.M.

and duly recorded as

Document No. 114109

Paul W. Zimmerman
Register of Deeds

By _____, Deputy

NOTICE TO THE PUBLIC

Notice is hereby given that that certain purported mortgage attempted to be held by the First National Bank of Montgomery, Minnesota dated May 8, 1964, executed by Jerome Daly, and filed for record in the office of the register of Deeds in and for Scott County, Minnesota on Lot 19, Fairview Beach, according to the recorded Plat thereof is void for the following reasons:

1) There was and is no lawful consideration given for said Note and Mortgage; 2) There was and is no lawful debt due; 3) The Mortgage was and is not in fact a lien on the mortgaged premises.

That said Note and Mortgage was and is attempted to be obtained by unlawful means by the First National Bank of Montgomery, contrary to the Declaration of Independence, the Constitution of the United States of America and the Constitution of the State of Minnesota and the whole and each and every part, phrase and clause contained therein.

That the First National Bank of Montgomery attempted to create money on their own books by which they attempted to acquire said Mortgage. That said Mortgage is the product of unconstitutional activity on the part of said Bank and is therefore void.

Take notice and govern yourselves accordingly.

Jerome Daly
Jerome Daly
Attorney for himself
Savage, Minnesota

June 7, 1967

42174

PETITIONER'S EXHIBIT 56

2/1/70 L.M.F.

9:15 AM
June 14

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of
Affidavit of Publication filed, recorded and preserved in the
Office of the Register of Deeds of Scott County, Minnesota, recorded ~~in Book~~
as Doc. # 114144
~~on page~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott
County Register of Deeds, on this 9TH day of FEBRUARY, 1970.
Paul W. Wemerskirchen
Register of Deeds

By _____ Deputy

Affidavit of Publication

State of Minnesota
County of Scott

Published Notice

NOTICE OF FORECLOSURE
NOTICE IS HEREBY GIVEN, that default has occurred in the conditions of that certain mortgage, dated the 8th day of May, 1964, executed by Jerome Daly, a single person, as mortgagor, to First National Bank of Montgomery, Minnesota, as mortgagee, filed for record in the Office of the Registrar of Deeds in and for the County of Scott, State of Minnesota, on the 21st day of April, 1967, at 11:30 o'clock A.M., and recorded as Document No. 113751; that no action or proceeding has been instituted at law to recover the debt secured by said mortgage, or any part thereof, that certain installments in the amount of \$475.38 remain unpaid; that pursuant to the provisions of said mortgage, said mortgagee has elected to declare the whole debt secured thereby to be now due and payable; that there is due and claimed to be due upon said mortgage includ-

ing interest to date hereof, the sum of Thirteen Thousand Three Hundred Eighty Eight and 71/100 hundredths (\$13,388.71) Dollars and pursuant to the power of sale therein contained, said mortgage will be foreclosed and the tract of land lying and being in the County of Scott, State of Minnesota, described as follows, to-wit:

Lot 18, Fairview Beach, according to the recorded Plat there-

of, and be sold by the sheriff of said County at public auction on the 1st day of June, 1967, at 11:00 o'clock A.M., in the lobby of the Sheriff's main office located in the Police Safety Building in the City of Shakopee in said County and State, to pay the debt then secured by said mortgage and taxes, if any, on said premises and the costs and disbursements allowed by law, subject to redemption within twelve months from said date of sale.

Dated: April 21, 1967
FIRST NATIONAL BANK OF MONTGOMERY, MINNEAPOLIS, MINN.
SOTA, a corporation.
MORTGAGEE
McGUIRE & MCELROY
THEODORE B. MCELROY
Attorneys for Mortgagee
First National Bank Building
Montgomery, Minnesota 56062
(Pub. in the Shakopee Valley News, May 4, 11, 18, 25, June 1, & 1967). (37115)

George E. Roberts being duly sworn, on oath says: that he is, and during all the times herein stated has been the Co-publisher of the Corporation, the publisher of the newspaper known as The Shakopee Valley News, and has full knowledge of the facts herein stated;

That immediately prior to the publication therein of the printed Notice of Mortgage Foreclosure hereto attached, said newspaper was printed and published in the City of Shakopee, in the County of Scott, State of Minnesota on Thursday of each week that during all said time said newspaper has been printed in the English language from its known office of publication within the City of Shakopee from which it purports to be issued as above stated in newspaper format and in column and sheet form equivalent in space to at least 450 running inches of single column, two inches wide; has been issued once each week from a known office established in said place of publication and employing skilled workmen and equipped with the necessary material for preparing and printing the same and the presswork on that part of the newspaper devoted to local news of the community which it purports to serve, was done in its known office of publication.

That during all said time in its makeup not less than twenty-five per cent of its news columns have been devoted to local news of interest to the community it purports to serve, that during all said time it has not wholly duplicated any other publication, and has not been entirely made up of patents, plat, matter and advertisements; has been circulated in and near its said place of publication to the extent of at least two hundred and forty (240) copies regularly delivered to paying subscribers and has entry as second class matter in its local postoffice; that the said newspaper was in existence but publication thereof was suspended before the completion of one full year because the editor or publisher entered active military service after December 7, 1941, and prior to December 21, 1946, under the Selective Service Act of 1946, and publication of the newspaper was resumed after honorable discharge of the editor or publisher; and that there has been on file in the office of the County Auditor of Scott County, Minnesota the affidavit of a person having knowledge of the facts, showing the name and location of said newspaper and the existence of the conditions constituting its qualifications as a legal newspaper; and that there has been a copy of each issue, filed with the Minnesota Historical Society, St. Paul, Minnesota.

That the Notice of Mortgage Foreclosure hereto attached was cut from the columns of said newspaper, and was printed and published therein in the English language, once each week, for Six successive weeks; that it was first so published on Thursday, the 4th day of May 1967, and thereafter on Thursday of each week to and including the 8th day of June 1967, and that the following is a printed copy of the lower case alphabet from A to Z, both inclusive, and is hereby acknowledged as being the size and kind of type used in the composition and publication of said notice, to-wit:

abcdefghijklmnopqrstuvwxyz
abcdefghijklmnopqrstuvwxyz

George Roberts

Subscribed and sworn to before me this 8th day of June 1967.



