



Minnesota District Court (Carver County)  
Civil and criminal case files

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#8

DISTRICT COURT

CARVER COUNTY, MINNESOTA

George Erhard  
Plaintiff

Moritz Wagner  
Defendant

Thos. J. Craven  
Plaintiff's Atty.

John J. Fahy  
Defendant's Atty.

Date of Entry Feb. 25<sup>th</sup> 1907

Register of Actions, 9, Page 484

Term Tried 1907

Judgment for Plaintiff

Amount of Judgment, \$ 227.43

Date of Judgment July 11<sup>th</sup> 1907

Judgment Book 1, Page 355

Default Judgment Book Page

Date of Docketing 1907



STATE OF MINNESOTA.  
COUNTY OF CARVER.

DISTRICT COURT.  
EIGHTH JUDICIAL DISTRICT.

George Erhard, Plaintiff,) )  
-vs- ) )  
Moritz Wagner, Defendant.) )

COSTS AND DISBURSEMENTS IN SAID ACTION On The First Trial Thereof.

Sheriff's Fees paid J.A. Gatzke, (To be taxed) \$4.00  
Clerk's fees, N. O. Muehlberg, (To be taxed) 3.84  
" " " " " " 3.06

WITNESS FEES, Viz.,

| Name.           | Residence. | Attend-<br>ance. | Date of attend-<br>ance. | Travel.  |        |
|-----------------|------------|------------------|--------------------------|----------|--------|
| Bernhard Pietz, | St. Paul.  | 2 days,          | April 18-19, 1907,       | 66 miles | \$5.96 |
| Geo. Hartman,   | Waconia.   | 3 days,          | April 18-19, 1907,       | 38 miles | 3.68   |

Stenographer's fees paid C. G. Bowdish, Court Reporter,  
for transcript of the evidence, \$48.00

COSTS AND DISBURSEMENTS IN SAID ACTION On The Second Trial Thereof.

Sheriff's Fees, including service of copy of  
judgment (To be taxed) \$4.00  
Clerk's fees, including certified copy of  
judgment, (To be taxed) 5.35  
" " " " " " 2.00  
" " " " " " 1.00

WITNESS FEES, Viz.,

| Name.            | Residence.  | Attend-<br>ance. | Date of attend-<br>ance. | Travel.   |        |
|------------------|-------------|------------------|--------------------------|-----------|--------|
| Bernard Pietz,   | St. Paul.   | 3 days.          | Nov. 29-30, 1909.        | 66 miles, | \$5.96 |
| Geo. Hartman,    | Waconia,    | 2 days.          | Nov. 29-30, 1909.        | 38 miles, | 3.68   |
| Ber. Steinhagen, | Waconia,    | 3 days.          | Nov. 29-30, 1909.        | 38 miles, | 3.68   |
| Steve Mullen,    | Green Isle, | 2 days.          | Nov. 29-30, 1909.        | 76 miles, | 6.30   |

Stenographer's Fees paid C. G. Bowdish, Court Reporter,  
for one-half cost of transcript of  
the evidence, \$21.00

The above Bill of Costs and Disbursements taxed and  
allowed at - - - - -

Amount of judgment (\$70. and Interest from Jan. 1, 1907  
to July 15th 1911, \$89.08  
Statutory Costs, - - - - - 10.00

Dated July 5th, 1911.

*C. L. Lundstram*  
Clerk.

STATE OF MINNESOTA,  
ss.  
COUNTY OF CARVER.

AFFIDAVIT OF DISBURSEMENTS.

Thomas F. Craven being duly sworn says; that he is the Attorney of said Plaintiff in the above entitled action, and has been such Attorney during all the time said cause has been in said Court; that the foregoing and hereto annexed itemized Bill of Costs and Disbursements is a true and correct Bill of Costs and Disbursements of said Plaintiff in the above entitled action, and that the foregoing items of disbursements, and each item thereof, have been actually and necessarily paid or incurred therein by and on behalf of said Plaintiff; that each of the witnesses named therein was a material witness for the said Plaintiff, was necessarily in attendance at the trials of said action on behalf of said Plaintiff the number of days and on the dates specified in said Bill of Costs, and for the purpose of such attendance thereon necessarily traveled the number of miles specified in going from his place of residence to and returning from the place of said trials; that all of the said witnesses so named were sworn and testified at the trials on behalf of said Plaintiff, except that witnesses Bernard Pietz, George Hartman, and Bernhard Steinhagen, were not sworn and did not testify as witnesses upon the second trial of said cause; that said Bernhard Pietz was called to testify and would have so testified on the second trial of said action as he had testified on the first trial of said action and to all of the facts which he had so testified to upon said first trial, and the reason he was not called as a witness and did not so testify was because at said second trial by stipulation of said parties and consent of Court the testimony of said witness Pietz as given upon the first trial of said cause was admitted as evidence upon the said second trial thereof; that said George Hartman was called to testify and would have testified on the second trial of said action as he had testified on the first trial thereof and to all of the facts which he had so testified to upon said first trial, and the reason he was not called as a witness and did not so testify was because at said second trial by stipulation of said parties and consent of Court



the testimony of said witness Hartman as given upon the first trial of said cause was admitted as evidence upon said second trial thereof; that said Bernhard Steinhagen was called as a witness to testify and would have testified upon the second trial of said action that the surface waters accumulating in Defendant's marsh lands in question never at any time naturally flowed over or across the Defendant's other lands lying to the East of said Defendant's marsh lands to or toward the marsh lands in question owned by said Plaintiff, and that the natural way and course of drainage of said Defendant's marsh lands is and always has been to the South and into what is known as Radde Creek, and said witness would have been called as a witness and in substance would have testified as herein above stated had the Court not ruled upon said second trial differently from its ruling upon the first trial, and as a matter of law determined that Defendant's answer admitted that there was at all times a natural barrier and water shed separating the marsh lands of said Defendant from the marsh lands of said Plaintiff.

Affiant further says; that the actual residence of each of said witnesses at the time of said trial was at the place stated in said Bill of Costs; that said Green Isle is in the County of Sibley, and said St. Paul is in the County of Ramsey, said State, and that said Waconia is a township in said Carver County.

That that certain item of Forty Eight Dollars (\$48.00) paid to said C. G. Rowdish, Court Reporter, was paid for transcript of the evidence in order for affiant to perfect the first appeal to said Supreme Court, and the same has never heretofore been taxed herein or paid by Defendant; that that certain other item of Twenty One Dollars (\$21.00) paid as Stenographer's fees to said C. G. Rowdish, was paid by Plaintiff upon the request of said Honorable Gorham Powers, the Trial Judge who tried said cause the second time, and who desired such transcript of the evidence for the purposes of his decision; and that said transcript of the evidence so furnished and paid for by this said Plaintiff was in fact used by said Defendant on his said Motion for a new trial, the settlement of the case, and on the appeal

in said action, and was used by said Defendant for the purposes  
of settling his said last appeal herein and thus save said  
Defendant in procuring from said Stenographer a full transcript  
of said evidence at a like cost.

Thomas F. Craven

Subscribed and sworn to before me this 5th day of July A. D. 1911.

Edwin A. Adams

Notary Public, Williams County, North Dakota  
My com. expires Oct-15, 1912



State of Minnesota,  
County of Carver } ss.

## DISTRICT COURT,

Eight Judicial District.

## AMOUNT OF JUDGMENT OR VERDICT.

Amount of Judgment or Verdict, - - - - - \$  
Interest on same from the - - - day of - - - 1 - - - \$

## COSTS AND DISBURSEMENTS.

Statutory Costs, - - - - - \$  
Affidavits, - - - - - \$  
Acknowledgments, - - - - - \$  
Sheriff's Fees, - - - - - \$  
Jury Fees, - - - - - \$  
Clerk's Fees (to be taxed), - - - - - \$

## WITNESS FEES, VIZ.:

(Give name of each Witness, Residence, Number of Days and Dates of Attendance and Number of Miles Traveled.)

| NAMES. | RESIDENCE. | NO. DAYS ATTENDANCE. | DATES OF ATTENDANCE | NO. MILES TRAVELED. |
|--------|------------|----------------------|---------------------|---------------------|
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |
|        |            |                      |                     | \$                  |

The above Bill of Costs and Disbursements taxed and allowed at - - - \$

Dated - - - 190 - - - Total Amount, \$ - - -

Clerk.

## AFFIDAVIT OF DISBURSEMENTS.

State of Minnesota,  
County of - - - } ss.

being duly sworn, says on oath, that he is - - - the Attorney of the - - - in the above entitled action; that the foregoing is a true and correct statement of the costs and disbursements of said - - - in the above entitled action, and that the foregoing items of disbursements, and each item thereof, have been actually and necessarily paid or incurred therein, by and on behalf of said - - -; and that each of the above named witnesses was a material witness for the said - - - in said action, and was duly sworn, and testified on the trial of said action, on behalf of said - - - That each of said witnesses actually and necessarily traveled the number of miles above set opposite his name, in going from his said place of residence to, and returning to said place of residence from, the place of trial of said action, and for the purpose of so testifying, actually and necessarily attended said Court the number of days and on the dates hereinbefore stated; and that the residence of each of said witnesses is at the place above stated.

Subscribed and sworn to before me this

day of - - - 190 - - -

Notary Public, - - - County Minn.

NOTICE OF TAXATION OF COSTS.

State of Minnesota, }  
County of Carver } ss.

DISTRICT COURT,

Eighth Judicial District.

GEORGE ERHARD, Plaintiff

- VS. -

MORITZ WAGNER, Defendant.

Sir: Please Take Notice, That on the 15<sup>th</sup> day of July 1911  
at One o'clock P. M., application will be made to  
Clerk of said Court, at his office in the County Court House  
of Chaska in the County of Carver and State of Minnesota, to have the  
within bill of costs and disbursements taxed and inserted in the judgment then and there to be entered  
herein.

Dated July 5<sup>th</sup> 1911

Yours respectfully,

Thos F. Brown

John J. Fahey, Esq.,

Attorney for said Defendant.

Attorney for Plaintiff.



(original)

District Court,

*Eighth* Judicial District,

County of *Leaves*

*George Erhard*  
Plaintiff

*Morty Wagner*  
Defendant

Notice of Taxation of Costs and Bill of  
Costs and Disbursements.

Due service of the within bill of disburse-  
ments and affidavit to same, and notice of  
taxation thereof, by delivery of copy  
thereof, is hereby admitted this *10th*

day of *July* 19*11* at *Minneapolis*

*John J. Haher*  
Attorney for Defendant

Filed this *10th* day of *July*

A. D. 19*11*  
*O. Lundstrom*  
Clerk.

STATE OF MINNESOTA,  
SUPREME COURT.

MANDATE.

The State of Minnesota.

To the Hon. Judge and Officers of the District Court of the Eighth Judicial District,

sitting within and for the County of Carver Greeting:

Whereas, Lately in your court, in an action therein pending, wherein

George Erhard was

Plaintiff and

Moritz Wagner was

Defendant

a certain order ~~XXXXXX~~ was entered therein September 15, 1910  
from which order ~~XXXXXX~~ said ~~XXXXXX~~ Defendant

appealed to this court

And Whereas, The same was duly argued, heard and submitted at the General  
April ~~XXXX~~ Term, A. D. 1911 of our Supreme Court. After mature deliberation thereupon had, our  
Supreme Court did adjudge, determine, decree and ORDER "That the order ~~XXXXXX~~ of the Court below  
herein appealed from, be, and the same hereby is, in all things affirmed

and that judgment be entered accordingly. A copy of the entry of Judgment thereupon in this Court is here  
with transmitted and made part of this Remittitur.

Now, Therefore, This MANDATE is to you directed and certified, to inform you of these pro-  
ceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and here-  
with REMANDED to your Court for such other or further record and proceedings therein as may be by law  
necessary, just and proper, under and by virtue of the said order herein made.

Witness, The Hon. CHARLES M. START, Chief Justice of the  
Supreme Court aforesaid, and the seal of said Court  
at St. Paul, this 28th day of June 1911

Clerk of the Supreme Court.

By Deputy.



**SUPREME COURT,**  
STATE OF MINNESOTA.

**MANDATE**  
TO THE DISTRICT COURT OF  
Carver County.

George Erhard,  
Respondent,

**AGAINST**  
Moritz Wagner,  
Appellant.

CARVER COUNTY,  
FILED

JUL 6 1911

*Wm. H. ...*

Attorney for

484 D

STATE OF MINNESOTA,  
County of Carver,

IN DISTRICT COURT,  
Eighth Judicial District.

-----:-----  
George Erhard, Plaintiff.

-vs-

BOND ON APPEAL.

Moritz Wagner, Defendant.  
-----

KNOW ALL MEN BY THESE PRESENTS, That we Moritz Wagner, of the County of Carver, State of Minnesota, as principal, and Don. Wagner and George Schuble of said County and State as sureties are held and firmly bound unto George Erhard, the plaintiff in the above entitled action, in the sum of Three Hundred Dollars, lawful money of the United States, to be paid unto the said George Erhard, his heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 8th day of October, 1910.

