

STATE OF NEW YORK  
SURROGATE'S COURT : COUNTY OF SUFFOLK

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In the matter of the account of :  
proceedings of :

GEORGE SASSOWER, :

as Preliminary Executor in the :  
estate of :

EUGENE PAUL KELLY, :  
Deceased. :

-----X

Riverhead, N. Y.,  
June 15th, 1977.

B E F O R E :

HON. ERNEST L. SIGNORELLI,  
Surrogate.

APPEARANCES:

CHARLES Z. ABUZA, ESQ.,  
Attorney for Edward Kelly, Legatee,  
551 Fifth Avenue,  
New York City, N. Y.

ERNEST G. WRUCK, ESQ.,  
Guardian ad litem,  
31 Oak Street,  
Patchogue, N. Y. 11772.

VINCENT G. BERGER, ESQ.,  
Attorney for Public Administrator,  
6351 Jericho Turnpike,  
Commack, N. Y.

GEORGE SASSOWER, ESQ.,  
Appearing pro se,  
75 Wykagyl Station,  
New Rochelle, N. Y.

SIBEN & SIBEN, ESQS.,

BY: HENRY W. FRANK, ESQ.,  
of counsel,

Attorneys for claimant,  
Winifred Huck,

90 East Main Street,  
Bay Shore, N. Y. 11706.

VIRGINIA D. MATHIAS  
Surrogate's Court Reporter

THE CLERK: Account of proceedings in the estate of Eugene Paul Kelly.

THE COURT: Is everybody ready for trial?

MR. BRUCK: Ready to proceed.

MR. ABUZA: Ready for trial.

MR. SASSOWER: I am here at the direction of the court.

MR. BERGER: Before any trial proceeds, I represent the Public Administrator and I have an application.

Judge, Letters Testamentary which were issued to Mr. Sassower were revoked by this Court by order dated March 9th, 1976. The Public Administrator thereafter was appointed the Temporary Administrator by order of this court dated March 25th, 1977. I'm sorry, Your Honor, the first date was March 9th, 1977. My client, pursuant to your order of March 25th, 1977, thereafter posted the sum of \$50,000.00. He incurred a substantial amount of money to do that. Letters were issued to the Public Admin-

istrator appointing him temporary administrator on March 29th, 1977. Thereafter, the court issued an order on April 28th, 1977, directing Mr. Sassower to turn over to the temporary administrator, the Public Administrator, all books, papers and other property of the estate of Eugene Paul Kelly in his possession or under his control, on or before May 5th, 1977. On May 5th, 1977, I talked with my client, Mr. Mastroianni, the Public Administrator, and he advised me he had not received any papers whatsoever, except miscellaneous legal proceedings which were turned over to my office. Based on Mr. Mastroianni's representation that he received no books, records or other property of this estate. I wrote Mr. Sassower a letter on May 5th, and I ask that it be marked as an Exhibit for Identification.

MR. SASSOWER: Objection.

MR. BERGER: You acknowledged that you received that letter, in which I re-

requested the contents of the court order.

THE CLERK: Court Exhibit I has been marked for Identification and placed on the record.

MR. BERGER: That letter, basically Your Honor, asks Mr. Sassower to comply with the direction of the court as contained in this order of April 28th, 1977.

I received no response, oral or written, to that letter.

We appeared in court today by direction of the court, Your Honor. We had previously appeared last week and this matter was adjourned to today. I had a conversation with my client, the Public Administrator. Mr. Mastroianni advised me he has not received any books, papers or records or assets of this estate.

I then had a conversation with Mr. Sassower, here present in court, and as of this moment, no books, papers, records or other property of the estate have been turned over to him or to me, and I ask



this court for some remedy.

I have advised Mr. Sassower that he is in contempt of this court's order of April 23th, 1977. He is rendering my client unable to perform his duties as temporary administrator and I am most concerned about this and ask the court to take whatever action it deems necessary to remedy the situation.

I think that should be determined, Your Honor, before any trial or hearing is conducted by this court. That is my application.

THE COURT: I will hear from the attorneys who represent the residuary legatees. Mr. Wruck?

MR. WRUCK: If it please the court, Your Honor, in light of what Mr. Berger has submitted to the court, it becomes apparent that as far as a trial on the merits of this accounting here today is concerned, we would be remiss not joining in his application, and asking that this

matter be placed over, because if we had a trial on the merits today, there would be no way these records could be in the hands of the Public Administrator to ascertain whether these assets are actually in existence, and more particularly these bank accounts, checking accounts and savings accounts and the interest thereon.