James Jankiewicz
JAMES J. JANKIEWICZ
Notary Public, Scott County, Minn.
My Commission Expires Aug. 24, 1972.

Form No. 829-Return on Personal Service. (Revised 1964)

State of Minnesota,

County of Scott

of Savage

therein named personally by handing to and leaving with

true and correct copy thereof.

Sheriff's Mileage \$

Cop. \$

Sheriff's Fees \$

Total \$

I hereby certify and return that on the 10th

day of June 1967 at the Village

in said county and state I served the attached Notice of Foreclosure

upon

therein named personally by handing to and leaving with

true and correct copy thereof.

Sheriff's Mileage \$

Cop. \$

Sheriff's Fees \$

Total \$

Sheriff of Scott County, Minn.

By *Howard Halverson* Deputy

NOTICE IS HEREBY GIVEN, that default has occurred in the conditions of that certain mortgage, dated the 8th day of May, 1964, executed by Jerome Daly, a single person, as mortgagor, to First National Bank of Montgomery, Minnesota, as mortgagee, filed for record in the Office of the Register of Deeds in and for the County of Scott, State of Minnesota on the 21st day of April, 1967, at 11:20 o'clock A.M., and recorded as Document #113751; that no action or proceeding has been instituted at law to recover the debt secured by said mortgage, or any part thereof, that certain installments in the amount of \$476.38 remain unpaid; that pursuant to the provisions of said mortgage, said mortgagee has elected to declare the whole debt secured thereby to be now due and payable; that there is due and claimed to be due upon said mortgage including interest to date hereof, the sum of Thirteen Thousand Three Hundred Eighty Eight and 71/hundredths (\$13,388.71) Dollars and pursuant to the power of sale therein contained, said mortgage will be foreclosed and the tract of land lying and being in the County of Scott, State of Minnesota, described as follows, to-wit:

Lot 19, Fairview Beach, according to the recorded Plat thereof

will be sold by the sheriff of said County at public auction on the 26th day of June, 1967, at 11:00 o'clock A.M., in the lobby of the Sheriff's main office located in the Public Safety Building in the City of Shakopee in said County and State, to pay the debt then secured by said mortgage and taxes, if any, on said premises

and the costs and disbursements allowed by law, subject to redemption within twelve months from said date of sale.

Dated: April 21, 1967

42174

FIRST NATIONAL BANK OF MONTGOMERY,
MINNESOTA, a corporation,
MORTGAGEE

THEODORE R. MALLBY

/s/ Theodore R. Mallby
Theodore R. Mallby
Attorneys for Mortgagee
First National Bank Building
Montgomery, Minnesota 56069

PETITIONER'S EXHIBIT 57

2// /70 L.M.F.

Office of Register of Deeds
Scott County, Minn.

I hereby certify that the within instrument was filed in this office for record on the 16th day of June A.D. 1967, at 10:00 o'clock A.M. and duly recorded as

114144

Document No. Paul W. Wernersbach
Register of Deeds

By Deputy

Office of Register of Deeds
Scott County, Minn.

hereby certify that the within instrument was filed in this office for record on

A.D. 1967, at 10:00 o'clock

and duly recorded as

Document No.

Office of Register of Deeds
Scott County, Minn.

hereby certify that the within instrument was filed in this office for record on

A.D. 1967, at 10:00 o'clock

and duly recorded as

Document No.

Office of Register of Deeds
Scott County, Minn.

OFFICE OF THE REGISTER OF DEEDS

STATE OF MINNESOTA }
COUNTY OF SCOTT } SS

I hereby certify that the foregoing is a true and correct photocopy of the original record of
Sheriff's Certificate & Foreclosure Record filed, recorded and preserved in the
Office of the Register of Deeds of Scott County, Minnesota, recorded ~~in Book~~
~~as Doc #~~ *114393*
~~on page~~

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Scott
County Register of Deeds, on this *9TH* day of *FEBRUARY*, 19 *70*.

Paul W. Veinert-Ricker
Register of Deeds

By _____ Deputy

State of Minnesota.

County of _____

I, _____, do hereby certify that on the _____ day of _____, 19____, at _____ upon the land and premises described in the mortgage foreclosure sale hereto attached for the purpose of serving said notice on the persons in possession thereof and that on said _____ day of _____, 19____, I did read said notice and had been wholly present and unimpeded.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public _____ County, Minn.
My commission expires _____ 19____.

SV. AFFIDAVIT OF COSTS AND DISBURSEMENTS

State of Minnesota.

County of _____

Thodore S. Welby

being duly sworn, on oath says that he is _____ the attorney, _____ foreclosing the mortgage described in the printed notice of mortgage foreclosure sale hereto attached; that the following is a detailed bill of the costs and disbursements of said foreclosure, and that the same have been actually and unconditionally paid or incurred therein, to-wit:

Attorney's fee for foreclosing said mortgage	\$ 225.00
Printer's fee for publishing notice of sale	\$ 45.00
My fee for _____	\$ _____
Recording power of attorney to foreclose	\$ 1.50
Fee for serving notice of sale on occupants	\$ 3.00
Sheriff's fee for making foreclosure sale	\$ 6.00
Fees of Register of Deeds for recording Certificate	\$ 6.00
Recording Notice of Foreclosure & Foreclosure	\$ 5.75
Recording Affidavit of Non-Military Status	\$ 1.00
Total Costs and Disbursements	\$ 297.00

Subscribed and sworn to before me this 29th day of _____, 19____.

Thodore S. Welby

Notary Public _____ County, Minn.
My commission expires November 23, 1971.

V. SHERIFF'S CERTIFICATE OF SALE

State of Minnesota.

County of _____

I, W. B. Schroeder, Sheriff of the County of _____

State of Minnesota, do hereby certify that pursuant to the printed Notice of Mortgage Foreclosure sale hereto attached and the power of sale contained in that certain mortgage therein described to-wit: that certain mortgage, dated the _____ day of _____, 19____, executed by _____, in case said _____ a single person

as mortgagor, to THE FIRST NATIONAL BANK OF MONTGOMERY, MINNESOTA as mortgagee

And for record in the office of the Register of Deeds in and for said _____ County, Minnesota, on the _____ day of _____, 19____, and recorded _____

and did strike off and sell the same to THE FIRST NATIONAL BANK OF MONTGOMERY, MONTGOMERY,

for the sum of Thirteen Thousand Nine Hundred Twenty and 87/100 Dollars (\$13,920.87) the said purchase money being the highest bidder and said sum being the highest and best bid offered therefor and that said bid in all respects openly, honestly, fairly, and lawfully conducted, and said land or sold is subject to redemption at any time within twelve months from said date of said sale.