The condition of this obligation is such that, WHEREAS, the said Moritz Wagner, said defendant in the above entitled action, appeals to the Supreme Court of the State of Minnesota, from the order of said District Court entered herein and filed in the office of the Clerk of said Court on the 15th day of September, A. D. 1910 denying said Defendant's motion for a new trial of said action, and from the whole thereof.

NOW, THEREFORE, If said Moritz Wagner shall pay all costs and charges which may be awarded against him on the said appeal and the damages sustained by the said plaintiff and respondent in consequence thereof if said order or any part thereof shall be affirmed or said appeal dismissed, and to abide and satisfy the judgment or order which the appellate Court may give therein then this obligation shall be void, otherwise of force.

Signed, Sealed and Delivered  
in Presence of

John J. Fahey  
W. A. Hauck

: Moritz Wagner (SEAL)  
: Don. Wagner (SEAL)  
: George Schuble (SEAL)



State of Minnesota,  
County of Carver.

Be It Known, That on the 8th day of October, A. D. 1910,  
before me personall appeared Mortiz Wagner Dom. Wagner and  
George Scheuble to me known to be the same persons described  
in and who executed the foregoing bond, and each for himself acknowledged  
the same to be his free act and deed.

John J. Aahley

NOTARY PUBLIC, CARVER CO., MINN.  
BY COMMISSION EXPIRES APRIL 11, 1912

State of Minnesota,  
County of Carver.

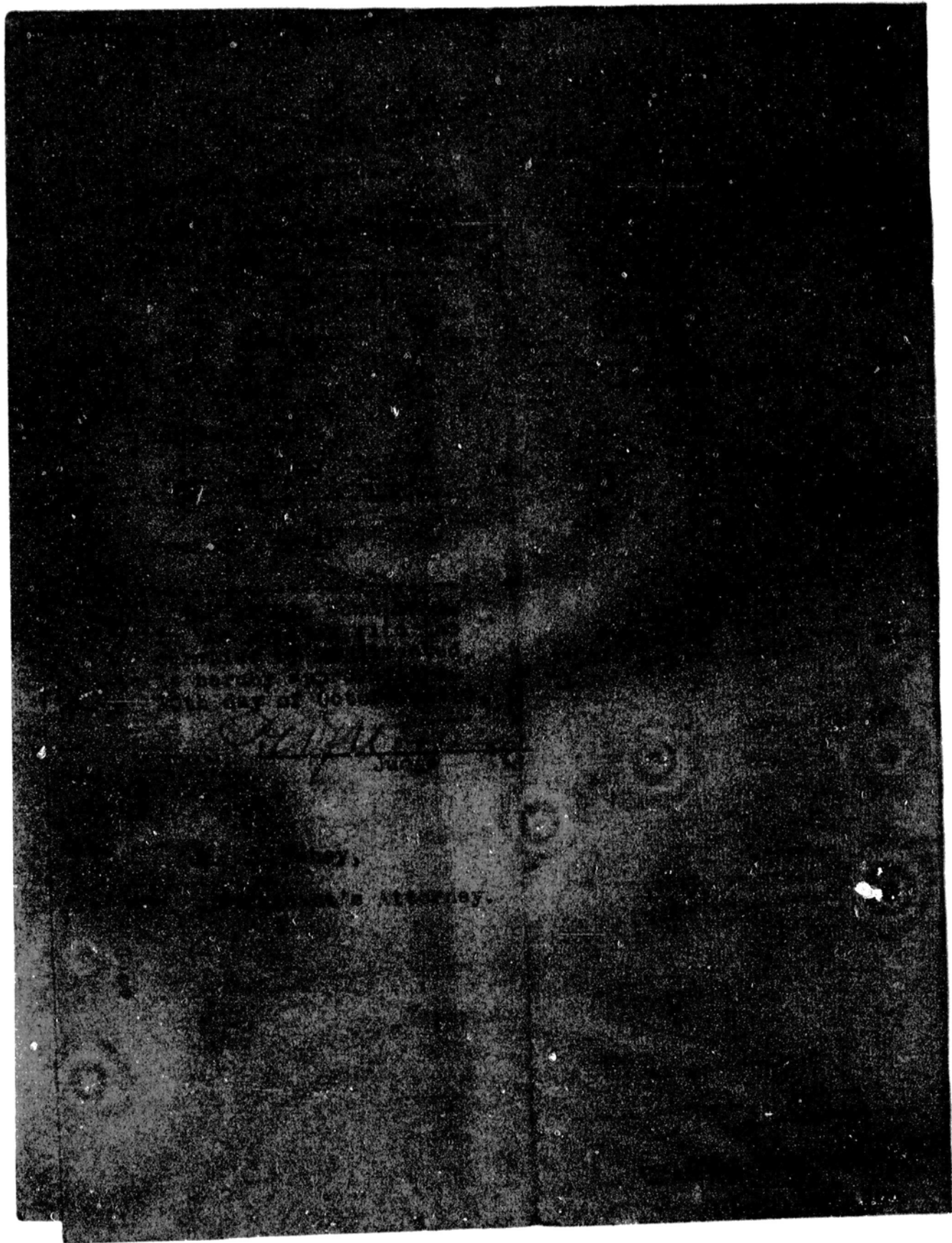
Dom. Wagner and George Scheuble  
the sureties named in and who executed the foregoing bond, being first duly  
sworn, doth, each for himself, depose and say that he is a resident and free-  
holder of the State of Minnesota, and worth double the amount of Three Hun-  
dred Dollars above his liabilities, and exclusive of his property exempt  
from execution.

Subscribed and sworn to before me  
this 8th day of October, A. D. 1910.

John J. Aahley

Dom Wagner  
George Scheuble

NOTARY PUBLIC, CARVER CO., MINN.  
BY COMMISSION EXPIRES APRIL 11, 1912





State of Minnesota,

County of Carver,

ss.

District Court

Eighth

Judicial District

George Erhard, Plaintiff.

-vs-

Moritz Wagner, Defendant.

To Thos. F. Craven, Esq., Attorney for the above named  
 Plaintiff, George Erhard and to H. O. Muehlberg, Esq.,  
 Clerk of said District Court:

Please Take Notice, That the above named Defendant

appeal to the Supreme Court of the State of Minnesota, from the order  
 of the said District Court entered herein on the 15th day of September A. D. 1910  
 denying said defendant's motion for a new trial of said cause,

from the whole thereof.

Dated this 10th day of October A. D. 1910.

John J. Hakey  
 Attorney for Defendant

DISTRICT COURT

*Eighth*

Judicial District

County of

*Carver*

*George Erhard, Plain*  
*tiff- Respondent*

*vs.*

*Mary Wagner, Defend*  
*ant- Appellant.*

Notice of Appeal to Supreme Court

*John J. Rahey,*

Attorney for Appellant

*Narwood, Minn.*

981000

CARVER COUNTY,  
FILED

OCT 18 1910

*H. O. Muehlberg, Clerk.*

(484)



*State of Minnesota,* } ss.  
County of *Carver,* } *Eighth* Judicial District

*George Erhard, Plaintiff.*

-vs-

*Moritz Wagner, Defendant.*

To *Thos. F. Craven, Esq.,* Attorney for the above named  
Plaintiff, *George Erhard* and to *H. O. Huehlberg, Esq.,*  
Clerk of said District Court:

*Please Take Notice, That the above named Defendant*

*appeals to the Supreme Court of the State of Minnesota, from the order*  
*of the said District Court entered herein on the 15th day of September A.D. 1910*  
*denying said defendant's motion for a new trial of said cause,*

*and from the whole thereof.*

Dated this *10th* day of *October* A.D. 191*0.*

*John L. Mahoney*  
Attorney for Defendant.

# DISTRICT COURT

Eighth

Judicial District

County of Carver.

George Erhard, Plaintiff,  
Respondent.

-vs-

Moritz Wagner, Defendant,  
Appellant.

## Notice of Appeal to Supreme Court

John J. Fahey,  
Attorney for Appellant  
Norwood, Minn.

981000

Due and personal service  
of the within Notice of Appeal  
to the Supreme Court is admit-  
ted this 10th day of October,  
1910.

Wesley Crowe  
Attorney for Respond-  
ent.



Defendants Brief on Motion for a New Trial.

State of Minnesota,  
County of Carver,  
-----

District Court,  
Eighth Judicial District.

George Erhard, Plaintiff.

-vs-

Moritz Wagner, Defendant.  
-----

The above entitled action was brought on for trial for the second time at the court house in the city of Chaska said County on the 29th day of November, 1909, the Hon. Gorham Powers presiding in stead of the Hon. F. W. Morrison. On the 18th day of April, 1910, <sup>the Court</sup> rendered his decision in favor of the plaintiff, George Erhard.

The defendant respectfully submits that the decision of the Court was erroneous and that the defendant is entitled to a new trial for the following reasons, to-wit:

third

In the ~~former~~ finding of facts it is stated that "by reason of such barrier (water-shed), none of the waters accumulating in defendant's slough could or could ever flow to or upon plaintiff's land, except by the ditch dug by the defendant as hereafter found"

The evidence is to be found on page 43 of the transcript. Mr. Wagner, before your tile ditch was placed on the farm there, was there any outlet to your marsh or slough?

There was at that time three outlets, to a big marsh there is many outlets, but there were only three outlets, one to the north, one to the east and one to the south, but it was only an overflow, we can't call, but we call out let really a creek, there was no creek at all out of the marsh then the water have to raise three or four feet before it went over on any of those points. The out let to the north is where the tile drain is now and those are the natural conditions as they existed when he came there way back in 1876. His testimony with reference to the above is corroborated by the testimony of Lobitz given at the former trial and found in the paper book offered as Plaintiff's and Defendant's exhibit 1 ("I have not a copy of the paper book but the testimony of Lobitz will be found in the same").

The above is the testimony of Wagner and Lobitz who appear to be only parties who testified as to the conditions as they existed naturally before the ditches referred to were constructed.

fourth

The court erred in the ~~second~~ finding of facts when he found that "plaintiff's meadow prior to the wrongful acts of the defendant, complained of, produced valuable crops of hay each year." That said meadows were flooded and re-flooded by water is testified to by Frank Graf on pages 56 and 57 of the transcript of the evidence. The same is testified to by Gottlieb Radde and Moritz Wagner and Frank Graf in their testimony given in the paper book.

The court erred in the fifth finding of fact in that the tile ditch of the defendant existed as it exists to-day since 1881 only that the said

ditch was repaired by replacing the wooden boxes with 15 inch tiling and by lowering the east end of the ditch a trifle. The inlet of the ditch was not lowered in any manner simply the boxes removed and the tiling put there instead. It seems that the eastern side of the ditch was dug a little deeper so as to give the water a better opportunity of getting out quicker. See the testimony of Dominick Wagner in the paper book. From the testimony given at the former trial there is no foundation for the Court to find that defendant "re-constructed the old ditch in 1904". The ditch was simply repaired in 1904; that is the testimony given at the former trial of this cause and the only testimony given relative to the re-construction of the said ditch.

The Court erred in the 10th finding of facts: In reference to the most practicable and feasible method of draining the Wagner marsh the evidence of Mullen is contradicted by the evidence of Dieter and Van Krevlin. Mullen testified that in order to drain Moritz Wagner's marsh it would be necessary to dig a large and deep ditch down through the Wagner meadow through a part of George Erhard's (plaintiff) land and through Radde's land down to the so called Radde creek. Now I contend that such a method of drainage would not be practicable for the reason that Moritz Wagner would have no legal right to go upon either the land of Erhard or the land of Radde to construct a ditch thereon without their consent and permission.

Then again Dieter testified that the Wagner, Erhard and Radde marshes were on a practical level and that near the public highway on the Radde land the land was of the same height as the highest point over the tile drain. These are the conditions ~~xxx~~ as they exist to-day and it seems to me that when Mr. Wagner has constructed his ditch entirely upon his own land and led the water into a natural water course that he has complied with the law of the ~~xxxx~~ state of Minnesota as set forth in the cases of Sheehan -vs- Flynn 59 Minn. and Werner -vs- Popp 94 Minn.

It seems to me that the doctrine of estoppel as laid down by the Supreme Court of this state in the case of Munch -vs- Stettler ~~xxx~~ 124 N. W. could apply in this case. The plaintiff well knew that the ditch which Wagner had constructed had had been maintained by him for a number of years prior to the time plaintiff was deeded the farm by his father. See pages 36 and 37 transcript.

then

I respectfully submit ~~that~~ that the defendant is entitled to a new trial.

Respectfully submitted,

John J. Fahey.  
Attorney for Defendant.





SEP 15 1970  
H. O. Muehlberg (484)



State of Minnesota,  
County of Carver,  
-----

George Erhard, Plaintiff.