The times that this court has requested Mr. Sassower to, not only deliver these papers to the Public Administrator, or these records and assets and bank accounts to the Public Administrator, but also to submit these in accordance with the directive of this court for the purpose of our examination, are legion. I can honestly say, and very conservatively say, I have been here ten times at least with regard to this particular proceeding, which is not by any stretch of the imagination, anything less than a waste of valuable time, and it certainly presents considerable hardship on everyone con-

cerned, as well as consuming the time of the court, and if this type of conduct is permitted to continue, it lessens the benefits that my clients would gain from this estate, and I wholeheartedly join Mr. Berger in his application.

THE COURT: Mr. Abuza?

MR. ABUZA: I would also join with Mr. Wruck in agreeing with the application by the attorney for the Public Administrator, and also point out for the record that Mr. Sassower appealed Your Honor's order appointing the Public Administrator. He also appealed your order directing him to turn over the books and records of the estate to the Public Administrator. Mr. Wruck and I, together, brought a motion in the Appellate Division, Second Department, to dismiss that appeal.

While that motion was pending in the Appellate Division, Mr. Sassower also brought on a cross-motion, apparently in

the Appellate Division for a stay of Your Honor's two orders.

The opinion of the Appellate Division was unanimous in dismissing Mr. Sassower's appeal, and also in denying his motion for a stay. Notice of entry was recently sent out by my office to all interested parties with respect to the decision of the Appellate Division. The decision of the Appellate Division was unanimous on that particular motion.

At the present time, there is no stay pending anywhere, allowing Mr. Sassower to continue to hold these papers.

THE COURT: Has there ever been a stay ordered by any court?

MR. ABUZA: No, Your Honor. The only other thing I would like to add is just for the record, that in Mr. Sassower's deposition before trial taken in this court on July 27th, 1976, he agreed to furnish Mr. Wruck and myself with copies of such items - I don't want to make a



lengthy list - but to give us copies of the decedent's federal income tax returns for three years prior to death, the estate checking account, the estate savings bank accounts. However, none of these things have been offered to Mr. Wruck or to me at any time since the date of that examination, and still have not had an opportunity to examine those books and records dealing with the estate, and therefore, as I say, I agree with Mr. Wruck. We believe it would be in the best interests of the estate if all those books and records were turned over to the Public Administrator, primarily so we may have the opportunity to see them and review them, and examine Mr. Sassower on them if we deem it appropriate. Thank you.

THE COURT: I see Mr. Frank from Siben & Siben's office. Mr. Frank, I see that you are here. What is your position?

MR. FRANK: Your Honor, I represent

Winifred Huck.

THE COURT: Let us have your appearance, please, Mr. Frank.

MR. FRANK: Siben and Siben, by Henry W. Frank, of counsel, 90 East Main Street, Bay Shore, New York, 11706, appearing for the claimant, Winifred Huck. We appear in this proceeding to object to so much of the account as filed, which rejects and disallows a claim for services rendered to the decedent.

We have no specific interest in the records that have been mentioned in these proceedings. We are here to present our claim to the court, so the court may be aware of this claim.

THE COURT: Thank you.

Mr. Abuza?

MR. ABUZA: Charles Z. Abuza, 551 Fifth Avenue, New York City, attorney for legatee, Edward Kelly.

THE COURT: Mr. Wruck?

MR. WRUCK: Ernest G. Wruck, 31 Oak Street, Patchogue, New York, guardian ad-litem for Susan Kelly and others, parties in interest.

THE COURT: Mr. Berger?

MR. BERGER: Vincent G. Berger, 6351 Jericho Turnpike, Commack, attorney for the Public Administrator.

THE COURT: Mr. Sassower?

MR. SASSOWER: George Sassower, 75 Wykagyl Station, New Rochelle, New York.

THE COURT: You are appearing pro se?

MR. SASSOWER: Yes, Your Honor.

THE COURT: Mr. Sassower, do you have the books and records pertaining to this estate with you today?

MR. SASSOWER: Well, Your Honor, not to be discourteous to the court, I think, frankly Your Honor, that - -

THE COURT: Just answer my question. Do you have the books and records per-

taining to this estate?