In Testimony Whereof, I have hereunto set my hand this 5th day of August, 1907.

In Presence of

Richard K. Hines
Edna L. Taylor

W. B. Schmeckler
W. B. SCHMECKLER
as Sheriff of SCOTT County, Minn.

By _____ Deputy.

State of Minnesota,

County of SCOTT.

On this 3rd day of August, 1907, before me personally appeared W. B. Schmeckler Sheriff of said County, and the person named in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as such Sheriff.

Richard K. Hines
Notary Public Scott County, Minn.

My commission expires 12

Notary Seal
W. B. Schmeckler
Notary Public
Scott County, Minn.
My Commission Expires Aug 4, 1908

114383

Sheriff's Certificate and
Foreclosure Record

Under Power of Sale in Mortgage

By Sheriff

TO

Office of Register of Deeds,
STATE OF MINNESOTA.

County of Scott.

I hereby certify that the within instrument was filed in this office for record on the 27th day of July, 1907.
At Montgomery, Minn., and was duly recorded in Book 1 of Deeds, page 107.

Richard K. Hines
Notary of Deeds
for Scott County, Minn.

STATE OF MINNESOTA

IN JUSTICE COURT

COUNTY OF SCOTT

TOWNSHIP OF EAGLE CREEK

First National Bank of Montgomery,
Minnesota,

Plaintiff

-VS-

COMPLAINT

Jerome Daly,

Defendant

.....

I.

That the defendant is in possession of Lot 19, Fairview Beach, according to the recorded Plat thereof on file and of record in the office of the Register of Deeds in and for the County of Scott and State of Minnesota, and was the owner in fee thereof at the time of the execution of the mortgage hereinafter mentioned.

II.

That on May 8, 1964, defendant made and delivered to plaintiff a mortgage of said premises to secure the payment of a promissory note for Fourteen Thousand and no/hundredths (\$14,000.00) Dollars, then made and delivered by defendant to plaintiff; that on April 21, 1967, said mortgage was recorded in the office of the Register of Deeds for said County as document #113751.

III.

That thereafter, default having been made in the payment of the principal and interest of said note and mortgage, plaintiff duly foreclosed said mortgage by advertisement under a power therein, and duly caused the same to be sold by the Sheriff of said County at public auction on June 24, 1967, in conformity with the Statute in such case made and provided; that at said sale plaintiff was the purchaser of said premises and said Sheriff duly made and delivered his official certificate of said sale as provided by Minnesota Statutes 580.12; that on July 7, 1967, said certificate was

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PETITIONER'S EXHIBIT
2/11/70 L.M.F.

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recorded in the office of the Register of Deeds for said County as documents #114393 and #114394.

IV.

That more than one (1) year has elapsed since that date and no redemption has been made therefrom and the time for redemption therefrom has expired.

V.

That by reason thereof and of the Statute in such case made and provided, plaintiff is the owner in fee and entitled to the immediate possession of said premises.

VI.

That defendant withholds possession thereof from plaintiff.

WHEREFORE, plaintiff demands judgment for the restitution of said premises and costs and disbursements.

MOGENSEN & MILLER

/s/ Theodore R. Mellby
Theodore R. Mellby
Attorney for Plaintiff
Montgomery, Minnesota 56069
Tele: 364-7327

42174

STATE OF MINNESOTA

IN JUSTICE COURT

COUNTY OF SCOTT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff,

vs.

ANSWER AND COUNTERCLAIM

Jerome Daly

Defendant.

Defendant, Jerome Daly, for his Answer and Counterclaim herein states and alleges:

I.

Defendant denies generally each and every matter and thing in Plaintiff's Complaint except as is hereinafter alleged.

II.

Alleges that Defendant is now and has been at all times herein material the owner in fee of the premises described in the Complaint and now is in possession thereof.

III.

Alleges that on or about May 8, 1964 Defendant made and delivered a promisory note in the sum of \$14,000.00 along with a mortgage to secure payment of the alleged note, however, Defendant alleges that said Note and Mortgage are void because said Note and Mortgage are not supported by any lawful consideration nor did Defendant receive any lawful consideration for said Note and Mortgage.

IV.

Alleges specifically that the Plaintiff, through its agents, created, unlawfully, by bookkeeping entry upon the ledger books of said Bank, the sum of \$14,000.00 in money and credit by which it attempted to give and grant as a lawful consideration for said Note of \$14,000.00. That said activity by said Bank is unlawful, unconstitutional and void.

V.

That the Federal Reserve Banking Act and the National Banking Act, in so far as they are attempted legislation by the United States authorizing Federal Reserve and National Banks as Banking Corporations, is unconstitutional and void and not necessary and proper for carrying into execution the powers vested in the United States Gov. by the people. That on the contrary the said corporations

are set up, maintained and permitted to exist as artifices, tricks and devices for the purpose of swindle, fraud, forgery and theft and also usury and to further usurious practices. That all the foregoing unlawful practices apply to plaintiff in this case.

VI.

That Plaintiff is engaged with the Federal Reserve system of creating unlawfully, money and credit by bookkeeping entry upon its books as it did in this case, all of which is unconstitutional and void in violation of laws relating to forgery and usury.

VII.

That said Note dated on or about May 8, 1964 is all without lawful consideration and is void.

VIII.

That the recording of said Mortgage and the Sheriff's sale constitutes Defendant's slander of title of Plaintiff's property.

Wherefore, Defendant demands judgment as follows:

1. That Defendant be adjudged not guilty, with Judgment entered for Defendant to that effect, together with Costs taxed against Plaintiff and that an execution issue therefore.
2. That the said \$14,000.00 Note be declared null and void as not founded upon a lawful ^{consideration} consideration.
3. That said Mortgage and Sheriff's Sale be likewise declared null and void as not founded upon a lawful consideration.
4. That Plaintiff has no right, title or interest in said premises or lien thereon.