-vs-

Moritz Wagner, Defendant.  
-----

In District Court,  
Eighth Judicial District,

Sir:

You will please take notice at that at chambers of Judge Gorham Powers one of the Judges of the 12th Judicial District of Minnesota, in the village of Granite Falls, in the County of Yellow Medicine, in said State, on Monday, June 6th, 1910, at 10 o'clock in the fore-noon of said day defendant will move said Court that an order be made by said Court vacating and setting aside the judgment, decree and decision heretofore made by said Court in said action and granting a new trial thereof upon the following grounds:

. That said judgment, decree and decision of said Court is not justified by the evidence.

That the same is contrary to law.

Which said motion will be made and based upon all the files and records in said action, including the settled case.

Yours &c

*John J. Fahy*  
*Atty for Deft.*

Thos. F. Craven, Esq.,

Attorney for Plaintiff.

Original  
District Court  
Carver County

George Erhardt  
- R.  
Moritz Wagner

Due Service of the  
within Notice of Motion  
for a New Trial admitted  
this 27th day of May, 1910  
- ~~Wm. F. Crover~~  
att. for def.

Notice of Motion for a  
New Trial

CARVER COUNTY,  
FILED  
MAY 27 1910  
H. O. Muehlberg  
(484)

John J. Fahren  
att. for def.  
Newwood, Minn.



State of Minnesota

County of Carver

District Court

Eighth Judicial District.

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

George Erhard

v.

Moritz Wagner.

o-o-o-o-o-o-o-o-o-o-o-o-o-o-o-o

This cause was tried Nov. 29, 1909, at the Court House in the City of Chaska, in said county, by the undersigned, one of the Judges of the Twelfth Judicial District, acting for the Hon. P. W. Morrison, Judge of the Eighth Judicial District.

Thomas F. Craven appeared for the plaintiff, and  
John J. Fahey for defendant.

Having heard counsel for the respective parties, the court finds the following facts:

1. Plaintiff now is and ever since 1903 has been the owner in fee and in possession of the East half of the North West quarter of Section 27, Township 116 North of Range 25 West, in Carver county, Minn.; and the defendant is and ever since 1873 has been the owner in fee and in possession of the North-west quarter of the North-west quarter of Section 27, the North-east quarter of ~~Section~~ of the North-east quarter, and the West half of the North-east quarter of Section 28, in said township and range.

2. Upon said lands of defendant in section 28 there is, and since 1873 has been, a large extent of marsh and slough land, of about 70 acres, which has no natural drainage, and can be drained only by artificial means; and adjacent to said slough lands of defendant, to the north and west thereof, are large areas of other wet lands, and when the water becomes excessively high upon defendant's said slough lands, it naturally flows and has flowed south thru said Section 28, and farther on, about one mile in all, into what is known as Radde's Creek, and away from said lands of plaintiff.

3. Plaintiff's said lands are separated from defendant's said marsh and slough lands by a natural water-shed of <sup>high hard</sup> ~~high~~ land, which has at all times been a natural barrier and protection to plaintiff's said land from the surface waters which naturally accumulate in said marsh or slough of defendant. Said water-shed is located on the westerly half of the North-west quarter of said Section 27, on defendant's land; it runs north and south, is several rods wide, the easterly side slopes rapidly down to the west line of plaintiff's land, and the westerly side slopes down to defendant's marsh or slough; and by reason of such barrier, none of the waters accumulating in defendant's slough would or could ever flow to or upon plaintiff's land, except for the ditch dug by defendant as hereafter found.

4. Plaintiff's said land lies on a plane 20 feet lower than the plane of defendant's slough, and situated thereon is a meadow of 20 acres, which prior to the acts of defendant, complained of, produced valuable crops of hay each year.

5. Defendant in 1904 constructed a tile ditch running easterly from his said slough, thru said water-shed to a point on the east slope thereof, about 40 rods west of plaintiff's land; said ditch was from 800 to 900 feet long, from 4 to 10 feet deep, and the tilting at the west end was 15 inches, and at the east end 12 inches, in diameter, and it had a fall of three feet.

6. Defendant in the year 1881 constructed a ditch thru said water-shed along the same course as the one above described, and has ever since maintained the same, but it does not appear that said ditch ever caused the waters to flow upon or over the land now owned by plaintiff, or that it did any damage or injury to said land or the crops thereon.

7. Prior to 1904, defendant had constructed several ditches on his lands, all draining and conveying the waters from the ~~land~~ low and wet lands thereon into his said marsh or slough, and up to the west end of the tile ditch, and in 1904 he found, which was the fact, that said old ditch would not drain his said slough from the waters



the waters accumulating thereon, and for the purpose of completely draining said slough, he re-constructed said old ditch, put in tiling instead of wooden boxes, dug the same from one foot to one foot and a half deeper, and thereby caused the waters to flow, and they did flow, from said slough and defendant's adjoining lands, and from the adjoining lands of others lying to the south, west and north-west, in great quantities, thru said tile ditch, to, upon and over plaintiff's said meadow land, injuring said land and destroying the hay crops thereon in the years 1904, 1905, and 1906, to plaintiff's damage in the sum of \$70.

8. That if said ditch is allowed to remain and be maintained by defendant, the waters from said slough and other waters running into it, will continue at times of high water and excessive rains, to run thru said tile ditch in great and destructive quantities, to and upon plaintiff's said meadow, and causing him great damage repeatedly, each year.

9. That defendant's said marsh or slough covers about 70 acres, and the same is of little or no value unless properly drained, when it will become valuable agricultural land.

10. That the only practicable and reasonable way of draining defendant's said marsh or slough and his low wet lands tributary to the same, as well as the wet lands adjoining which belong to others, is by means of a ditch running south thru said section 28, and a little farther on into Radde's Creek, which is the natural and suitable outlet of all said waters west of said watershed.

#### CONCLUSIONS OF LAW.

I. The acts of defendant in reconstructing said tile ditch thru said watershed in 1904, were wrongful and unlawful.

II. That plaintiff is entitled to judgment enjoining and restraining the defendant from maintaining or continuing said tile ditch, and directing and commanding him to forthwith abate, remove and fill up the same, so as to prevent the waters from flowing thru the same upon the land of plaintiff.

III. Plaintiff is entitled to recover from defendant as damages by reason of said tile ditch, for the years 1904, 1905 and 1906, the sum of \$70, with interest thereon from January 1st, 1907, besides his costs and disbursements herein.

Let judgment be entered accordingly, twenty days after notice of filing this decision.

Dated April 12, 1910.

Graham Powers,  
District Judge..

FILED

APR 19 1910



District Court  
Carver County

George Edward

<sup>vs</sup>  
Mervyn Wagner

Findings &  
Order for judgment  
for plaintiff.

April 12-10.

CARVER COUNTY,  
FILED

APR 13, 1910

H. M. Muehlberg, Clerk.

(484)

Dated April 13, 1910.

Notice of filing this decision.

Let judgment be entered accordingly, twenty days after  
sides his costs and disbursements herein.

The sum of \$30.00 with interest thereon from January 1st, 1904, be-  
cause reason of said title ditch, for the years 1904, 1905 and 1906.

III. Plaintiff is entitled to recover from defendant as damages

No.

DISTRICT COURT,

Carver County.

George Erhard

against

Morty Wagner

NOTE OF ISSUE.

LAST PLEADING SERVED,

Dec 21 1907

Fact

Case.

Thos F. Craven

Attorney for Plaintiff.

John J. Faber

Attorney for Defendant.

Will the Clerk please file this Note of Issue, and enter the cause on the Calendar for the October A. D. 1907.

General Term of this Court.

Yours, etc.,

Thos F. Craven

Attorney for Plaintiff.

Filed

Oct 4<sup>th</sup>

1907

H. O. Mueller

Clerk.

The \$3.00 deposit required by Sec. 4, Chap. 48, General Laws of 1883, must be paid before any action will be entered in Clerk's Office.

No. 83. - Pioneer Press Co., St. Paul, Minn.

(484)



State of Minnesota,  
County of *Carver*

DISTRICT COURT,  
*Eighth* Judicial District

*George Erhard*

*Plaintiff*

- vs -  
*Moritz Wagner*

*Defendant*

Notice of Trial

Sir: YOU WILL PLEASE TO TAKE NOTICE that the issue of *fact*  
in the above entitled action, will be brought on for *Trial*  
at the next *General* Term of the District Court aforesaid,  
appointed to be held in and for the County of *Carver* at the  
Court House in the *City* of *Chaska* in said  
County, on the *Eleventh day of October 1909* at the  
opening of said Court on that day, or as soon thereafter as Counsel can be heard.

Dated *Sept 28,* 190*9*

Yours respectfully,

*Wm F. Lawrence*

Attorney for

*Plaintiff, Chaska*

To *John J. Fahy, Esq.*

Attorney for

*Defendant*

DISTRICT COURT.

*George Erhard*  
vs  
*Moritz Wagner*

NOTICE OF TRIAL.

Due service of within Notice is hereby

admitted, this *17* day of

*October*, A. D. 190*9*

*John J. Pahey*  
Attorney for Defendant

*Thos F. Craven*

Attorney for Plaintiff  
*Charles Munn*

No. 41.

CARVER COUNTY,  
FILED

OCT 4 190*9*

*H.O. Muehlberg* Clerk.

(484)



STATE OF MINNESOTA,  
SUPREME COURT.

MANDATE.

The State of Minnesota,

To the Hon. Judge and Officers of the District Court of the Eighth Judicial District,  
sitting within and for the County of Carver Greeting:

Whereas, Lately in your court, in an action therein pending, wherein  
George Erhard was Plaintiff, and  
Moritz Wagner was Defendant

a certain order was entered therein August 10, 1907,  
from which order said Plaintiff  
appealed to this Court,

And Whereas, The same was duly argued, heard and submitted at the General April  
Term, A. D. 1908, of our Supreme Court. After mature deliberation thereupon had, our Supreme  
Court did adjudge, determine, decree and ORDER "That the order of the  
Court below, herein appealed from, be, and the same hereby is, in all things reversed and a  
new trial granted

and that the Appellant-Plaintiff above named have judgment accordingly."  
A copy of the entry of Judgment thereupon in this Court is herewith transmitted, and made part of  
this Remittitur.

Now, Therefore, This MANDATE is to you directed and certified, to inform you of these  
proceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby  
and herewith REMANDED to your Court for such other or further record and proceedings therein as  
may be by law necessary, just and proper, under and by virtue of the said Order herein made.

Witness, The Hon. CHARLES M. START, Chief Justice of the  
Supreme Court aforesaid, and the seal of said Court,  
at St. Paul, this 1st

day of June A. D. 1908

C. A. Ridgson  
Clerk of the Supreme Court.

**SUPREME COURT,**  
STATE OF MINNESOTA.

**MANDATE**  
TO THE DISTRICT COURT OF  
Carver County.

George Erhard,  
Appellant.

AGAINST

Moritz Wagner,  
Respondent.

CARVER COUNTY.  
FILED

JUN 3 1908  
*H.O. Muehlberg* Clerk.

Attorney for



1 STATE OF MINNESOTA  
2 S U P R E M E C O U R T  
3 April Term, A.D. 1908.

4 George Erhard, Plaintiff, Appellant,  
5  
6 -vs-  
7 Moritz Wagner, Defendant, Respondent.  
8 -----

9 STIPULATION CORRECTING RECORD.

10 It is hereby stipulated and agreed between the parties  
11 to the above entitled action that the description of the  
12 plaintiff's lands in Finding of Fact No. 1, as filed in the  
13 decision of this case in the District Court of Carver County,  
14 and as returned to the Supreme Court, is erroneous and that  
15 such error occurred by inadvertence, and that there is no dis-  
16 pute between the parties as to the correct description of  
17 plaintiff's lands, injuries to which are claimed by plaintiff in  
18 this action; and therefore,

19 It is further stipulated that the description of  
20 plaintiff's lands in said Finding of Fact No. 1, instead of  
21 reading, "the east half of the northeast quarter of section  
22 twenty-six, township one hundred sixteen, north of range  
23 twenty-five west" shall be changed and understood to read as  
24 follows, to-wit: "the east half of the northwest quarter of  
25 section twenty-seven, township one hundred sixteen, north of range  
26 twenty-five west."

27 And it is further stipulated that this stipulation  
28 shall be filed in said Supreme Court and made a part of the  
29 record in said case therein, and that after the decision upon  
30 said appeal in said Supreme Court the said stipulation, together  
31 with the order of said court thereon, or a certified copy  
32 thereof, shall be transmitted to said District Court together  
33 with the remittitur in said case, and when so transmitted shall be  
34 and become a part of the records and files and of the judgment

1 roll in said action in said District Court;

2 And it is further stipulated that the order of said  
3 court may be entered hereon upon the filing of this stipulation  
4 without further notice.

5 Dated April 1, 1908.

6  
7 Thos. F. Craven  
8 Attorney for Plaintiff, Appellant.

9  
10 John J. Fahy  
11 Brown, Albert & Guernsey  
12 Attorneys for Defendant, Respondent.

13  
14  
15  
16 ORDER UPON STIPULATION.