MR. SASSOWER: I have some records in court.

THE COURT: With you in court today?

MR. SASSOWER: I am ready to go to trial on the issues which the court set down as issues and - -

THE COURT: Have you turned the books and records over to the Public Administrator of Suffolk County, pursuant to an order of this court dated April 28th, 1977, which was personally served upon you in this court?

MR. SASSOWER: Well, with all due respect to the court, I don't particularly think the procedure followed by this court at this time is proper or appropriate.

THE COURT: Mr. Sassower, notwithstanding your opinion as to the propriety of this proceeding, I ask you again:



Have you turned over the books and records to the Public Administrator as ordered and directed by this court?

MR. SASSOWER: No, Your Honor.

THE COURT: Why have you failed to obey this order?

MR. SASSOWER: For many reasons, Your Honor.

THE COURT: I would like to hear you.

MR. SASSOWER: Your Honor, before I go into that matter, may I make a somewhat terse but incomplete preliminary statement?

THE COURT: Then, I assume you will answer the question?

MR. SASSOWER: Absolutely; but if I don't, I would appreciate it if Your Honor would remind me.

THE COURT: All right.

MR. SASSOWER: Initially, for the record, I would like to state that since,

myself and Your Honor are adversaries in a proceeding presently pending in the Supreme Court - -

THE COURT: Excuse me; we are not adversaries. I don't consider myself your adversary. What you consider yourself to be is your opinion, but I don't consider you my adversary.

MR. SASSOWER: In that event, Your Honor, while we may disagree in terminology, there is an action presently pending in the Supreme Court, wherein I am the petitioner and your Honor is one of the respondents.

THE COURT: Which proceeding are you talking about, Mr. Sassower?

MR. SASSOWER: The proceeding in the Supreme Court Suffolk County.

THE COURT: What is the nature of the proceeding?

MR. SASSOWER: An Article Seventy-eight proceeding.

THE COURT: And the relief you are seeking?

MR. SASSOWER: Well, there are several - -

THE COURT: I know, but I don't know the relief you are seeking.

MR. SASSOWER: If I may just straighten the record.

THE COURT: Since you brought it up, I think the record should have this information.

MR. SASSOWER: So there is no inaccuracy in my statement, may I mark a copy of the petition as a court exhibit?

THE COURT: You mean the proceeding you are talking about in the Supreme Court?

MR. SASSOWER: Right.

THE COURT: Sure. Mr. Sassower, I recall what you said - correct me if I am wrong - I think essentially, what you want today is to stay an alleged order by this court delivered to the Sheriff ordering that he apprehend you, and also,

you want the Judiciary Law declared unconstitutional. Isn't that the basis of your application?

MR. SASSOWER: I would not say that.

THE COURT: Then you enlighten me.

MR. SASSOWER: Your Honor, Mr. Berger has given you a copy of the order to show cause.

THE COURT: A court exhibit. Any objection?

MR. BERGER: No.

THE COURT: Mark it as a hearing exhibit.

THE CLERK: Hearing Exhibit 2 has been marked.

THE COURT: Give it back to Mr. Sassower. He may want to refer to it.

Mr. Sassower, I asked a question. What is the nature of the relief you are seeking? You disagreed with what I said; so you correct me if you feel I was wrong.



MR. SASSOWER: I don't think Your Honor was wrong. I just feel that what Your Honor said was incomplete.

THE COURT: You correct me, then.

MR. SASSOWER: Again, I have no intent of correcting His Honor.

THE COURT: No, no; by all means, if you feel I didn't correctly state the relief you are seeking, please do so.

MR. SASSOWER: If I said that, I erred. I just said I feel it was not complete.

THE COURT: Now, having refreshed your recollection, do you disagree with what I have said?

MR. SASSOWER: I don't disagree. I just say that Your Honor's statement is not complete.

THE COURT: How is it not complete?

MR. SASSOWER: There is a cause of action, as Your Honor stated, declaring a certain clause of the Judiciary Law

unconstitutional, and I think there is a cause of action wherein I allege that the procedure followed by this court in issuing a body attachment was unconstitutional.

THE COURT: What body attachment are you talking about, Mr. Sassower?

MR. SASSOWER: I will get to that, Your Honor.

THE COURT: All right.

MR. SASSOWER: I was advised on June 2, 1977, in the Supreme Court, Queens County - -

THE COURT: Who advised you, sir?