November 30, 1968

Jerome Daly
28 East Minnesota Street
Savage, Minnesota

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff

-vs-

REPLY

Jerome Daly,

Defendant

.....
1.
Denies each and every allegation

WHEREFORE plaintiff prays that Defendant take nothing by his pretended Counterclaim and that plaintiff be awarded judgment against defendant pursuant to its complaint including attorneys fees, interest, costs and disbursements.

MCGUIRE & MELLBY

42174

PETITIONER'S EXHIBIT 61

2/11/70 L.M.F.

BY Theodore J. Melby
Theodore J. Melby
Attorney for Plaintiff
Montgomery, Minnesota 56060
Tel: (612) 364-7227

STATE OF MINNESOTA

COUNTY OF SCOTT

IN JUSTICE COURT

TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,

Plaintiff,

AMENDED

vs.

ANSWER AND COUNTERCLAIM

Jerome Daly

Defendant.

Defendant, Jerome Daly, for his Answer and Counterclaim herein states and alleges:

I.

Defendant denies generally each and every matter and thing in Plaintiff's Complaint except as is hereinafter alleged.

II.

Alleges that Defendant is now and has been at all times herein material the owner in fee of the premises described in the Complaint and now is in possession thereof.

III.

Alleges that on or about May 8, 1964 Defendant made and delivered a promisory note in the sum of \$14,000.00 along with a mortgage to secure payment of the alleged note, however, Defendant alleges that said Note and Mortgage are void because said Note and Mortgage are not supported by any lawful consideration nor did Defendant receive any lawful consideration for said Note and Mortgage.

IV.

Alleges specifically that the Plaintiff, through its agents, created, unlawfully, by bookkeeping entry upon the ledger books of said Bank, the sum of \$14,000.00 in money and credit by which it attempted to give and grant as a lawful consideration for said Note of \$14,000.00. That said activity by said Bank is unlawful, unconstitutional and void.

V.

That the Federal Reserve Banking Act and the National Banking Act, in so far as they are attempted legislation by the United States authorizing Federal Reserve and National Banks as Banking Corporations, is unconstitutional and void and not necessary and proper for carrying into execution the powers vested in the United States Gov. by the people. That on the contrary the said corporations

are set up, maintained and permitted to exist as artifices, tricks and devices for the purpose of swindle, fraud, forgery and theft and also usury and to further usurious practices. That all the foregoing unlawful practices apply to plaintiff in this case.

VI.

That Plaintiff is engaged with the Federal Reserve system of creating unlawfully, money and credit by bookkeeping entry upon its books as it did in this case, all of which is unconstitutional and void in violation of laws relating to forgery and usury.

VII.

That said Note dated on or about May 8, 1964 is all without lawful consideration and is void.

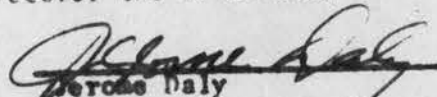
VIII.

That the recording of said Mortgage and the Sheriff's sale constitutes Defendant's slander of title of ~~Rinkkiff's~~ property.

Wherefore, Defendant demands Judgment as follows:

1. That Defendant be adjudged not guilty, with Judgment entered for Defendant to that effect, together with Costs taxed against Plaintiff and that an execution issue therefore.
2. That the said \$14,000.00 Note be declared null and void as not founded upon a lawful consideration.
3. That said Mortgage and Sheriff's Sale be likewise declared null and void as not founded upon a lawful consideration.
4. That Plaintiff has no right, title or interest in said premises or lien thereon.
5. That Plaintiff is not entitled to recover the possession of the premises described in the Complaint.

November 30, 1968


Jerome Daly
28 East Minnesota Street
Savage, Minnesota

Respondents' Exhibits aaa through
333

except for

42174

lll - denied

rrr - denied

~~vvv~~ denied

www denied

xxx denied

yyy denied

zzz denied

Respondents' Exhibits A through Z
except for 42174

~~A~~
~~B~~
~~C~~
~~D~~
~~E~~
~~F~~
~~G~~
~~H~~
~~I~~
~~J~~
~~K~~
~~L~~
~~M~~
~~N~~
~~O~~
~~P~~
~~Q~~
~~R~~
~~S~~
~~T~~
~~U~~
~~V~~
~~W~~
~~X~~
~~Y~~
~~Z~~

~~A~~
~~B~~
~~C~~

~~D~~

- to be furnished by Daly

Petitioner's Exhibits 1 through 99
except for No. ~~4~~

37 }
38 } not offered
~~39~~

The Court being fully advised in the premises, IT IS HEREBY

ORDERED:

1. That the motion for a Three-Judge Court is denied.
2. That the motion for judgment against the non-answering defendants is denied.
3. That the motion for summary judgment by the answering defendants, United States of America, Federal Reserve Bank of Minneapolis, President Lyndon B. Johnson, Henry Fowler, State of Minnesota, Val Bjornson, Treasurer of the State of Minnesota, Northwestern National Bank of Minneapolis, American National Bank of St. Paul, First National Bank of St. Paul and First National Bank of Minneapolis is granted and the action is dismissed against all parties.

Dated: March 15 1967, at Minneapolis, Minnesota.

Edward J. Devitt

EDWARD J. DEVITT
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Petitioner's Ex 2

2/9/70 L.M.L.

42174

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

William Wildanger, Leo Zurn,
Joan Van Poperin, Richard
Roe and John Doe,

Plaintiffs,

4 66 CIV 88

vs.

COMPLAINT

Federal Reserve Bank of Minneapolis,
First National Bank of Minneapolis,
Northwestern National Bank of
Minneapolis, Lyndon B. Johnson, President
of the United States of America, Henry H.
Fowler, Secretary of the U. S. Treasury,
the United States of America, State of
Minnesota, Val Bjornson, Treasurer of
Minnesota, Richard Roe and John Doe,

Defendants.

COME NOW THE PLAINTIFFS, in the full exercise of their individual sovereign right to peaceably assemble and to petition the Judicial Department of the Government of the United States for a redress of grievances, for the Complaint herein state and allege:

I.