17 Upon the filing and reading of the foregoing stipulation,  
18 IT IS HEREBY ORDERED that the record in said case on file in  
19 this court be changed as provided by the above stipulation, and  
20 that after decision in said case in this court the said  
21 stipulation and this order thereon be transmitted together with  
22 remittitur herein for the purposes and with the effect provided  
23 in said stipulation.

24 Dated, April 6 1908.

25  
26 Chas. M. Stout  
27 Judge, Supreme Court.  
28 Chief Justice



(Endorsed)

15589

State of Minnesota  
Supreme Court  
April Term, A.D. 1908.

George Eckhard  
Plaintiff - Appellant

Marilyn Wagner  
Defendant. Respondent

Stipulation & Order

Filed Apr 6 1908  
C. A. Pidgeon, Clerk

John J. Foley  
Attorney for Respondent  
1006 Metropolitan  
Life Building  
Minneapolis, Minn.

Without further notice.  
Court may be ordered herein upon the filing of this stipulation  
and it is further stipulated that the order of said  
court in said action in said District Court.

STATE OF MINNESOTA,  
SUPREME COURT. } ss.

I, C. A. PIDGEON, Clerk of said Supreme Court, do hereby certify  
that the foregoing is a full and true copy of the Stipulation and Order  
.....  
in the cause therein entitled, as appears from the original, remaining on file  
.....  
in my office; that I have carefully compared the within copy with said original, and that the  
same is a correct transcript therefrom, and of the whole thereof.

WITNESS my hand and seal of said Supreme Court at the  
Capitol, in the city of St. Paul, this 1st  
day of June, A. D. 1908

C. A. Pidgeon Clerk.



CARVER COUNTY,  
FILED

JUN 3 1908

*H. O. Muehlberg* Clerk

State of Minnesota,  
County of CARVER

DISTRICT COURT,  
Eighth Judicial District.

George Erhard, Plaintiff

-VS.-

Meritz Wagner, Defendant.

BOND ON APPEAL.

Know all Men by these Presents, That we George Erhard  
principal and George Hartmann  
and Joseph Hartmann sureties,  
are held and firmly bound unto Meritz Wagner, the defendant

in the above entitled action, in the sum of Three Hundred  
Dollars, lawful money of the United States, to be paid unto the said Meritz Wagner, his

heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind  
ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 23<sup>rd</sup> day of August A. D. 1907

The condition of this obligation is such that, WHEREAS, the said George Erhard, said  
plaintiff in the above entitled action, appeals to the Supreme Court of the State  
of Minnesota, from the order of said District Court entered herein and  
filed in the office of the Clerk of said Court on the 10th day of  
August A.D. 1907 denying said Plaintiff's motion for a new trial of  
said action, and from the whole thereof

(PA JUDICIAL DISTRICT COURT ST. PAUL, MINN.)  
NOTED FOR THE CLERK OF DISTRICT COURT ST. PAUL, MINN.

Now, Therefore, If said George Erhard shall pay all costs and charges  
which may be awarded against him on the said appeal and the damages  
sustained by the said defendant and respondent in consequence thereof  
if said order or any part thereof shall be affirmed or said appeal dis-  
missed, and to abide and satisfy the judgment or order which the appel-  
late Court may give therein

then this obligation shall be void, otherwise of force.

Signed, Sealed and Delivered in Presence of

J. B. Erhardt  
J. B. Erhardt

George Erhard Seal  
George Hartmann Seal  
Joseph Hartmann Seal



STATE OF MINNESOTA,

County of CARVER

SS.

Be it Known, That on this 23<sup>rd</sup> day of

August

A. D. 1907,

before me personally appeared George Erhard

George Hartmann and Jos eph Hartmann

to me known to be the same persons described in and who executed the foregoing bond, and each for himself acknowledged the same to be his own free act and deed.

STATE OF MINNESOTA,

County of CARVER

SS.

Notary Public Carver County Minn.  
(My Commission Expires July 1<sup>st</sup> 1913)

George Hartmann  
and Jos eph Hartmann

the sureties named in and who executed the foregoing bond, being first duly sworn, doth, each for himself, depose and say that he is a resident and freeholder of the State of Minnesota, and worth the amount of ~~double~~ Three Hundred Dollars

above his debts and liabilities, and exclusive of his property exempt from execution.

Subscribed and sworn to before me on this 23<sup>rd</sup> day of August A. D. 1907

George Hartmann  
Joseph Hartmann

Notary Public Carver County, Minn.  
(My Commission Expires July 1<sup>st</sup> 1913)

DISTRICT COURT,

*Eighth* Judicial District.

County of *Carver*

*George Archibald*

vs

*Mortz Wagner*

BOND ON APPEAL

The within Bond, being in the sum and  
with the sureties by me directed, is  
hereby approved this *26th*  
day of *Aug* A. D. 1907

*John J. Fisher*  
*Bridge*  
One and person of service  
of copy of within bond is  
admitted his 26th day of  
August 1907  
Defendants Attorney.

PIONEER PRESS, ST. PAUL, MINN.

*Charles H. Crowe*  
attorney for Plaintiff  
*Chas. H. Crowe*

CARVER COUNTY,  
FILED

AUG 29 1907

*H. O. Muehlberg* Clerk.

(484)

Original in the space opposite section.

George Archibald vs  
Mortz Wagner



STATE OF MINNESOTA

County of Carver.

IN DISTRICT COURT

Eighth Judicial District.

George Erhard,

Plaintiff

- VS. -

Meritz Wagner,

Defendant.

To John J. Fahey, Esq., attorney for the above named Defendant Meritz Wagner,  
and to H. O. Miehler, Esq., Clerk of said District Court:

YOU WILL PLEASE TAKE NOTICE, That the above named Plaintiff appeals  
to the Supreme Court of the State of Minnesota from the order of said  
District Court entered herein and filed in the office of the Clerk of said  
District Court on the tenth day of August A.D. 1907 denying said plaintiff's  
motion for a new trial of said cause, and from the whole thereof.

Dated this 26th day of August A.D. 1907

*Thor F. Graven*  
Attorney for Plaintiff  
Chaska, Minn.

(Original)

STATE OF MINNESOTA,

County of Carver

District COURT.

George Erhard  
Plaintiff.

vs.  
Moritz Wagner  
Defendant.

Notice of Appeal to Supreme Court

Due and personal service of the within  
Notice of Appeal is hereby admitted  
this \_\_\_\_\_ day of August

A. D. 1907

John J. Fahy  
Attorney for \_\_\_\_\_

Thos F Crocker  
Attorney for Plaintiff  
Chaska Minn.

O. F. GREENWOOD, MANKATO, MINN

being \_\_\_\_\_  
10 \_\_\_\_\_ he served the  
day of \_\_\_\_\_ upon \_\_\_\_\_  
therein named, personally, by \_\_\_\_\_  
leaving \_\_\_\_\_ at the house of the usual abode of said \_\_\_\_\_  
a person of suitable \_\_\_\_\_  
age and discretion, then resident therein, a true and correct copy of said \_\_\_\_\_  
that said \_\_\_\_\_ is to affiant well known to be the same \_\_\_\_\_  
as the within named \_\_\_\_\_

State of Minnesota,

County of \_\_\_\_\_  
CARVER COUNTY,  
FILED  
AUG 29 1907  
H. O. Munkelberg

(484)



STATE OF MINNESOTA

County of Carver.

DISTRICT COURT,

Eighth Judicial District

George Erhard,

Plaintiff.

- VS. -

Meritz Wagner,

Defendant.

SIR:

You will please take notice, that at a special term of Court to be held at the Court House in the City of Chaska in said County and State on the 9th day of July A.D. 1907, at the opening of court on that day, or as soon thereafter as counsel can be heard, said <sup>Plaintiff</sup> ~~defendant~~ will move said Court for an order setting aside and vacating the decision of the Court herein and for a new trial of said action upon the following grounds to-wit:

- Errors of law occurring at the trial and excepted to at the time by said ~~defendant~~. <sup>Plaintiff</sup>
2. That the decision of the Court is not justified by the evidence, particularly in that the <sup>second</sup> ~~sixth~~, Seventh, Eight and Ninth findings of fact, and each one of said findings, is not justified by the evidence; and
3. That the said decision of the Court is contrary to law.

You will also take notice that upon the hearing of said motion and in support thereof said plaintiff will read the records and files in said motion, including the settled case, or so much thereof as he deems pertinent.

Very truly,

*Shas F. Groves*  
Attorney for Plaintiff  
Chaska, Minn.

JOHN J. FAHEY, ESQ.,  
Attorney for Defendant,  
Norwood, Minn.

(Original)  
STATE OF MINNESOTA,  
County of Carver  
District COURT.  
George Erhard  
Plaintiff.  
vs.  
Moritz Woguer  
Defendant.  
Notice of Motion

Due and personal service of the within  
is hereby admitted

this 28th day of June

A. D. 1907

John J. Fahey  
Attorney for Defendant

Shas H. Graves  
Attorney for Plaintiff  
Chaska Minn.

C. F. GREENWOOD, MANKATO, MINN

(484)

ss.  
State of Minnesota,  
County of Garver  
first duly sworn upon oath, deposes and says, that at the  
in said County and State, on the 19th day of June, he served the  
within 19 upon being  
the therein named, personally, by leaving  
with said at the house of the usual abode of said  
age and discretion, then resident therein, a true and correct copy of said a person of suitable  
that said is to affiant well known to be the same

GARVER COUNTY,  
FILED

JUL 2 1907

H. O. Munkley



District Court.  
Eighth Judicial District.

George Erhard, Plaintiff,  
                    against  
Mauritz Wagner, Defendant.

1. Errors of law occurring at the trial, and excepted to at the time by said plaintiff;

2. That the decision of the Court is not justified by the evidence, particularly in that the second, sixth, seventh, eighth and ninth findings of fact, and each one of said findings is not justified by the evidence; and that said decision of the Court is contrary to law.

Thomas F. Craven, Esquire, appeared as counsel for the plaintiff, in support of said motion;

John J. Fahey, Esquire, appeared as counsel for the defendant, in opposition thereto.

Said motion was made and based upon the records and files in said action, and the settled case therein.

After hearing the arguments of counsel for the respective parties, reading the authorities cited by them, and giving all matters and things involved in said cause due consideration, it is O R D E R E D , that the said motion of the plaintiff be, and the same hereby is, in all respects denied.

Dated at Norwood, Minnesota, this 9th day of August, A.D. 1907.

Judge of said Court.

All proceedings on the part of the defendant are hereby stayed  
for the period of thirty days.

---

Judge.



State of Minnesota  
County of Carver  
In District Court

Jes. Erhard,  
- vs -  
Marty Wagner  
Def.

Order Denying  
New Trial

CARVER COUNTY,  
FILED  
AUG 10 1907  
H. O. Muehlberg, Clerk  
(484)

State of Minnesota,

County of Carver.

District Court.

Eighth Judicial District.

George Edward, Plaintiff,

against

Moritz Wagner, Defendant.

At an adjourned term of the District Court duly held in and for the said County of Carver, on the 8th day of April, A.D. 1907, the above entitled cause came duly on for trial to the Court, without a jury.

Thomas F. Craven, Esquire, appeared as counsel for the plaintiff;

John J. Fahey, Esquire, appeared as counsel for the defendant.

After hearing the evidence adduced at the trial, hearing the arguments of counsel for the respective parties, and giving all matters and things involved in said cause due and deliberate consideration, and being fully advised in the premises, the Court, in addition to the admissions in the pleadings, makes the following

FINDINGS OF FACT:

First. That said plaintiff now is, and ever since the year 1908 has been the owner in fee in possession of the following described lands, to-wit: The east half of the northeast quarter of section 26, township 118, north of range 25. That said defendant now is, and ever since the year 1879 has been the owner in fee and in possession of the following described lands, to-wit: the northwest quarter of the northwest quarter of section 27; the northeast of the northeast quarter and the west half of the northeast quarter of section 28, in said township and range.



Second: That located on said lands of said defendant so located in said section 28 is a large extent of marsh and slough land, that has no natural drainage, and that can be drained only by artificial means; and that adjacent to said lands of said defendant are large areas of other lands to the north and west, which have no natural drainage except when the water becomes excessively high when it then flows in a southerly direction thru said section 28 and away from the aforesaid lands so owned by this plaintiff.

Third: That the plaintiff's lands aforesaid are separated from the defendant's said marsh and slough lands and the other lands to the west and northwest thereof, by a natural watershed and wide expanse of high, hard land, which naturally forms, and has at all times naturally formed a barrier and protection to plaintiff's said lands aforesaid from the water which naturally accumulates in said marsh, slough, and low lands of the defendant aforesaid; that said watershed and wide expanse of hard land aforesaid is located in the westerly half of the northwest quarter of said section 27, and is owned and occupied by said defendant; that the easterly side of said watershed forms a side hill and slopes rapidly down to the westerly line of this plaintiff's said land, and the westerly side of said watershed slopes off to the marsh and slough lands so owned by said defendant; and that said watershed and wide expanse of high, hard lands as aforesaid, extends in width about 80 rods and in length from the northerly boundary line of said section 27 to the southerly boundary line thereof.