MR. SASSOWER: The Clerk of the court.

THE COURT: Did you get his name? Not that it is terribly important, but if you recall, I would appreciate knowing it.

MR. SASSOWER: I know who it is, but I - -

THE COURT: In Queens County?

MR. SASSOWER: In Queens County.

THE COURT: Where? What part?

MR. SASSOWER: Trial Term I.

THE COURT: Trial Term, Part I; all right, what did he say to you?

MR. SASSOWER: What he said to me in substance was what is contained in the petition.

THE COURT: What did he say to you?

MR. SASSOWER: Your Honor, I would like to make a statement, with all due respect to the court.

THE COURT: You may proceed.

MR. SASSOWER: I will try to answer each one of His Honor's questions.

THE COURT: All right; proceed.

MR. SASSOWER: Irrespective of what he said, I was thereafter advised that no such order or body attachment had been issued by this court, or out of this county.

THE COURT: When were you so advised about that, and by whom?

MR. SASSOWER: I believe it was last Wednesday, or last Thursday.

THE COURT: Was that after you had obtained the order to show cause?

MR. SASSOWER: Oh yes - - Yes. I had been advised of that after, by an Assistant Attorney General.

THE COURT: I had never signed or issued a body order directing the Sheriff to apprehend you.

MR. SASSOWER: I was advised, as set forth in the papers, that no such order had been issued. That's his statement.

THE COURT: Let me ask you a question: Before you obtained or requested the order to show cause, did you inquire of this court, or of the Sheriff whether such an order had ever been issued?

MR. SASSOWER: Can Your Honor - -

THE COURT: Can you answer that? It's a simple question. Did you do that?



MR. SASSOWER: No, Your Honor, I did not.

THE COURT: All right, fine; please answer the question. Proceed.

MR. SASSOWER: Now, there is relief requested in the third and fourth causes of action, which Your Honor did not set forth on the record, and as to that extent, that I took exception to His Honor's remark. In any event - -

THE COURT: Took exception to my remark  
Which remark?

MR. SASSOWER: The thrust of Your Honor's remark - I am not saying intentional - was that the petition was solely concerned with the body arrest - -

THE COURT: I didn't say that.

MR. SASSOWER: I know. I want the record to be perfectly clear in that respect.

THE COURT: To make the record clear, Mr. Sassower, you have been advised there is no such order that I have issued dir-

ecting the Sheriff to apprehend you, and I think you know I never issued such an order. Are you satisfied with that?

MR. SASSOWER: I am satisfied with that statement, and I am not satisfied.

THE COURT: All right; proceed.

MR. SASSOWER: In any event, there is a proceeding pending, and since we were - call it whatever you desire - adversaries, or parties to litigation, I believe it would be inappropriate as a matter of fact and as a matter of law, for Your Honor to sit on this case, or any application made with respect to this case.

THE COURT: You have already asked and you are now asking me to disqualify myself in this case. I have denied it, because I feel you have alleged no grounds for the granting of that relief, and I tell you right now, Mr. Sassower, that I am totally unbiased. I am prepared to render a just and fair determin-

ation. All I want to do, Mr. Sassower, is to ultimately resolve this matter with justice to everyone.

MR. SASSOWER: With respect to Your Honor's remark, as I have confidence in the statements of this court, I have confidence also in the advice given to me in the Supreme Court of Queens County, and I think that I am entitled to know the text or substance of a telephone call being made to the Supreme Court, Queens County, inappropriately stating that such body attachment had been issued.

THE COURT: Mr. Sassower, I don't know who gave you that information, if that information in fact was given, but you told me somebody told you this. That information was erroneous. I never issued such an order.

MR. SASSOWER: There was a telephone call?

THE COURT: Yes, there was a telephone call.

MR. SASSOWER: So the matter can be cleared up.

THE COURT: There was a telephone call. When you had submitted an affirmation of other engagement, and therefore, you were not in Court on June 1st on this matter, I then directed the clerk of this court to call the Clerk of Trial Term, Part I where you said you had an engagement, primarily to determine how long it would last, so that we could then adjourn the matter appropriately. That was the sum and substance of the directive I gave the clerk.

MR. SASSOWER: Well, again, Your Honor, the clerk in the Supreme Court Queens County, from where I sit - could we have him out - -

THE COURT: Mr. Sassower, I am not going to discuss this matter any further. You asked a question and I answered it. Now, please, let's get on.