That Plaintiffs are residents, freeholders, voters, citizens and taxpayers of the United States of America. That Plaintiffs bring this action as representative taxpayers, on behalf of, in the interest of, themselves and the people of the United States to enforce the primary right of the people of the United States to have the Constitution of the United States followed by their Government. That the object of this action is to adjudicate the claims of the defendant banks against the defendant U. S. Government and State of Minnesota by virtue of the purported obligations of the United States of America, held by said banks in the form of U. S. Securities, bonds and other purported obligations of said state and United States. That there is a common question of law and fact at hand and the several rights are here asserted and the relief sought are common to and affect all of the taxpayers of the State of Minnesota and the United States

Filed MAR 14 1966

Frank A. Massey, Clerk.

By

A true copy in 17 sheets

certified January 30 1970

BY:

Judith Palmer

Deputy

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individually and as a class; that plaintiffs above named are fully representative of this class of taxpayers, so numerous as to make it impracticable to bring them all before this Court.

That Plaintiffs are individually obligated to pay direct and indirect taxes, duties, imposts and excises, and income taxes, pursuant to law, to pay the debts and provide the common defense and general welfare of the United States and the State of Minnesota and to retire their lawful obligations.

II.

That jurisdiction of this Court exists because this is a case in law and equity arising under the Constitution of the United States and the laws of the United States; is a controversy to which the United States is a party; directly involves the Constitution of the United States and more specifically Article I Section 8 Clause 5, Article I Section 10, Article III, Article VI, Amendments 1, 5, 7, 9, 10, and 13.

III.

That by virtue of the Declaration of Independence all sovereign power is vested in and consequently is derived from the people. That the individual and not the state, is the source of and basis of our social compact. With the exception of powers granted to the Government by the Constitution, sovereignty resides in the individual. The defendant U. S. Government exists through a delegation by the people collectively as a nation of a portion of their sovereign governmental powers based upon their natural and inherent rights. Beyond that, as against the individual, the U. S. Government has no rights, its obligations consist altogether of duties.

More specifically, the people vested all legislative power granted, by the Constitution, in a Congress of the United States a part of which is the power to coin money, regulate the value thereof, and of foreign coin. That this power to coin and create the nation's money has unconstitutionally been attempted to be delegated to the Federal Reserve Corporation, National Banks listed above and member State Banks dominated and controlled by foreign financiers, set up by dishonest means, using a Congress stuffed with time-serving legislators who act

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in behalf of the de facto banker-government to the detriment of the de jure government of the United States of America for the purpose of robbing the American public for the bankers' selfish gains. That the defendant Federal Reserve Bank of Minneapolis obtains the Federal Reserve Note from the United States Government Printing Office, including all other Federal Reserve Notes, for use in circulation to the general public paying as consideration therefor only the cost of printing. More specifically, the defendant banks are circulating what is perversely labeled as a Federal Reserve Note which is shown.



As opposed to the retired lawful money in the form of a Silver Certificate which is shown.



IV.

That defendant Federal Reserve Bank of Minneapolis, a privately owned corporation, organized and existing by virtue of Title 12, U. S. Code Annotated, is a part of the Federal Reserve System under the complete domination, direction and control of a Board of Governors of the Federal Reserve System, operating completely independently of the United States.

V.

That the defendant National Banks named herein are private corporations under the National Banking Act of 1964 and all amendments thereto and/or the Federal Reserve Act of 1913. That said banks are unlawfully uttering, issuing and circulating unlawful money in the deluding and deceiving form of authentic U. S. Currency all contrary to the Constitution, which activity amounts to a nuisance as defined by common law.

VI.

That the defendant Henry H. Fowler is the Secretary of the Treasury of the United States and is the appointee of and agent of the defendant Lyndon B. Johnson, President of the United States of America.

That the office of President of the United States is a public trust with the Treasury of the United States directly under his control. As legally authorized by lawful authority, the President is the Executive Officer of the Government of the United States with authority through his Secretary of the Treasury for the regular disbursement of lawful money of the United States for the retirement of legal obligations of the Government of the United States on behalf of its people. Val Bjornson is the Treasurer of Minnesota and is legally authorized by law to retire lawful obligations of the State of Minnesota.

VII.

That the defendants John Doe and Richard Roe are fictitious persons named for the purpose of substituting other banks as defendants within the jurisdiction of this Court and other governmental subdivisions and their officers of the State of Minnesota, as necessary parties the exact names of which are not ascertainable at this time.

VIII.

That by virtue of the 16th Amendment to the Constitution of the United States, the U. S. Government does impose and collect a direct tax upon the income of all citizens of the United States including Plaintiffs from which tax monies as and when collected approximately fifty (50) percent is paid upon purported legal obligations, principal and interest, and more specifically on the attempted obligations hereinafter referred to. That the said income tax, as levied, becomes a first and immediate lien upon all the property of Plaintiffs, real, personal and otherwise, including the Homestead, without benefit of any exemption whatsoever as to personal property.

That the State of Minnesota does impose a direct tax upon income of all citizens, which money is used to pay all the State held obligations of the First National Bank of Minneapolis and the Northwestern National Bank of Minneapolis.

That by virtue of Title 12, Section 531, U. S. Code Annotated, the Federal Reserve Bank is exempt from taxation, the said Statute is quoted as follows:

"Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom, shall be exempt from Federal, State, and local taxation, except taxes upon real estate. Dec. 23, 1913, c. 6, sec. 7, 38 Stat. 258; Mar. 3, 1919, c. 101, sec. 1, 40 Stat. 1314"

IX.

That the Federal Reserve System including defendant Federal Reserve Bank of Minneapolis is the only instrumentality endowed by U. S. Statutes with discretionary power to create and extinguish the money and credit that serves as the public credit and cash. That the defendants First National Bank of Minneapolis and Northwestern Bank of Minneapolis are private corporations created, organized and existing by virtue of the National Banking Act and the Federal Reserve Act.

That at all times herein material the defendants Federal Reserve Bank of Minneapolis, First National Bank of Minneapolis and Northwestern National Bank of Minneapolis are by their joint and combined activity creating money and credit on their own books without the slightest consideration therefor, by bookkeeping

entries unlawfully usurping one of the legislative powers of Congress to coin (create) money and regulate the value thereof, and of foreign exchange. That with said unlawfully created money and credit, the said defendant banks are and have been, all without consideration acquiring U. S. Bonds and other securities and obligations of the U. S. Government and of the State of Minnesota and its governmental subdivisions and are illegally receiving interest thereon.