Fourth: That plaintiff's said lands aforesaid naturally lie on a plane considerably below the plane of said defendant's said lands, which is located to the west of said watershed; that located on the north half of plaintiff's said lands as aforesaid is a large meadow of about 20 acres of level land, the surface of which is thirty feet, more or less, below the plane of

defendant's said marsh and slough lying west of said natural watershed and high expanse of hard land as aforesaid; that said meadow lands aforesaid so owned by the plaintiff border along the easterly foot line of the side-hill slope so formed by said watershed aforesaid; that the natural drainage of plaintiff's said meadow lands is slow and sluggish, but was at all times ample and sufficient to suitably carry off the surface waters naturally reaching said meadow, and the said meadow lands of the plaintiff during all of the times herein mentioned was productive and annually yielded to said plaintiff valuable crops of hay each year.

Fifth:: That said defendant built and constructed a network of ditches and drains in his said marsh and slough lands, and collected therein surface waters naturally flowing in upon said lands, and by said network of ditches conveyed such surface waters a distance of from about 800 to 900 feet thru said watershed, in the direction of the lands of the plaintiff, to a point 45 rods from the lands of the plaintiff, which ditch thru said watershed was about eleven and a half feet deep, and thereby said defendant drained about 70 acres of his slough lands thru said network of ditches and drain thru said watershed to said side hill or slope a distance of 45 rods from the lands of the plaintiff where said waters ran down the side of said side hill or slope in, upon and over the said meadow land of the plaintiff.

Sixth: That said network of ditches and said drain or sewer leading the waters from the same thru said high ridge of land was first built and constructed by the defendant in the year 1881, by and with the consent of plaintiff's grantor, ever since which time it was suffered to remain, and was used as the only means of draining the defendant's said slough and marsh lands, and other lands adjacent thereto; and that in the year 1904 when plaintiff was the owner and in possession of his said lands



the defendant repaired said drain or sewer leading thru said high ridge of land from his said network of ditches, by putting in tiling in the place of wooden boxes which had become decayed, ever since which time over 70 acres of defendant's lands and other lands adjacent thereto have been drained thru said sewer or drain, and network of ditches in upon the said lands of the plaintiff, which are the acts of damage complained of in his complaint.

Seventh: That during excessive rains great quantities of water would flow thru said network of ditches and drain down the side of said slope or hill and in upon the said lands of the plaintiff, where the same would remain for a short period of time, but eventually would flow off in a southeasterly direction from said lands of the plaintiff; and that other surface waters adjacent to said <sup>lands</sup> ~~marsh or slough~~ <sup>or meadow</sup> lands of the ~~defendant~~ <sup>plaintiff</sup> would also flow down from other lands lying north thereof, and rest upon the said lands of the plaintiff, but eventually would flow off in a southeasterly direction therefrom. That during the years 1904, 1905, and 1906, during periods of high water and excessive rains, said network of ditches and drain so constructed by the defendant as aforesaid, carried water and dirt in upon the said lands of the plaintiff, thereby damaging the growing grass and hay thereon to the extent of \$75.00 during said years.

Eighth: That at the easterly end of said ditch and on the side of said slope or side hill, there is a ravine in which said network of ditches and drain deposits the water from said defendant's land and other lands adjacent thereto, thru which ravine said water when so deposited, runs down upon the said meadow lands of the plaintiff; and that said ravine is the only accessible natural drain into which defendant could deposit said waters so accumulated upon his said lands.

Ninth: That said system of drainage so made and constructed by the defendant is the only practical and feasible means by which his said lands can be drained with the least injury to his neighbor; and that while the plaintiff, during excessive rains and wet seasons may suffer some damage, by reason of said system of drainage so depositing the waters in said ravine, that it flows upon his said meadow lands, the amount of benefit to the lands of the defendant and other lands adjacent thereto, far exceeds the amount of injury sustained by the plaintiff, and the said plaintiff is not unreasonably and unnecessarily injured thereby.

AS CONCLUSIONS OF LAW

the Court finds:

1. That the action of the plaintiff should be dismissed upon its merits, and it is so Ordered.

Let judgement be entered accordingly.

Dated at Norwood, Minnesota, this 10th day of May, A.D. 1907.

R. M. Morrison  
Judge of said Court.

*All proceedings in the part of  
the defendant are hereby stayed for  
a period of 40 days from and after  
notice of the filing of this decision.*

*R. M. Morrison*  
*Judge*



State of Minnesota  
County of Carver

Geo. Erhard

vs. - No - Ref

Monty Wagner

Dep

Findings  
and Decision

CARVER COUNTY,  
FILED

MAY 11 1907

H. O. Muehlberg, Clerk.

(484)

STATE OF MINNESOTA,  
County of Carver,

IN DISTRICT COURT,  
Eighth Judicial District.

George Erhard, Plaintiff. :  
-vs- :  
Moritz Wagner, Defendant. :  
: A N S W E R .  
: :

Now comes the defendant and for his answer to the complaint of the plaintiff in the above entitled action alleges:

1. That except as is hereinafter expressly admitted, qualified or otherwise explained, said defendant denies said complaint and each and every allegation thereof.

Folio 1.

2. Defendant admits that said plaintiff is and at all time stated in said complaint was, the owner in fee and in possession of the East Half of the North-west Quarter of Section Twenty Seven Township One Hundred Sixteen North of Range Twenty Five West.

3. Defendant admits and alleges that said defendant is and during all the time stated in said complaint was, the owner and in possession of the North-west Quarter of the North-west Quarter of said Section Twenty Seven; the North-east Quarter of the North-east

to 2.

Quarter, and the west Half of the North-east Quarter of Section Twenty eight in said Township One Hundred Sixteen North of Range Twenty Five West. Defendant admits that there is a large area of marsh land owned by him in said Section Twenty eight, but specifically denies that the natural drainage of said marsh lands of said defendant is in a southerly direction as is alleged in the complaint herein; defendant admits that there is a water-shed and

to 3.

wide expanse of hard high land located as described in the complaint herein and that said water-shed and high land is owned, occupied, cultivated and used by said defendant.

4. Defendant admits the allegation of the complaint herein as to the position of plaintiff's said land with reference to said water-shed and to defendant's said land, and admits that plaintiff has a meadow of the size and description alleged in the complaint herein but specifically denies that said meadow land was very productive and annually yielded to said plaintiff most val-



uable crops of hay as alleged in the complaint herein; defendant alleges that of wet seasons prior to 1904 said plaintiff's meadow was flooded and covered over with water and in such a condition due to water that it was impossible for plaintiff to go on said

Folio 4. meadow with a team of horses and mowing machine to harvest the hay growing on and produced on said meadow land.

5. Defendant admits and alleges that by a net-work of ditches and drains heretofore dug and constructed and extended throughout ~~plaintiff's~~ defendant's said marsh lands, the water which is gathered on and in said lands is conveyed by said net-work of ditches and drains to the westerly foot-line of said water-shed and conveyed through said water-shed by a sewer ditch, so called, but said defendant specifically denies that said sewer ditch, so called, was wrongfully, unnecessarily, and unreasonably, dug, built and constructed in the early part of 1904, and said defendant specifically denies that said sewer ditch, so called, was constructed at all, or any part thereof in 1904.

6. Further answering defendant alleges that heretofore, to-wit, sometime in the year 1880, said defendant acting in the interests of good husbandry, and with a view to drain and reclaim a large area of low, wet, swampy, marshy lands located on said lands of

Folio 6. said defendant, dug, opened up, built and constructed and extended throughout said low, wet, swampy, marshy lands a net-work of ditches; and that said defendant in said year 1880 expended a great amount of labor, money and time in digging, opening up, building and constructing and extending said net-work of ditches; that said net-work of ditches were dug, opened up, built and constructed and extended throughout said low, wet, swampy, marshy lands by said defendant in the interests of good husbandry and for the purpose of draining and reclaiming said low, wet, swampy, marshy

Folio 7. lands and rendering the same fit for cultivation and use and making the locality thereabouts more healthful and more habitable; that an endeavor was made by defendant in said year 1880 to drain his said lands off in a southerly direction but that said defendant found it impossible, impracticable and not feasible to drain his said lands in a southerly direction because there

was not a sufficient fall in that direction to carry off the waters accumulating in said net-work of ditches; that said net-work of ditches without an outlet to carry off the waters accumulating on said lands of said defendant was of no value whatever to defendant; that all of the labor, money and time expended in digging, opening up, building and constructing and extending said net-work of ditches throughout said low, wet, swampy, marshy lands of said defendant, would be expended for nothing by said defendant without an outlet having sufficient capacity and fall to carry off the waters collected on and in defendant's said lands and in said net-work of ditches.

Folio 9.  
7. Defendant alleges that sometime in the year 1881 said defendant dug and constructed a large and deep drain through said watershed and through said wide expanse of high hard land and that said drain extended from the <sup>westerly</sup> ~~easterly~~ foot line of said watershed through said watershed and wide expanse of high hard land to the <sup>easterly</sup> ~~westerly~~ foot-line of said watershed, and to and into a ravine and natural watercourse where said drain terminated at a point in said ravine and natural watercourse about 40 <sup>rods</sup> west of the west boundary line of the said land now owned by said plaintiff.

10.  
That the point where said drain terminates in said ravine and watercourse is in defendant's own land. That said ravine and watercourse extends away from said watershed in an easterly direction. That said drain constructed through said watershed and said wide expanse of high hard land and to and into said ravine and natural watercourse as aforesaid, was in the year 1881 connected with said net work of ditches and drains dug, opened up, built and constructed and extended throughout defendant's low, wet, swampy, marshy lands and together with said net-work of ditches formed and still forms a system of drainage of sufficient volume, capacity and fall to completely drain and did completely

10 11.  
drain and does completely drain defendant's said low, wet, swampy, marshy land, and that said low, wet, swampy, marshy land is rendered fit for cultivation and use and the ~~same~~ locality thereabouts is made more healthful by reason of such system of drainage.



8. That in the year 1882\* defendant placed and caused to be placed at the bottom of said drain dug and constructed through said watershed and wide expanse of high hard land, tiling pipe in the central or middle part of said drain and boxes open at either end, and constructed of <sup>plank</sup>wood, at either end of said drain; and that the tiling pipe and the boxes made of plank formed an <sup>continuous</sup> opening or drain through which the water passed from said net work of ditches ~~into~~ and into said ravine and natural watercourse; that said tiling pipe and boxes made of plank were placed in the bottom of said drain dug and constructed across said water-shed and wide expanse of high hard land because of their convenience.

Folio 12.

9. That since 1882 and for a period of more than 20 years last past the water gathering on and in defendant's said lands has accumulated in said net-work of ditches and drains, dug, opened up, built and constructed and extended throughout defendant's low, wet, swampy, marshy lands and has been conveyed by said net work of ditches to and into said drain made of tiling pipe and plank boxes and has passed through said drain made of tiling pipe and plank boxes to and into said ravine and natural watercourse; and that the flowage of said water through said net-work of ditches and drains and through said drain made of tiling pipe and plank boxes has continued peacefully and uninterruptedly, and by the tacit consent of all parties interested for more than 20 years last past.

Folio 13.

10. That by reason of the long, peaceful and uninterrupted flowage of the waters through said system of drainage formed by said net-work of ditches and drains and said drain made of tiling pipe and boxes made of plank, the said lands of the defendant have become and are now freed, relieved and unincumbered in law from the water carried off by said system of drainage; and any and all rights of said plaintiff to have said drain or sewer ditch so called, as it is referred to in the complaint herein, filled up and closed up and the water stopped from flowing through it

Folio 14.

15. have become barred, concluded and estopped by reason of the great length of time during which the <sup>said</sup> flowage of the water has contin-

Folio 15.

ued.

11. That said defendant has a right by perscription\*by reason of long, continued and uninterrupted flowage of the waters on his said lands, through said sewer ditch so called, to have said lands drained and continue to have his lands drained by said sewer ditch so called; that said <sup>sewer</sup> ditch has become by long continued and uninterrupted use the natural outlet for the waters accumulating in and

Folio 16. on defendant's said slough and marsh lands; that said defendant has used said sewer ditch so called for a period greater than 20 years last past continuously and uninterruptedly for the purpose of draining his said slough and marsh\*lands; and that said defendant has gained the prescriptive right to have the water from his said marsh and slough lands drained to into and through said sewer ditch so called by the undisputed and the interrupted use

Folio 17. of said sewer ditch so called for the purpose of draining his said marsh and slough lands for the period required by law for that purpose.

12. That the drain made of tiling pipe and boxes made of plank constructed by defendant through said water-shed and said wide expanse of high hard land is the identical drain referred to as a sewer ditch so called in the complaint of the plaintiff herein.