I believe I asked you, sir, the specific question: Why have you failed to turn over the books and records of the estate to the Public Administrator? I would appreciate getting an answer. DV

MR. SASSOWER: I am going to come to an answer. I feel before I answer Your Honor, that preliminary statement should have been made.

Secondly, I take exception to Mr. Wruck's statement that the books and records were not turned over for an inspection, because I was in this court, - -

THE COURT: Proceed; I am listening.

MR. SASSOWER: - - with a brief case containing the books and records that he desired, and Mr. Wruck, in my presence, was at liberty to inspect the books, records and documents, and there were, from what I saw examined, a substantial number of books, records and documents. Coming to Your Honor's question, in good faith,

I did consider the order of the court to be unlawful. ✓

THE COURT: I beg your pardon?

MR. SASSOWER: To be unlawful.

THE COURT: My order?

MR. SASSOWER: Yes, Your Honor.

THE COURT: I see.

MR. SASSOWER: Secondly - I say secondly, because I thought this statement should come first - this application should not be entertained, and if Mr. Berger desires to make any application with respect to this matter, insofar as turning over the books and records, it should be done by formal motion papers - contempt papers, Your Honor - so that I could put in a full and deliberate response. ✓

MR. BERGER: George, could I say something?

MR. SASSOWER: Mr. Berger wants to say something, and I have no objection.

THE COURT: All right; you have the

floor.

MR. BERGER: So that there is orderly progression on what is occurring here, I wanted to bring this matter to your attention. I fully intend to go back to the office and prepare a set of papers, based on how Mr. Sassower responded to you this afternoon.

MR. SASSOWER: Mr. Berger desires to bring this on, which I think is the only proper way, by formal papers. I will answer him formally and completely, and with the aid of books that I don't have at the present time; but I say this at this time: I have spoken to Mr. Berger, I think in a rather pleasant conversation. There is a point of disagreement.

In sum and substance, I have told Mr. Berger that I have no objection to him having copies of the papers and me the originals, or him the originals and me the copies, and I am willing to work this matter in conjunction with him with-

out prejudice to my position in this matter.

Mr. Berger asked if he can respond.

THE COURT: All right.

MR. SASSOWER: I said he could, and I realize I would have no objection.

Let me finish my statement.

MR. BERGER: Let me respond to that point.

(Off the record between counsel and the court.)

MR. SASSOWER: Mr. Berger would like to respond point by point, and I leave that procedure up to Your Honor.

THE COURT: Do you mind being interrupted?

MR. SASSOWER: Again, no objection to being interrupted, but just let me finish this statement.

THE COURT: All right.

MR. SASSOWER: Again, I am willing to work with Mr. Berger, provided it is



clearly understood that it is without prejudice to my position. Mr. Berger's position I am leaving to Mr. Berger.

I am also willing to think out any other reasonable arrangement that may be proposed either by Mr. Berger, since he didn't feel that procedure was appropriate or didn't feel he could go along with the procedure. Perhaps either Mr. Berger or the court, or anyone else.

THE COURT: I have to interrupt you inasmuch as this order is not negotiable. The direction of this court is not negotiable. You have been removed - I reiterate and remind you - you have been removed as fiduciary in this case, and further ordered by the court to turn over the assets and books and records pertinent to this estate to the Public Administrator; notwithstanding that you may consider my order unlawful, I have asked you to do this.

Now, my question to you is: Do you intend to obey this order? You have not done it up to now.

MR. SASSOWER: Right.

THE COURT: Do you intend to obey this order?

MR. SASSOWER: I would make - -

THE COURT: Just please answer my question. I want it answered now.

MR. SASSOWER: When the papers come in from Mr. Berger - -

THE COURT: I am asking you right now.

MR. SASSOWER: I don't know, Your Honor.

THE COURT: You don't know; you, a lawyer and member of the Bar. Will you obey my order?

MR. SASSOWER: I didn't say that. I will determine after looking it over, based on what Mr. Berger puts in the papers, as to whether I am correct and

whether the order is lawful or unlawful. ✓

THE COURT: I am not concerned with what you are going to do. I am asking you now. Are you going to turn over in conformity with this order, the assets, the books and records of this estate to the Public Administrator - -

MR. SASSOWER: Insofar as - -

THE COURT: - - which I have so directed you to do? Are you going to do that? Yes or no?