That said purported bonds, Securities and obligations and the whole thereof, for which no legal consideration was paid, the exact amount and number of which are not presently known to Plaintiffs, are in the possession, actual or constructive, of and run in favor of the defendant banks, jointly and/or severally, as attempted obligations of the United States Government and said State of Minnesota and its governmental subdivisions which bonds are unlawful, void, worthless and no obligation owing. Upon information and belief, the Federal Reserve Bank of Minneapolis holds the amount of \$850,000,000.00, more or less, of U. S. Securities; the First National Bank of Minneapolis holds the amount of \$88,193,942.26, more or less, of U. S. Securities and the amount of \$52,299,320.05, more or less, of Securities of the State of Minnesota or its governmental subdivisions; the Northwestern National Bank of Minneapolis holds the amount of \$90,219,322.00, more or less, of U. S. Securities and the amount of \$51,685,525.00, more or less, of Securities of the State of Minnesota or its governmental subdivisions.

Plaintiffs are obligated and required by Criminal Statute to pay Federal and State income taxes and to keep records, supply information and account for and pay over State and Federal income taxes for the retirement of these obligations and payment of the interest thereon.

That the defendant the United States Government and State of Minnesota are in effect merely a conduit or collection agency for the defendant banks in the payment of principal and interest for these unlawful obligations effecting in fact peonage, servitude and slavery over Plaintiffs and the people of the United States and the State of Minnesota.

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WHEREFORE, Plaintiffs, individually, as citizens and taxpayers, demand judgment and relief as follows:

1. That the Court determine the number, nature, extent and amount of the purported United States Securities and obligations and securities, bonds and obligations of the State of Minnesota and its Governmental subdivisions held by the defendant banks and each of them whether jointly or severally and the same be declared null, void and no obligation owing by the United States Government or the State of Minnesota and its Governmental subdivisions to the said defendant banks named herein.

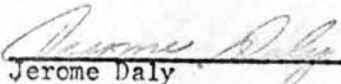
2. That the nuisance activity which said banks are engaged in unconstitutionally usurping the power of Congress to coin money and regulate the value thereof and of foreign exchange be abated and enjoined.

3. That the defendant Lyndon B. Johnson, as President, and the defendant Henry H. Fowler, as Secretary of the Treasury, of the United States, and each of them be enjoined from applying any of the monies, tax or otherwise, of the Government of the United States of America toward the payment of said purported obligations and any interest thereon.

That the defendant Val Bjornson, as Treasurer of the State of Minnesota, be enjoined from applying any of the monies, tax or otherwise, of the State of Minnesota toward the payment of said purported obligations held by defendant banks or any interest thereon.

4. That said banks be enjoined from creating money or credit by bookkeeping entries upon their books and that they be enjoined from circulating private notes as money.

Dated this 14th day of
March, 1966.


Jerome Daly
Attorney at Law
28 East Minnesota Street
Savage, Minnesota
Phone: 890-2274

MEMORANDUM TO THE COURT

The subject of money is disposed of by the United States Constitution with extreme brevity, it is as follows:

"Art. 1, Sec. 1 All legislative powers herein granted shall be vested in a Congress of the United States, -- Art. 1 Sec. 8 Clause 5 The Congress shall have the power to coin money, regulate the value thereof and of foreign coin."

This provision gives Congress the exclusive right to do three things. These rights are of equal importance. (1) The right to coin money; the denial of that right to the states or to individuals is unquestioned. (2) The right of Congress to regulate the value of domestic money, and (3) foreign coin. The denial of that right to the states or to individuals is equally beyond question.

The Supreme Court of the United States has held in numerous decisions that only Congress can coin money, regulate the value thereof and of foreign coin and produce a substitute for coin. See *Briscoe vs. The Bank of the Commonwealth of Kentucky* 11 Peters 257, *Fox vs. State of Ohio* 5 Howard 410, *United States vs. Marigold* 9 Howard 560.

Federal Reserve \$10.00 Notes recite that they are "redeemable in lawful money at the U. S. Treasury", and therefore are promissory notes of a private corporation for the payment of lawful money and therefore, inso facto, cannot be lawful money.

This power to coin money and regulate the value thereof has been denied to the States by Article 1 Section 10 which states "no state shall coin money, emit bills of credit or make anything but gold and silver coin a tender in payment of debts."

The Federal Reserve system together with the Federal Reserve Laws are obviously set up to defraud the people of the states. Plaintiffs are not willing to go along with this fraud.

No one will deny that Federal Reserve Bank notes are intended, and in fact are, a substitute for money. Their necessity grows out of a deficiency of money. Congress has authority, which it derives from the Constitution, to coin money and regulate the value thereof.

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If authority exists anywhere to coin a substitute, it must rest with that branch of the Government authorized to coin the real. The very fact that Congress delegates the power to banks, and the fact that banks claim to derive their power from Congress, to issue paper substitutes for coin, are admissions that Congress possessed the power, else how could it confer what it did not possess?

All the powers of Congress are derived from the Constitution, and if that instrument confers the power to coin money substitutes, it is implied that clause conferring power to coin money. Has Congress a right to delegate its control over the coinage of gold and silver to private corporations? If not, whence does it derive its authority to delegate to banking associations its control over coin substitutes? Congress could not grant the substitute prerogative to the banks unless it first possessed it. If it ever possessed it, it held it as a trust, to exercise for the benefit of the people as their agent. If it never possessed the substitute prerogative, it could not confer it upon banks, hence, they exercise a usurped power. If Congress does possess the prerogative, it has no more right to delegate it than it has to delegate the power to coin money.

Is the right to issue, regulate and control the currency of the country a natural individual right, or a function of sovereignty?

If a natural individual right, is not the monopoly of it by the national banks in violation of the spirit of our republican form of Government which was instituted to protect all men in the full enjoyment of their natural rights, instead of depriving them of one of them?

If it is a function of sovereignty, how can it be exercised by any except such as are so chosen by the sovereign people from time to time to exercise it?