14. That defendant has been to considerable labor and expense in clearing up and rendering his said marsh and slough lands fit for cultivation and use, and that said lands are now and have been for

Folio 18. years the most valuable land defendant owns; that said marsh and slough lands are now reasonably worth and of the value of \$100 per acre; and that defendant has and owns several acres of said valuable land; that if said sewer ditch so called be caused to be closed up and the flowage of water through it stopped the said marsh and slough lands of the said defendant will become practically worthless; that said defendant has maintained, kept in repair and

Folio 19. kept open said sewer ditch so called ever since its construction in the year 1882.



14. That said system of drainage is the most practible and feasible one by which defendant can drain his said marsh and slough lands; that plaintiffs grantor in 1882 gave permission to said defendant to construct said sewer ditch so called.

W H E R E F O R E said defendant demands judgement that said sewer ditch so called be kept open as heretofore and that the flowage of water be allowed to continue as heretofore, and for his costs and disbursements herein and for such other and further relief as to this Court may seem just and equitable, and that plaintiff take nothing herein.

Dated February 12, 1907.

*John J. Faherty*  
Defendant's Attorney,  
Norwood, Minn.

ORIGINAL.

District Court  
Carver County

George Erhard

-vs-

Moritz Wagner

John J. Fahey,  
Defendant's Attorney,  
Norwood, Minn.

ANSWER

CARVER COUNTY,

FILED

MAR 4 1907

H. O. Muehlberg  
(484)



STATE OF MINNESOTA  
County of Carver.

DISTRICT COURT,  
Eighth Judicial District.

-----::-----  
George Erhard,  
Plaintiff.

- VS. -

Meritz Wagner,  
Defendant.  
-----::-----

Said Plaintiff for his reply in the above entitled action respectfully states and alleges that he denies each and every allegation of new matter contained in said defendant's answer herein.

WHEREFORE, Plaintiff demands judgment as in and by his complaint prayed.

this 16th day of February 1907.

*Shurtz & Craven*  
Attorney for Plaintiff,  
Chaska, Minn.

(Original)

STATE OF MINNESOTA,  
County of Carver

District COURT.

George Erhard  
Plaintiff.

vs. Moritz Wagner  
Defendant.

Reply (Original)

Due and personal service of the within  
Reply is hereby admitted  
this 19th day of February

A. D. 1907  
John J. Fahy  
Attorney for Defendant

Shes A. Gower  
Attorney for Plaintiff  
Chaska Minn.

C. F. GREENWOOD, MANKATO, MINN.

(484)

CARVER COUNTY,  
FILED

APR 10 1907

H. O. Muehlberg

State of Minnesota,

County of

being

19, he served the

day of

first duly sworn upon oath, deposes and says, that at the  
in said County and State, on the

upon

therein named, personally, by

leaving

at the house of the usual abode of said

a person of suitable

with

with said

age and discretion, then resident therein, a true and correct copy of said

is to affiant well known to be the same

as the within named



State of Minnesota,

ss.

County of Carr24<sup>th</sup>

day of

January 1907

I hereby certify and return, that on the

at the Town of Waconiain the County of Carrin said State, I served the within SummonsComplaint upon the within named defendant, Moritz Wagner personally,

by then and there handing to and leaving with him a true

copy of said Summons & Complaint

Dated this

25<sup>th</sup>

day of

January

1907

Sheriff's Fees, Return, \$ 1.00Mileage 30 m \$ 3.00Total \$ 4.00Sheriff Carr County, Minn.

By \_\_\_\_\_ Deputy.

STATE OF MINNESOTA

County of Carver.

ss

IN DISTRICT COURT,

Eighth Judicial District.

-----:-----  
GEORGE ERHARD,

Plaintiff.

- VS. -

SUMMONS.

MORITZ WAGNER,

Defendant.  
-----:-----

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:

You, Moritz Wagner, are hereby summoned and required to answer the Complaint of the Plaintiff in the above entitled action, which Complaint is hereto annexed and herewith served upon you and to serve a copy of your answer to the said Complaint on the subscriber at his residence in the City of Chaska in said County of Carver within twenty days after the service of this Summons upon you, exclusive of the day of such service; and if you fail to so serve your answer to the said Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in said Complaint, together with the costs and disbursements herein.

Dated January 21st, 1907.

*Thos. H. Craven*  
Attorney for said Plaintiff,  
Chaska, Minn.



STATE OF MINNESOTA

DISTRICT COURT,

County of Carver.

Eighth Judicial District.

George Erhard,

Plaintiff.

-VS.-

Moritz Wagner,

Defendant.

Said plaintiff for his complaint in the above entitled action respectfully alleges, states and shows to the Court:

(1) That said plaintiff is, and at all the time hereinafter stated was, the owner in fee and in possession of the East Half of the North-west Quarter of Section Twenty Seven Township One Hundred Sixteen North of Range Twenty Five West.

(2) That said defendant is, and during all the time hereinafter stated was, the owner and in possession of the North-west of the North-west quarter of said Section Twenty Seven; the North-east quarter of North-east quarter, and the West Half of North-east quarter of Section Twenty eight in said Township and Range aforesaid. That located on the said lands of said defendant so located in said Section twenty eight is a large extent of marsh and slough land and that the usual and natural drainage of said marsh and slough lands of said defendant, as well as large areas of other low lands to the north and west of said defendant's said lands, is and at all times has been in a southerly direction through said section twenty eight and away from the aforesaid lands so owned by this plaintiff; and that plaintiff's said lands aforesaid is separated from the defendant's said marsh and slough lands and the other low lands to the west and north-west thereof by a natural water-shed and wide expanse of high hard land which naturally forms, and has at all times naturally formed, a barrier and protector of plaintiff's said lands aforesaid from the waters which naturally accumulate in the said marsh, slough and low lands aforesaid. That said water-shed and wide expanse of hard high land aforesaid is located in the westerly half of north-west quarter of said section twenty seven and is owned and occupied by said defendant. That the easterly side of said water-shed forms a side hill and slopes rapidly down to the westerly line of this plaintiff's said land and the westerly side of said water-shed slopes off to the marsh and slough lands so owned by said defendant,



and the said water-shed and high expanse of hard high lands as aforesaid extends in width about eight rods and in length from the northern boundary line of said section twenty seven to the southern boundary line thereof.

(3) That plaintiff's said lands aforesaid naturally lies on a plain considerably below the plain of defendant's said lands which is located to the west of said water-shed. That located on the north half of plaintiff's said land aforesaid is a large meadow of about twenty acres of level land the surface ~~thereof~~ which is thirty feet more or less below the plain of the defendant's said marsh and slough lying to the west of said natural water-shed and high expanse of hard lands aforesaid; that the said meadow lands aforesaid so owned by plaintiff border along the ~~the~~ easterly foot line of the side-hill-slope so formed by said water-shed aforesaid. That

That prior to the wrongful acts of said defendant hereinafter stated ~~the~~ the natural drainage of plaintiff's said meadow lands was slow and sluggish but nevertheless was at all times ample and sufficient to seasonably carry off the surface waters naturally reaching said meadow, and the said meadow lands was then very productive and annually yielded to said plaintiff most valuable crops of hay each year.

(4) That by a net-work of ditches and drains heretofore dug and extended throughout defendant's said marsh and slough lands aforesaid the waters, which naturally gather on and in said lands, is collected in said net-work of ditches and conveyed to the westerly foot line of said water-shed aforesaid, and instead of conveying said waters so gathered on to the south along the natural and usual course of drainage for defendant's said lands, the said defendant, in the early part of the year 1904, wrongfully, unnecessarily and unreasonably, dug built and constructed a large sewer ditch, so called, beginning at and connecting with his said net-work of ditches aforesaid and thence extending, at a depth of twelve to fourteen feet, across and through said water-shed and wide expanse of high hard lands aforesaid and terminating on the side-hill-slope next to and leading down to said plaintiff's meadow lands aforesaid; and in the building of said sewer ditch aforesaid defendant so laid the pipe therein that all the waters gathered up by the said net-work of ditches aforesaid, as well as the entire body of surface waters which naturally reaches said defendant's said lands from territory to the north and the west thereof, is wrongfully unnecessarily and unreasonably conveyed to and through said sewer ditch aforesaid, and such said waters ever since the construction of said sewer ditch aforesaid has an-



usually rushed in a large and destructive stream through said sewer ditch and thence on down said side-hill-slope in a rapid stream carrying the dirt and filth from defendant's land and depositing all the waters dirt and filth upon the said meadow lands aforesaid so owned by this plaintiff. And ever since the defendant built said sewer ditch as aforesaid, said defendant has wrongfully unlawfully unnecessarily and unreasonably maintained and now maintains, and threatens to forever continue to maintain the said sewer ditch. That said defendant has thereby annually during each of the years 1904, 1905, and 1906 unnecessarily and unreasonably conveyed to and through the said sewer ditch aforesaid large volumes of water and thereby flooded and re-flooded plaintiff's entire meadow lands aforesaid and thereby greatly injured and damaged valuable crops of grasses thereon to this plaintiff's great damage.

(5) That prior to the wrongful acts of said defendant in so unnecessarily and unreasonably diverting the surface waters as aforesaid, the lands aforesaid so owned by this plaintiff were of great value for agricultural purposes and then were by said plaintiff so used. That because of the said wrongful acts of said defendant in the building of the said sewer ditch as aforesaid and diverting the waters and conveying the same to and upon the lands of the said plaintiff as aforesaid, and by reason thereof during each of the years 1904, 1905, and 1906 plaintiff's entire meadow lands aforesaid was, at different times during each of said years, thereby flooded, and the said waters, so diverted by defendant as aforesaid, stood thereon to great depths during each summer season and destroyed the grasses and crops then upon said meadow lands, and washed upon said plaintiff's meadow lands the dirt and filth caught up by the stream as aforesaid, all to plaintiff's great damage in the sum of three hundred and fifty dollars. And if said defendant is permitted to so maintain the said sewer ditch across said natural water-shed as aforesaid plaintiff's said meadow lands aforesaid must and will continue to be flooded and damaged <sup>by waters</sup> so conveyed thereon by said defendant as aforesaid each succeeding year as time goes on, and said sewer ditch, so constructed and maintained by defendant as aforesaid, is and, if permitted to be maintained, ever will be a continuing common nuisance to the great and permanent damage of said plaintiff, and said plaintiff thereby will be put to a multiplicity of suits to recover the damages which he will by reason thereof sustain, and because of the facts aforesaid this plaintiff has no adequate remedy at law.

Wherefore, Plaintiff prays for decree and judgment against said defendant as follows:

1. That defendant be perpetually enjoined and restrained from in any way or manner draining or causing to flow through the said sewer ditch or across the said water-shed in this complaint alleged the surface waters or any other waters naturally lying to the westerly side of the said water-shed,

2 That said defendant be by the mandatory injunction of this court required and commanded to forthwith fill up and completely stop up the flow of water through said sewer ditch in this complaint described and to forever keep said sewer ditch so closed

3 That plaintiff have and recover of said defendant damages in the sum of three hundred fifty dollars, together with plaintiff's costs and disbursements herein,

4. That plaintiff have such other and further relief in the premises may to said Court seem just and equitable.

Dated this 17th day of January A.D. 1907.

Thos. F. Caven  
Attorney for said Plaintiff,  
Chaska, Minn.



STATE OF MINNESOTA,

County of Carver

Eighth Judicial District COURT.

George Erhard  
Plaintiff.

vs.

Morty Wagner  
Defendant.

Summons & Complaint  
(originals)

Due and personal service of the within  
is hereby admitted  
this \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 190\_\_\_\_\_

Attorney for \_\_\_\_\_

Thos F. Gower

Attorney for

Plaintiff  
Charles Minn.

G. F. GREENWOOD, MANKATO, MINN

(484)

State of Minnesota,

County of \_\_\_\_\_

ss.

being first duly sworn upon oath, deposes and says, that at the  
in said County and State on the \_\_\_\_\_ day of \_\_\_\_\_  
within \_\_\_\_\_ upon \_\_\_\_\_  
the \_\_\_\_\_ therein named, personally, by \_\_\_\_\_  
with said \_\_\_\_\_ at the house of the usual abode of said  
leaving \_\_\_\_\_ a person of suitable  
age and discretion, then resident therein, a true and correct copy of said  
that said \_\_\_\_\_ is to affiant well known to be the same  
as the within named \_\_\_\_\_

State of Minnesota,  
County of CARVER

DISTRICT COURT,

Eighth Judicial District

George Erhard,

Plaintiff.

- VS. -

Moritz Wagner,

Defendant.

*Notice of Trial*

Sir: YOU WILL PLEASE TO TAKE NOTICE that the issue of law and fact  
in the above entitled action, will be brought on for trial  
at the next General Term of the District Court aforesaid,  
appointed to be held in and for the County of CARVER at the  
Court House in the City of Chaska in said  
County, on the Fourth day of March A.D. 1907 at the  
opening of said Court on that day, or as soon thereafter as Counsel can be heard.