MR. SASSOWER: I couldn't answer that yes or no.

THE COURT: Then you just won't obey my order?

MR. SASSOWER: I cannot say that.

THE COURT: You cannot say that?

MR. SASSOWER: No sir. ✓

THE COURT: You realize, as a result of your wilful refusal to obey the order of this court, that that may result in your being held in contempt of this court and fined in the amount of \$250.00

or thirty days in jail, or both?

Now, I ask you once again, Mr. Sassower, and I might add parenthetically, in eighteen - in the eighteen years that I have been a Judge, I never saw fit to adjudge any lawyer to be held in contempt. I hope I don't have to do that today, but I tell you that now, and I ask you: Do you intend to obey the order of this court, and turn over the books and records assets and property of this estate to the Public Administrator?

MR. SASSOWER: Again, Your Honor, at this point, at this point in time, I couldn't answer that yes or no.

THE COURT: All right, Mr. Sassower; before I make a determination on the question of your contempt of this court, do you want to be heard?

MR. SASSOWER: Yes, Your Honor.

THE COURT: All right.

MR. SASSOWER: I believe, Your Honor the proper procedure is to have formal



papers served upon me, so that I could formally and accurately respond after due deliberation.

(Off the record between counsel and the Court.)

MR. SASSOWER: Can we not determine the procedure before Mr. Berger rises to say something?

THE COURT: Mr. Berger?

MR. BERGER: I would like to be heard on that point. While it is my privilege on behalf of my client, the Public Administrator, to formally and on papers, make an application to punish Mr. Sassower for contempt of court, Judge, I would much prefer not to do that, because he is an attorney and I would like to talk this thing out with him.

I still think the court has the power under the Judiciary Law - I don't know what section - to hold Mr. Sassower in contempt and to do whatever else he deems necessary.

I want to state on the record, I don't want to preclude the court from doing whatever it feels like doing.

THE COURT: Nobody is going to preclude me from doing what I think is right.

Proceed, Mr. Sassower.

MR. SASSOWER: I won't controvert as a legal proposition, what Mr. Berger has stated. Again, on formal papers, I could formally respond.

Secondly, I must say to this court that I came to this court pursuant to the direction of the court, to try certain issues. Had I known that any other matter was to be taken up by this court, I would have prepared myself accordingly; and I do ask Your Honor that, since Your Honor is entertaining such application, that Your Honor give me some time so that I can counsel with others, look up some law before - -

THE COURT: I don't mean to inter-

rupt, but I issued this order and you have chosen to appeal the issuance of that order to the Appellate Division, and they denied your appeal. They denied you a stay, and as a member of the bar and a lawyer having knowledge of the law, you should know where your duty lies. You don't have to remind me.

MR. SASSOWER: No, Your Honor, I don't have to remind you.

THE COURT: As a result of your refusal to obey the lawful mandate of this court, you are interfering with the orderly processes of this court. You are interfering with the ability of this court to resolve this matter and conduct a trial, and to insure to counsel the opportunity to be prepared for trial; and really, what we are trying to do in this court in this proceeding is to determine your account regarding your stewardship of the affairs of the estate, and without the books and records, we are precluded from doing this.

MR. SASSOWER: Your Honor, with all deference to the statement of the court, I have no intention that I will do anything in this matter to obstruct the orderly procedure of the court, and it is for that reason that I offered Mr. Berger - -

THE COURT: I don't care what you offered Mr. Berger. I want you to tell me now. I will give you a further opportunity. I don't want to hold you in contempt. Will you turn over the books, records and assets of this estate to Mr. Mastroianni, the Public Administrator?

MR. SASSOWER: I ask Your Honor, if Your Honor would state that I may do so without prejudice in any way to my position.

THE COURT: I don't understand what that means, and I don't care what that means. I am asking you the question: Are you going to obey this order and forthwith turn over to the Public Administrator the books records and assets and



other property of this estate?

MR. SASSOWER: There is certain property which I don't know if this is in litigation, but which I do want to xerox.

Let me put it this way: assets, insofar as bank books are concerned - no problem.

(Off the record between counsel and the court.)

MR. SASSOWER: No problem; there are no other documents that I will need for this litigation. I am sure that Your Honor will give me an opportunity to make the necessary copies.

THE COURT: Of course.