If Congress has a right to confer the monetary function of sovereignty upon a hereditary succession, has it not the same right to dispose of any and all sovereign powers in the same manner?

The two great arms of national sovereignty are the purse and the sword; if it is wise to confer one upon a hereditary succession, why not dispose of the other in the same manner?

If it is safe to trust the monetary prerogative of the nation to the present generation of bankers and their heirs and assigns forever, without regard to fitness and qualification, why not trust the war power of the Government to the present generation of brigadiers, their heirs and assigns forever?

Viewed in its true light, is not the Federal Reserve banking system a long step towards the establishment of sovereignty based upon hereditary succession, is it not a big block wrenched from the temple of liberty and planted as the corner stone of imperialism, a powerful element of sovereignty crowned with the divine rights of kings?

As the Federal Government possesses no powers except such as were delegated to it by the people and enumerated in the Constitution, was not the Federal Reserve Act, conferring and perpetuating delegated powers upon foreigners and aliens, a gross betrayal of trust, if not treason against the people?

Has the Government a constitutional right to delegate powers entrusted to it, especially to be exercised by it for the people?

If not, is not the Federal Reserve bank act a palpable violation of the constitution, and its enforcement a usurpation of power not warranted by that instrument?

If Federal Reserve notes are money, from whence do they derive their money qualities?

If the Government can create money for the banks, why not for itself and the people?

If Federal Reserve Notes are money, how can the power of the Government to create money be denied?

If Federal Reserve Notes are not money, did the bondholders ever loan any money to the Government, having loaned nothing but Notes?

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If the debts of a nation are good security on which to base its money, why is not its wealth better?

If the Government chooses to farm out its control over the currency to private parties, why not grant the privilege of those who need it in the production of wealth, instead of giving it to an idle monopoly to rob, blackmail and oppress the producers of wealth?

Why should the money power that has accumulated colossal fortunes solely, through Government protection and favoritism, be exempt from all Government support, when those out of whom it has made these fortunes are compelled to bear all the public burdens in addition to being robbed?

See also the Veto message by President Andrew Jackson in 1832 on the Rechartering of the United States Bank Bill found on page 101 in "The Story Of Our Money" by Olive Cushing Dwinell which is quoted as follows:

"It is maintained by some, that the bank is a means of exercising the Constitutional power 'to coin money and regulate the value thereof.' Congress has established a mint to coin money and passed laws to regulate the value thereof. The money so coined with its value so regulated, and such foreign coins as Congress may adopt, are the only currency known to the Constitution.

"But if they (Congress) have the power to regulate the currency; it was conferred to be exercised by themselves, and not be transferred to a corporation (or individuals).

"If the bank be established for that purpose with a charter unalterable without its consent, Congress have parted with its power for a term of years, during which the Constitution is a dead letter.

"It is neither necessary nor proper to transfer its legislative power to such a bank, and therefore Unconstitutional.

"It is to be regretted that the rich and powerful too often bend the acts of Government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to those natural and just advantages, artificial distinctions, to grant titles, gratuities, or exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society--the farmers, mechanics and laborers--who have neither the time nor means of securing favors to themselves, have a right to complain of the injustice of their government.

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"There are no necessary evils in government. Its evils exist only in its abuses. If it could confine itself to equal protection, and, as Heaven does its rain, shower its favors alike on the high and low, the rich and the poor, it could so be an unqualified blessing. In the Act before me there seems to be a wide and unnecessary departure from these just principles."

With the exception of small coins and small U. S. Notes, the Federal Reserve Banks, private corporations, in which the U. S. Government owns not one share of stock, together with member, privately owned, National and State banks, exercise exclusively the above legislative powers and further are acquiring U. S. Securities with non-existent money and credit coined and created on their own books. Congress has no more right to surrender the legislative power to coin and create the nations currency to a private corporation than it has the right to surrender the power to declare war to a private corporation.

Control of gold and monetary manipulation are the common denominator of all unconstitutional and subversive activity. By this medium it is sought to homologize our Constitution with the so-called British "unwritten" Constitution. Since the British have no Constitution the result is the gradual erosion and destruction of our individual sovereign rights as declared in the Declaration of Independence and our American Constitution. In our country we do not legally have "liberals" and "conservatives," nor do we have "right" and "left," either near or far. In America we have only Right and Wrong. Those who support the Declaration of Independence are Right; all others are Wrong.

Both external and internal subversives work hand in hand. Their common denominator is based upon usurpation of the right and duty of Congress to coin and regulate our money whereby the Federal Reserve Bank, a private corporation, FORGES billions of dollars in bonds and currency which it appropriates to its own use; and collect billions of dollars in "interest" from tax money; which bonds and interest our citizens and their government cannot possibly owe as a matter of law. This manipulation of illegal and void money is the means whereby ungodly influences direct and implement subversive activity, controls our government (regardless of elections); and at one and the same time steals alike our land and our birthright and in time will effectuate a revolutionary take-over from within by the small

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oligarchy at the top. Be it remembered the preamble of our Constitution clearly sets out the purpose of our government, "to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." Because of the Federal Reserve Act of 1913, we do not have a Government of the people, by the people, and for the people, we have a government by, of and for the few financial magnates who, in a back room, corner the money of the world.

Behind the scenes the big bankers, National and International, sit pulling the strings; fostering, conniving and perpetrating war with profit to themselves paid for by the blood, sweat, tears and toil of the humbler members of society.

Conformance to the Constitution requires that Congress set up its own U. S. Government Bank as an accounting mechanism of the Government to act as a National Cash Register, coin, create and issue U. S. Government gold and silver coin. Pursuant to law issue United States Notes redeemable to citizens of the United States in gold or silver coin and redeemable to foreigners, at the option of the Government of the United States in surplus commodities of the United States; regulate, control and direct use of debt free and interest free money by U. S. Government Departments; loan money to private banks, states, cities, counties and school districts at a rate of interest set by Congress with principal and interest payable back into the U. S. Treasury instead of to private, National and International Bankers.