Dated February 18th 1907

Yours respectfully,

*Shos A. Cravens*

Attorney for Plaintiff

Chaska, Minn.

To John J. Fahey,

Attorney for Defendant.



Original

DISTRICT COURT.

George Erhard, Plf  
- vs -  
Moritz Wagner, Jr

NOTICE OF TRIAL.

Due service of within Notice is hereby

admitted, this 19<sup>th</sup> day of

February A. D. 1907

John J. Fahren

Attorney for

Defendant

Thos F. Gaven

Attorney for

Plaintiff

CARVER COUNTY

FILED

APR 10 1907

H. C. Muehlberg Clerk

(484)

No. 3043.

15.

DISTRICT COURT,

8th

Judicial District,

County of

Cover

George Enghard  
vs

Moritz Wagner

NOTE OF ISSUE

Issue of

Fact

LAST PLEADING SERVED

Feb 19

1907

Thos H. Craven

Attorney for Plaintiff

John J. Fahren

Attorney for Defendant

Will the Clerk please file this Note of  
Issue, and enter the cause on the Calen-  
dar for the March  
A. D. 1907 Term  
of this Court.

Yours respectfully,

Thos H. Craven

Attorney for

Plaintiff

Filed

February 25<sup>th</sup>

1907

(484)

MILLER-GAYIS PRINTING CO., MINNEAPOLIS



B. RETURN OF SUMMONS (PERSONAL SERVICE)—Or Complaint to Attachment.

10-1. FREE PRESS PRINTING CO., MINNAPOLIS, MINN.

State of Minnesota, }  
County of Carr } ss. I hereby certify and return, that on the 17<sup>th</sup>  
day of July 1911, at the Town of Waconia County and  
State aforesaid, I served the Judgment Roll  
hereto attached upon Meritt Wagner the Defendant named therein,  
by handing to and leaving with him personally a true and correct copy thereof.

Dated this 18<sup>th</sup> day of July 1911

Sheriff's Fees: Service, \$ 1.00  
Travel \$ 2.80

\$ 3.80

Sheriff of Carr County, Minn.

By J. A. Ditz Deputy.

State of Minnesota

District Court

County of Carver

Eighth Judicial District.

O-O-O-O-O-O-O-O-O-O-O-O-O-O-O-O

George Erhard

vs

Moritz Wagner.

O-O-O-O-O-O-O-O-O-O-O-O-O-O-O-O

*Judgment*

This cause having been duly brought on for trial before the Court without a jury, Honorable Gorham Powers, one of the Judges of the Twelfth Judicial District, acting for Honorable P.W. Morrison, Judge of said Court, and the court having duly made and filed its findings of facts and decision, wherein as amended by Order on file herein, it is found, among other things, as follows, viz;

1, That plaintiff now is and ever since 1903 has been the owner in fee and in possession of the East Half of the Northwest Quarter of Section Twenty Seven, Township One Hundred Sixteen North Range Twenty Five West, in Carver county; and the Defendant is, and ever since 1873 has been the owner in fee and in possession of the North-west Quarter of the North-west Quarter of Section <sup>Twenty</sup> Seven, the North-east Quarter of the North-east Quarter, and the west Half of the North-east Quarter of Section Twenty Eight, in said Township and Range.

2. Upon said lands of defendant in Section 28 there is, and since 1873 has been, a large extent of marsh and slough land, of about 70 acres, which has no natural drainage, and can be drained only by artificial means; and adjacent to said slough lands of defendant, to the north and west thereof, are large areas of other wet lands, and when the water becomes excessively high upon defendant's said slough lands, it naturally flows and has flowed south thru said Section 28, and farther on, about one mile in all into what is known as Radde's Creek, and away from said lands of plaintiff,



3. Plaintiff's said lands are separated from defendant's said marsh and slough lands by a natural water-shed of high hard land, which has at all times been a natural barrier and protection to plaintiff's said land from the surface waters which naturally accumulate in said marsh or slough of defendant. Said water-shed is located on the westerly half of the North-west quarter of said Section 27, on defendant's land; it runs north and south, is several rods wide, the easterly side slopes rapidly down to the west line of plaintiff's land, and the westerly side slopes down to defendant's marsh or slough; and by reason of such barrier, none of the waters accumulating in defendant's slough would or could ever flow to or upon plaintiff's land, except for the ditch dug by defendant as hereafter found.

4. Plaintiff's said land lies on a plane 20 feet lower than the plane of defendant's slough, and situated thereon is a meadow of 20 acres, which prior to the acts of defendant, complained of, produced valuable crops of hay each year.

5. Defendant in 1904 constructed a tile ditch running easterly from his said slough, thru said water-shed to a point on the east slope thereof, about 40 rods west of plaintiff's land; said ditch was from 800 to 900 feet long, from 4 to 10 feet deep, and the tile at the west end was 15 inches, and at the east end 12 inches, in diameter, and it had a fall of three feet.

6. Defendant in the year 1881 constructed a ditch thru said water shed along the same course as the one above described, and ever since maintained the same, but it does not appear that said ditch ever caused the waters to flow upon or over the land now owned by plaintiff, or that it did any damage or injury to said land or the crops thereon.

7. Prior to 1904, defendant had constructed several ditches on his lands, all draining and conveying the waters from the low and wet lands thereon into his said marsh or slough, and up to the west end of the tile ditch, and in 1904 he found, which was the fact, that said old ditch would not drain his said slough from

the waters accumulating thereon, and for the purpose of completely draining said slough, he re-constructed said old ditch, put in tiling instead of wooden boxes, dug the same from one foot to one foot and a half deeper, and thereby caused the waters to flow, and they did flow, from said slough and defendant's adjoining lands, and from the adjoining lands of others lying to the south, west and north-west, in great quantities, thru said tile ditch, to, upon and over plaintiff's said meadow land, injuring said land and destroying the hay crops thereon in the years 1904, and 1905 and 1906, to to plaintiff's damage in the sum of \$70.

8. That if said ditch is allowed to remain and be maintained by defendant, the waters from said slough and other waters running into it, will continue at times of high water and excessive rains, to run thru said tile ditch in great and destructive quantities, to and upon plaintiff's said meadow, and causing him great damage repeatedly, each year.

9. That defendant's said marsh or slough covers about 70 acres, and the same is of little or no value unless properly drained, when it will become valuable agricultural land.

10. That the only practicable and reasonable way of draining defendant's said marsh or slough and his low wet lands tributary to the same, as well as the wet lands adjoining which belong to others, is by means of a ditch running south thru said section 28, and a little farther on into Radde's Creek, which is the natural and suitable outlet of all said waters west of said water-shed.

And wherein and whereby it is determined and decided that the acts of defendant in reconstructing said Tile Ditch through said water-shed in 1904 were wrongful and unlawful, and that plaintiff, in consequence of said wrongful and unlawful acts, suffered and sustained damage, and is entitled to recover from defendant as such damages for the years 1904, 1905 and 1906, the sum of \$70.00 with interest thereon from January 1st 1907, besides his costs and disbursements herein;



And wherein and whereby it is further determined and decided that plaintiff is entitled to judgment enjoining and restraining the defendant from maintaining or continuing said Tile Ditch, and directing and commanding him to forthwith abate, remove and fill up the same, so as to prevent the waters from flowing through the same to and upon the land of plaintiff.

Now, On Motion of Thos. F. Craven Esqr, It is Ordered, Adjudged, Determined and Decreed that the said defendant be and is hereby enjoined and restrained from maintaining or continuing the Tile Ditch herein and in said findings and decisions mentioned and referred to, and that said defendant be and is hereby directed and commanded to forthwith abate, remove and fill up said Tile Ditch, so as to prevent the waters from flowing through the same to and upon the ~~land~~ land of plaintiff.

And, On like motion, It is Ordered, Adjudged and Determined that plaintiff have and recover from defendant his damages aforesaid in the sum of \$70.00 together with interest thereon from and since January 1st 1907, and his costs and disbursements taxed and allowed at the sum of \$132.35

Judgment

Damages \$70.00

Interest \$19.08

Costs, etc. \$132.35

By the Court

O. L. Lundstrom Clerk.

DISTRICT COURT,

County of *Carver*

*George Erhard*

AGAINST

*Morty Wagner*

JUDGMENT ROLL.

Filed *July 15th* A. D. 19*41*

*O. J. Lundstrade*  
Clerk of the District Court.

No. 1071.



State of Minnesota, District Court,  
County of Carver, Eighth Judicial District  
Mary Erhard, Plaintiff  
vs  
Moritz Wagner and Mary Wagner,  
Defendants.

Order Denying Motion and Discharging  
Order to Show Cause.

The motion of plaintiff and order to show cause why defendants should not be punished as for contempt of court in refusing and neglecting to comply with the judgment and further proceedings of court in said action came duly on for hearing at the Special June 1921 term of court held at Chaska in said County. Mueller & Streissguth appeared as attorneys for plaintiff and Geo. A. & C. H. MacKenzie for defendants.

At the hearing in Glencoe on April 29th 1921, the parties entered into an agreement whereby the defendants agreed to close the tile system in question by filling in with concrete three lengths of the tile at each end thereof and while defendants, probably by not fully understanding the exact terms of said agreement, have not closed the tile system in precisely the manner provided by said stipulation, they have substantially complied therewith in that respect and have closed said tile system in such a manner as to effectually prevent the waters from going on to plaintiff's premises in damaging quantities. It is therefore ordered that said motion be denied and said show cause order be and hereby is discharged.

Dated July 28, 1921.

*C. M. Tapp*  
District Judge.

# 8

FILED  
DISTRICT COURT.  
JUL 20 1921  
CALIFORNIA COUNTY,  
*W. H. Lindstrom*  
Clerk of Court.

E 484



State of Minnesota, }  
County of Carver } ss. I hereby Certify and Return, That at the <sup>Township</sup> ~~City~~ of  
Waconia, County and State aforesaid, on the 22 day of January 1921  
I served the hereto attached Order to Show Cause and Affidavit on the within named  
Moritz Wagner and Mary Wagner, and each of them,  
personally by then and there handing to and leaving with each of them a true and correct  
copy thereof, and at the same time and place exhibiting to each of them <sup>and she</sup> so that he could see  
and read the same, the original signature of Honorable C. M. Tipton with  
Judge of the District Court of Carver County, Minnesota, to said original Order.  
Dated this 22nd day of January 1921  
Sheriff Fees—Service, \$ 2.00  
Travel, \$ 4.60  
Total, \$ 6.60  
By *G. A. Fritz*  
Deputy Sheriff.

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
EIGHTH JUDICIAL DISTRICT

Mary Erhard, sole heir and devisee  
of George Erhard, Deceased,

Plaintiff,

-v-

Moritz Wagner and Mary Wagner,  
his grantee,

Defendants.

-----  
ORDER TO SHOW CAUSE  
-----

On the annexed affidavit of Mary Erhard, and on  
motion of T. Otto Streissguth, her attorney,

IT IS ORDERED that the above named Moritz Wagner  
and Mary Wagner, and each of them, show cause before the  
Court, at the Court Room  
in the Court House in the city of Glencoe,  
W Leod County, Minnesota, on the 26th  
day of January, 1921, at 11 o'clock A. M.,  
or as soon thereafter as the parties can be heard, why an  
order should not be made adjudging the above named defendants,  
and each of them, guilty of contempt of Court for violation  
and disobedience of the Judgment referred to in said affidavit,  
and punishing them therefor, and why said Mary Erhard should  
not have such other relief as may be just and as may be  
prayed for in her said affidavit.

Let this order and said affidavit be served upon  
said defendants, and each of them, by exhibiting to them, and  
each of them, the originals and leaving with them copies



thereof, on or before the 22nd day of January,  
1921.

Dated January 15, 1921.

C. M. Lipp  
District Judge.

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
EIGHTH JUDICIAL DISTRICT

Mary Erhard, sole heir and  
devisee of George Erhard, Deceased,

Plaintiff,

-v-

Moritz Wagner and Mary Wagner,  
his grantee,

Defendants.

-----  
STATE OF MINNESOTA )  
                          ss.  
COUNTY OF CARVER )

Mary Erhard, being first duly sworn, says:

1. That at all times hereinafter mentioned up to and including the date of his death as hereinafter stated, her husband, George Erhard, was the owner in fee and in possession of the east half of the northwest quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$ ) of section twenty-seven (27), township one hundred and sixteen (116) north, range twenty-five (25) west in said County of Carver.

2. That said George Erhard, the husband of affiant, died on the 1st day of January, 1916, leaving a last will and testament, which was thereafter and on the 11th day of February, 1916, duly admitted to probate, by the Probate Court in and for said County of Carver; that by the terms of said will, the affiant's husband, said George Erhard devised said premises in fee to the plaintiff, and that at all times since the death of said George Erhard, the affiant



has been and she still is the owner in fee and in possession of said premises hereinbefore described.