MR. SASSOWER: Okay; insofar as I think during this recess we can work it out with Mr. Berger, and there are a tremendous amount of papers here and I can work it out with Mr. Berger as far as those papers which I will need for a hearing which he has no need for at this time.

THE COURT: Then you are going to

comply?

MR. SASSOWER: Again, I will comply without prejudice.

THE COURT: I don't know what that means, Mr. Sassower. It is very simple and explicit. Are you going to comply with this order?

MR. SASSOWER: I will comply with the direction of the court under protest, what I consider to be without prejudice.

THE COURT: You are going to obey this order?

MR. SASSOWER: Insofar as I stated, Mr. Berger and I will work things out as best we can, and if there is any dispute, I am sure Your Honor will resolve that dispute.

THE COURT: I will give you that opportunity. I will adjourn this matter until tomorrow at 9:30, unless you have the records and assets now.

MR. SASSOWER: All right - -

THE COURT: Do you have the assets?

MR. SASSOWER: Judge, believe me, to get out here at 9:30, I must take the 6:15 A.M. train.

MR. BERGER: I don't want to interrupt, but may I be heard for a moment?

THE COURT: Yes.

MR. BERGER: Possibly recess for lunch, or give us a short recess, so we can discuss this.

MR. SASSOWER: Yes, we can; then we can get home in time and back in time; but I am ready to proceed - -

MR. WRUCK: There is no big issue before this court at this particular point. A very simple question has been asked and I think a simple answer is needed. There is no purpose for a recess for lunch and then to come back to be belabored with this same type of rhetoric which seems to be so prevalent. I believe this can be concluded right now. The court can do whatever is necessary, based upon the application made by Mr. Berger

in the first instance.

THE COURT: Do you have the records and assets with you today?

MR. SASSOWER: Yes; I brought two brief cases. I have some records and some records I don't have. I have assets, but I don't have the whole thing. We will handle everything in a manner which I am sure will be suitable to Mr. Berger.

MR. BERGER: The only thing suitable to me is full compliance with that order.

THE COURT: Absolutely; nothing is negotiable here. Do you understand that? There is nothing negotiable.

MR. SASSOWER: I understand the remarks of the court.

THE COURT: I will give you a recess and give you that opportunity.

MR. SASSOWER: Your Honor - -

THE COURT: Just a minute, Mr. Sassower. Mr. Berger, you will report to me when this has been done, or what has been done.



MR. SASSOWER: I cannot; I need it for the hearing. If I give it to him today, I can't proceed with my hearing.

MR. BERGER: I believe my application is more important than the hearing.

MR. SASSOWER: I would like to have the liberty to make copies of what I give you, so that I can - -

MR. BERGER: My client is right downstairs and will make whatever copies Mr. Sassower wants.

MR. ABUZA: Your Honor, I don't understand what Mr. Sassower wants. He wants these documents for what hearing? As I understand, he is to turn over the books records and assets of the estate to the attorney for the Public Administrator. Some of those books and records he has stated he doesn't have with him today. This is understandable. I would say he should be directed to turn over the balance of the books and records he doesn't have with him today, to Mr. Berger by a

time to be determined by the court.

The original purpose of today's hearing which was a trial of the accounting should be adjourned until such time as the Public Administrator has the property and the opportunity to bring the account down to date, and we can proceed in all respects in a proceeding on the final accounting.

MR. BERGER: Your Honor, that would be the orderly and logical way to handle this, but since Mr. Sassower has not indicated to me or to you, or to us, what he intends to turn over to me today, I would prefer that the court calls a recess, so that we can confer.

(Conference off the record.)

THE COURT: We will adjourn to 2:00.

MR. SASSOWER: May I ask one question of the court?

THE COURT: Yes.

MR. SASSOWER: I am just assuming. I have to make arrangements if Your Honor

intends to proceed this afternoon. I have to make certain arrangements and make a few telephone calls.

THE COURT: Mr. Sassower, I don't know what's going to happen this afternoon. It all depends on what you are going to do.

MR. SASSOWER: May the record show I am doing this under protest.

MR. BERGER: Don't be ridiculous. Let me have them.

THE COURT: Recess until 1:00 P.M.

(Recess.)

(After recess at 1:00 P.M.)

MR. BERGER: I would like to report to the court, Judge. I was under the impression that we would be prepared to satisfy the court that Mr. Sassower had turned over all the papers to me.