In a more specific use of the term money, its value is determined by the budgetary processes of its government whereby the appropriation and taxation of money balances each other in a complete circuit. Taxation decreases the amount of money in circulation and thereby increases its value; appropriation increases the amount of money in circulation and thereby decreases its value. A balanced budget is a prerequisite to a stable sound currency. By appropriation, I mean any outgo of money from a Constitutional U. S. Government Bank. As required by the Constitution the interest rate for the use of money borrowed must

be set by law as it has a direct influence upon its value. Indiscriminate issue and circulation of money by any government could be bad, however, since money is the life blood of our economy, the Constitution requires that complete control of it remain in the hands of Congress. Then and then only, will American money ring true on every counter of the world.

Slavery between debtor and creditor has existed since recorded history as one of the most vicious forms of human bondage, as the creditor, at his whim, removes the debtor from his homestead, unheard of in ordinary simple slavery.

Our national indebtedness to the private Federal Reserve System and member Banks represents the most vicious form of human bondage, servitude and slavery ever known to the human race.

Those who expect to reap the blessings of freedom must, like men, undergo the fatigues of supporting it. All that is necessary for the triumph of oppression and evil is that good men do nothing. It is not a field of a few acres of ground that we are defending, but a cause that we are fighting for; and whether we defeat the enemy from within in one battle, or by degrees, the consequences will be the same.

All power exercised over a nation must have some beginning. It must be delegated to the government by the Constitution, express or implied, or it is assumed. There are no other sources. All delegated power is a trust; all assumed power is despotic usurpation. Time does not alter the nature or quality of either. No legislative power or article of the Constitution can be altered, delegated or infringed upon at the discretion of the Government of the United States. The U. S. Constitution is to that Government a law; and if that instrument is to be altered, it must be amended as provided, by the people, not otherwise. A nation can have no interest in being wrong.

Mankind are not universally agreed in their determination of right and wrong; but there are certain actions which the consent of all nations and individuals have branded with the unchangeable name of meanness. In the list of

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human vices we find some with such a refined constitution that they cannot be carried into practice without seducing some virtue to their assistance; but meanness has neither alliance nor apology. It is generated in the dust and sweepings of other vices, and is of such a hateful figure that all the rest conspire to disown it.

The particular act of meanness which I allude to in this description is the surrender of the political power of Congress to coin and create the nation's currency to the internationally owned and controlled Federal Reserve Banks and the subsequent borrowing of their unlawfully created money from them for the purpose of financing the government and supplying the nation's credit and currency.

How is it that we are unable to see the serious wrong inflicted upon our posterity by the continuation of this vicious practice. Our country is owned and controlled, lock, stock and barrel by the National and International Bankers, we being slaves to them in the land of the free and (dubious) home of the brave.

All the people on the face of the earth, whether friends or enemies, must and surely will unite in despising this dishonest, underhanded practice.

The preservation of our Constitution, with its built-in legal device for the protection of individual sovereignty and right and the safety of our people rides on the determination of our people to preserve sovereignty in themselves as promulgated in the Declaration of Independence and the Constitution.

By circulating worthless Federal Reserve Notes as money, irredeemable in gold or silver, the money of the Constitution, or anything else of value, the Federal Reserve Bank and National Banks, in their combined activity have committed an act of bankruptcy for which action they should be proceeding against by petition in involuntary bankruptcy, adjudged bankrupt with summary and immediate seizure of all their property and resulting disposition among their creditors in general; a fate which as a part of their nefarious and insidious practices they have designed for the American People.

While tortuously they sit on the horns of a dilemma, in the torture of a noble thought, most members of Congress would rather stay dumb.

As water, taking the easiest course and seeking the lowest level, they rejoinder, "with the money power controlling the press, we have nothing to worry over; you can't possibly hope to enlighten the rabble, so you might just as well get in the breadbox with the rest of us crumbs and grab what you can before the Roll is called up Yonder."

The uninhibited abandon with which some Senators and Congressmen ride down the provisions of the Constitution, in the face of their solemn oath to uphold, maintain and support that instrument, identifies them with treason and tyranny.

To them, ever more increasingly applicable, is the Bible's injunction: "Choose ye this day whom you will serve, God or Mammon." So far, almost to the man, they are weighed in the balance and found wanting. Their infamous perfidy loses itself with them inunfathomable and abysmal oblivion.

The people are not fools; they will record this injustice upon the tablets of their memories where it will not be erased by or with the sophisticated tongues of sapiring politicians.

I do not mean by this "Declaration" to condemn those who honestly believe otherwise; for credulity is not in and of itself a crime and they have the same right to their belief as I have to mine. But it is necessary to the happiness of man that he be mentally faithful to himself. Infidelity does not consist in believing or in disbelieving; it consists in professing to believe what one does not believe. It is impossible to calculate the moral mischief, if I may so express it, that mental lying has produced in society. When a Congressman or Senator has so far corrupted and prostituted the chastity of his mind so as to subscribe his professional belief to things he does not believe he has prepared himself for the commission of every other crime. He takes up that position for the sake of gain, and in order to qualify himself he begins with a perjury when he takes his oath of office. Can we conceive of anything more destructive to integrity and morality than this?

The strength of a government consists in the interest the people have in supporting it. Mere politicians of the old school may talk of alliances, but,

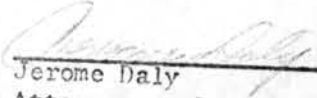
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the strongest of all alliances is that which the mildness, wisdom and justice of government, unperceived, combines with the understanding and acceptance of the people it governs. It grows in the mind with the secrecy and fidelity of love, and reposes on its own energy. Make it in the interest of the people to live in a state of government, and they will protect that which protects them. But when they are harrassed with indebtedness and spending which time discovers to be false, and burdened with taxes to pay principal and interest, baselessly, for which they can see no just cause, their confidence in such government withers away, and they laugh at the energy that attempts to restore it.

In the progress of mankind, it is sometimes useful to look back, lest we forget the ground we have travelled over and trace the turns and windings through which we have passed. With the exception of the Spirit or the Soul, man is but an atom, he is born, he lives, he acts and he dies; principles are eternal. An army of principles will penetrate where an army of soldiers cannot; it will succeed where diplomatic management would fail. It is neither the ocean, the Channel, the Rhine, nor the Wall that can arrest its progress. It will march over the horizon of the world; it will conquer.

Respectfully submitted,

Dated this 14th day
of March, 1966.


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