3. That at the time of the commencement of the action against him, hereinafter referred to, and at the time of the entry of judgment therein as hereinafter stated, the above named Moritz Wagner was the owner and in possession of the northwest quarter of the northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of section twenty-seven (27), the northeast quarter of the northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ ) and the west half of the northeast quarter (W $\frac{1}{2}$ NE $\frac{1}{4}$ ) of section twenty-eight (28), all in township one hundred and sixteen (116) north of range twenty-five (25) west, in said county; that said Moritz Wagner continued to be the owner/<sup>of record</sup>~~tax~~ of said premises until on or about February 28, 1912, on which day, as affiant is informed and believes, he conveyed said premises through a third person to his wife, the above named Mary Wagner, without consideration, for the purpose of avoiding the effect of the judgment hereinafter referred to and with intent to defraud the affiant and her husband, George Erhard, which purpose and intent were concurred in by said Mary Wagner; that said Moritz Wagner has been in the sole and exclusive possession of said premises at all times herein mentioned, and, as affiant verily believes, he has at all said times been and still is the true owner thereof, notwithstanding the transactions hereinbefore referred to.

4. That upon said lands of defendants in said section 28 there is, and since 1873 has been a large extent of marsh and slough land in all about 70 acres, which has no natural drainage and which can be drained only by artificial means; that adjacent to said slough lands of defendants, to

the north and west thereof, are large areas of other wet lands; that plaintiff's said lands are separated from defendants' said marsh and slough lands by a natural watershed of high hard land, which has at <sup>all</sup> times been a natural barrier and protection to plaintiff's said land from the surface waters which naturally accumulate in said marsh or slough of defendants, said water-shed being located on the westerly half of the northwest quarter of said section 27, on defendants' land; that plaintiff's said land lies on a plane 20 feet lower than the plane of defendants' slough, and situated thereon is a meadow of at least 20 acres, normally producing valuable crops of hay each year.

5. That in 1904, defendant Moritz Wagner constructed a tile ditch running easterly from his said slough, through said water-shed to a point on the east slope thereof, about 40 rods west of plaintiff's said land, said ditch being from 800 to 900 feet long, from 4 to 10 feet deep, and the tiling at the west end being 15 inches and at the <sup>east</sup> end 12 inches in diameter, and that it had a fall of three feet; that in said year, 1904, said Moritz Wagner, for the purpose of completely draining his said slough, re-constructed an old wooden ditch through said watershed, putting in tiling instead of wooden boxes, digging the same from one foot to one foot and a half deeper, and thereby caused the water to flow from said slough and defendants' adjoining lands, and from the adjoining lands of others lying to the south, west and north-west, in great quantities, through said tile ditch, to, upon and over plaintiff's said meadow land, injuring said land and destroying the hay crops thereon; that the acts of defendant, Moritz Wagner, in re-constructing said tile



ditch through said water-shed in 1904 were wrongful and unlawful, and that, except for the digging and re-construction of said ditch, none of the waters accumulating in defendants' said slough would or could flow to or upon plaintiff's land.

6. That on or about January 25, 1907, said George Erhard duly commenced an action in the District Court in and for said County of Carver against said Moritz Wagner, setting out in his complaint substantially the facts aforesaid and praying in his complaint for damages by reason thereof and for judgment against said Moritz Wagner enjoining and restraining him from maintaining or continuing said tile ditch and directing and commanding him to forth-with abate, remove and fill up said tile ditch so as to prevent the waters from flowing through the same to and upon said lands of plaintiffs; that said action was duly brought on for trial before said court, and duly heard on its merits, and on June 28, 1911, by order of said Court, judgment was duly entered therein in favor of plaintiff <sup>George Erhard,</sup> and against the defendant, Moritz Wagner, whereby it was ordered, adjudged and decreed that said Moritz Wagner be enjoined and restrained from maintaining or continuing the tile ditch hereinbefore referred to and whereby said Moritz Wagner was directed and commanded to forth-with abate, remove and fill up said tile ditch so as to prevent the waters from flowing through the same to and upon the lands of said George Erhard.

7. That notwithstanding said Judgment, and in contempt of the Injunction therein contained, said Moritz Wagner and his said Grantee, Mary Wagner, have without interruption since the date of said Judgment, <sup>willfully and wrongfully</sup> continued

and maintained said tile ditch and still maintain same; that notwithstanding said Judgment, and in contempt thereof, said Moritz Wagner and his said grantee, Mary Wagner, have wilfully, wrongfully and unlawfully, failed and neglected and refused to abate, remove and fill up said tile ditch so as to prevent the waters from flowing through the same to and upon the land of plaintiff.

8. That said misconduct of said Moritz Wagner, and his said grantee, Mary Wagner, was calculated to and did in fact prejudice, defeat and impair the rights and remedies of said George Erhard and affiant, his sole devisee and heir-at law, and that said misconduct caused an actual loss and injury to plaintiff and damage to her said property in the sum of \$1500.00; that by reason of said misconduct, affiant has been compelled to and did employ counsel, T. Otto Streissguth of Gaylord, Minnesota, to enforce her rights under said judgment, and that the services of said attorney in these proceedings will reasonably be worth the sum of \$250.00, for which sum affiant has incurred liability to her said attorney.

9. That no previous application has been made for the punishment of said misconduct of the above named defendants, and that affiant makes this affidavit for the purpose of obtaining from the Court an Order to Show Cause directing said defendants, and each of them, to show cause why they and each of them should not be punished as for contempt, and indemnify the plaintiff herein for her damages, expenses, costs and disbursements.

Subscribed and sworn to be fore me this 7th day of Jan., 1921.

(seal)

*Mary Erhard*  
*T. Otto Streissguth*  
T. Otto Streissguth  
Notary Public, Sibley County, Minn.  
My commission expires Oct. 14, 1922.



#3067

ORIGINAL

No. \_\_\_\_\_

**State of Minnesota**  
**County of Sibley. Carver**  
District Court,  
Eighth Judicial District.

Mary Erhard  
Plaintiff

vs.

Erritz Wagner, et al  
Defendants

AFFIDAVIT AND ORDER TO  
SHOW CAUSE

Due and Personal service of the with-  
in \_\_\_\_\_ hereby admitted  
this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

MAY 25 1925

CARVER COUNTY  
Clerk of Dist. Court  
T. Otto Strelsguth

Attorney for Plaintiff  
Gaylord, Minn.

\$ 484

STATE OF MINNESOTA, )  
 ) (SS.  
County of Carver., )

I hereby certify and return, that at the Village of Waconia, County and State aforesaid, on the 17th day of June A. D. 1921, I served the within and hereto attached Order and affidavit upon Moritz Wagner & Mary Wagner Defendants, by then and there handing to and leaving with them and each of them a true and correct copy thereof, and at the same time and place exhibiting to them and each of them so that they and each of them could see and read the same, the original signature of Honorable C. M. Tift, Judge of the District Court of Carver County, Minnesota, to the originals.

|                        |               |
|------------------------|---------------|
| Sheriffs fees service, | \$2.00        |
| Sheriffs fees travel,  | 3.40          |
| Total,                 | <u>\$5.40</u> |

G. A. Gatz  
Sheriff Carver Co. Minn.



State of Minnesota,  
County of Carver,

District Court,  
Eighth Judicial District.

Mary Erhard, sole heir and  
devisee of George Erhard,  
Deceased,

Plaintiff,

-vs-

Moritz Wagner and Mary  
Wagner, his grantee,

Defendants.

-o-o-o-o-o-o-o-

ORDER TO SHOW CAUSE

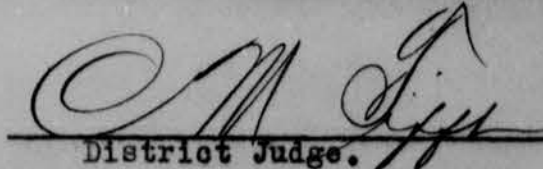
-o-o-

On the annexed affidavit of T. O. Streissguth, and on motion  
of Mueller & Streissguth, attorneys for the plaintiff,

IT IS ORDERED that the above named Moritz Wagner and Mary  
Wagner, and each of them, show cause before the court, at the Court  
Room in the Court House in the City of Gaylord, Sibley County, Minne-  
sota, on the ~~21st~~ <sup>21st</sup> day of June, A.D. 1921, at 1 o'clock P. M., or as  
soon thereafter as the parties can be heard, why an order should not  
be made adjudging the above named defendants, and each of them, guilty  
of contempt of Court for violation and disobedience of the Judgment  
referred to in said affidavit, and punishing them therefor, and why  
said Mary Erhard should not have such other relief as may be just and as  
may be prayed for in her said affidavit.

Let this order and said affidavit be served upon said defendants,  
and each of them, by exhibiting to them, and each of them, the originals  
and leaving with them copies thereof, on or before the 18th day of June,  
1921.

Dated June 16th., 1921.

  
District Judge.

State of Minnesota,  
County of Carver,

District Court,  
Eighth Judicial District.

Mary Erhard, sole heir and  
devisee of George Erhard,  
Deceased,

Plaintiffs,

-VS-

Moritz Wagner and Mary  
Wagner, his grantee,

Defendants.

-O-O-O-O-O-O-

State of Minnesota, )  
County of Brown. ) ss

T. O. Streissguth, being first duly sworn, says,  
that he is one of the attorneys for the plaintiff in the above entitled  
action.

2. That this matter came on to be heard before the  
Court at Glencoe on the 29th day of April, 1921, and after the hearing  
of some of the evidence on the part of the plaintiff the matter was  
continued under a stipulation of the parties whereby the defendants  
agreed to and did pay the plaintiff the sum of Two hundred fifty (\$250.)  
Dollars and further agreed to close the tile situate upon the premises  
described in the complaint herein within ten days after the 29th day  
of April, 1921, by filling with concrete three tiles on each end of said  
tile drain and to give a bond to the plaintiff in the sum of One  
thousand (\$1,000.00) Dollars conditioned upon the defendant so closing  
said drain that no water should flow therefrom unto the lands of the  
plaintiff.

3. That notwithstanding more than forty days have  
elapsed since the said 29th day of April,, defendants have failed to  
perform the conditions of their agreement aforesaid, except that they  
have paid the plaintiff the sum of Two hundred fifty (\$250.00) Dollars;  
That the tile drain upon the lands of the defendant have not been  
closed as agreed and that no bond has been furnished to the plaintiff

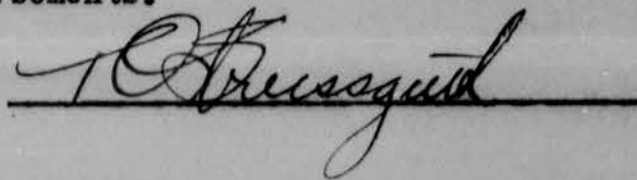


conditions as aforesaid.

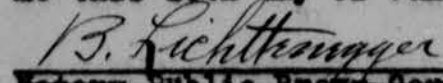
4. That notwithstanding said stipulation on the part of the defendants and notwithstanding the judgment in this action and in contempt of the <sup>in</sup>junction therein contained the defendants have without interruption since the date of said judgment wilfully and wrongfully continued and maintained the tile drain mentioned in the pleadings and still maintains same; that notwithstanding said judgment, and in contempt thereof said Moritz Wagner and his grantee, Mary Wagner, have wilfully, wrongfully and unlawfully failed and neglected and refused to abate, remove and fill up said tile ditch so as to prevent the waters from flowing through the same to and upon the land of plaintiff.

5. That said misconduct of said defendants was calculated to and did in fact prejudice, defeat and impair the rights and remedies of the plaintiff and have caused actual loss and injury to plaintiff and damage to her property in the sum of Fifteen hundred (\$1500.00) Dollars; that by reason of said misconduct, affiant has been compelled to and did employ, counsel, Mueller & Streissguth, of New Ulm, Minnesota, to enforce her rights under said judgment, and that the services of said attorneys in these proceedings will reasonably be worth the sum of Two hundred fifty (\$250.00) Dollars, for which sum affiant has incurred liability to her said attorneys.

6. Affiant makes this affidavit for the purpose of obtaining from the court an order to show cause directing said defendants and each of them to show cause why they and each of them should not be punished as for contempt, and indemnify the plaintiff herein for her damages, expenses costs and disbursements.



Subscribed and sworn to before  
me this 16th day of June, 1921.

  
~~Notary Public, Brown County, Minn.,~~  
~~My commission expires~~  
Clerk of District Court  
Sibley Co., Minn.

3067  
Original

State of Minnesota

County of Carver.

District Court.

Mary Erhard,  
Plaintiff,

vs

Moritz Wagner, and Mary  
Wagner, his grantee,  
Defendants,

AFFIDAVIT AND ORDER TO SHOW  
CAUSE

Due and personal service of the within

is admitted

at New Ulm, Minnesota, this

day of

FILED  
DISTRICT COURT

Attorney for MAY 25 1925

Filed *[Signature]*  
Clerk of Dist. Court

Clerk.

MUELLER & STREISSGUTH

Attorneys for Plaintiff,

New Ulm, Minnesota

W. B. KEMSKI PRINTING CO. NEW ULM, MINN.

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