What we did since we broke for a recess, Your Honor, is we went down to the Public Administrator's office and Mr. Sassower and I presented to the secretary down there, various documents that he had in his

possession, and I saw several of them with my own eyes, but Mr. Sassower represented to me that these documents would represent all of the papers and records of the estate, with the exception of the actual bank books, and I understand there are either two or three bankbooks, and on that score, he said he would get these to me in time; but the photostating was not completed, but the secretary for the Public Administrator says that she will have them completed. There are a tremendous amount of documents - one copy for myself, one for Mr. Wruck and one for Mr. Abuza.

I haven't had a chance to review these documents and I am just reporting this to the court.

MR. SASSOWER: I might also add, Your Honor, that there was some difficulty; there was a power failure for about fifteen or twenty minutes.

MR. BERGER: That's true, Judge.



THE COURT: I will give you a further opportunity to comply with that order. What date is convenient. I will adjourn this, and then you can report to me officially and finally what Mr. Sassower has or has not done.

MR. BERGER: Your Honor, may I have a minute with Mr. Wruck?

THE COURT: Yes.

(Off the record conference between Mr. Wruck, Mr. Abuza and Mr. Berger.)

MR. BERGER: Your Honor, how about the 22nd - next Wednesday?

MR. SASSOWER: Your Honor, the last engagement I have is the 28th. I don't want to sign affidavits of actual engagement to this court.

THE COURT: Mr. Berger suggests the 22nd.

MR. SASSOWER: After the 28th.

THE COURT: What's after the 28th?

MR. SASSOWER: Any date after the 28th.

MR. WRUCK: We sat here this morning and part of this afternoon. This court order is a very simple order.

THE COURT: Right; it actually calls for, as I see it at the present time, as to the disclosed assets you are talking about - a deed, fire insurance policy, any other legal documents there may be, whether real property, one savings book you are talking about, one estate checking account, or whatever else he has not disclosed - anything else.

MR. WRUCK: All these documents are so much talk, and I think there should be no reason why this can't be done in very short order.

THE COURT: Mr. Wruck, I am adjourning this matter to June 22nd, 1977, at 9:30 A.M. I want full compliance by that date.

Now, Mr. Wruck and Mr. Abuza, you don't have to be here on the 22nd.

MR. ABUZA: Thank you.

THE COURT: Unless you want to be heard, because we are not going to try anything on the 22nd.

I want you back on the 22nd, Mr. Sassower, at 9:30. I want the Public Administrator and his counsel here on that day, and I want to know at that time whether Mr. Sassower has complied with my order.

In the interim, I just want you to bear in mind, Mr. Sassower, that even if you turn over these documents, your responsibility in this matter is not concluded. You have, as I understand it, attempted to account to this court for the period 1972, approximately, to 1974; is that correct?

MR. SASSOWER: Yes, Your Honor.

THE COURT: You have a further opportunity to bring that account up to date, supplemented as of the date that you fully comply with this order and have turned over all the assets to the Public

Administrator. I just want you to start thinking about that. Be back on June 22nd at 9:30 A.M.

MR. SASSOWER: Your Honor, not to belabor the point, but we started today about 12:30. To get out here at 9:30 I have to take the 6:15 train.

THE COURT: What time is it convenient for you to get here in the morning?

MR. SASSOWER: The next train starts at 8:30, and doesn't get me here until 11:30.

THE COURT: All right; make it 11:30.

MR. WRUCK: Your Honor, would that order also include, as previously was done on other orders, that the papers to be turned over to Mr. Berger would also include the income tax returns for the decedent for the three years prior to his death?

MR. SASSOWER: I talked to Mr. Wruck the last time, and frankly, I don't have them.

MR. WRUCK: He agreed he would pro-



cure those on three different occasions. Actually, there is an accountant by the name of Mr. Baronowski.

MR. SASSOWER: I have no control over him. I met the man on several occasions.

THE COURT: If Mr. Baronowski has those returns, perhaps he would be good enough to give us copies of them so we can turn them over.

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I, VIRGINIA D. MATHIAS, Official Surrogate's Court Reporter, do hereby certify the foregoing forty-eight pages to be a true and accurate transcript of the colloquy conducted before Hon. Ernest L. Signorelli, at the Surrogate's Court, Riverhead, New York, on the 15th day of June, 1977, in the matter of the estate of Eugene Paul Kelly, deceased.

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Surrogate's Court Reporter.