

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GEORGE WAGNER,

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ATTORNEY GENERAL,
WENDELL G. BENCHE, JR., JOHN P. DE LUCA,
ALLEN KROOS, ANTHONY ISMAELI, and
LEONARD J. BUGATCH,

Defendants.

NOTICE OF HEARING
77-1147
(S.D.)

S I R :

PLEASE TAKE NOTICE that upon the complaint herein, the answer of the defendant Ernest L. Signorelli, the annexed affidavit of Leonard J. Bugatch, sworn to the 23rd day of August, 1977, the annexed memorandum of law dated August 23, 1977; upon the notice of motion dated August 9, 1977, the affidavit of Leonard J. Bugatch dated August 3, 1977, the memorandum of law dated August 8, 1977, and upon all papers and proceedings heretofore had herein, the undersigned will move this Court on the 2nd day of September, 1977 at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard for an order pursuant to Rule 12(c) of the Federal Rules of Civil Procedure:

1. Granting judgment on the pleadings in favor of the defendants Ernest L. Signorelli and Leonard J. Bugatch dismissing the complaint.
2. Granting such other and further relief as to the

court may seem just and proper.

Dated: New York, New York
August 23, 1977

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Ernest L. Signorelli and
Leonard J. Pugatch

By

LEONARD J. PUGATCH
Deputy Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3014

TO: GEORGE SASSOWER
75 Wykagyl Station
New Rochelle, N.Y. 10804

STATE OF NEW YORK
COUNTY OF NEW YORK

GEORGE CASSEVER,

Plaintiff,

-against-

FRANCIS L. SCORPIONE, AMY BY APPOINTMENT,
VINCENT G. SCORPIONE, JR., JOHN F. SCORPIONE,
ALLEN SCORPIONE, ALBERT SCORPIONE, and
RICHARD J. SCORPIONE,

Defendants.

77-2-1447
(J.C.C.)

STATE OF NEW YORK)
COUNTY OF NEW YORK)

LEONARD F. BURATCH, being duly sworn, deposes and says:

1. I am a Deputy Assistant Attorney General in the office of LEONARD F. BURATCH, Attorney General of the State of New York, attorney for the Defendant named L. Scorpione and Leonard F. Buratch herein.

2. I am fully familiar with all the proceedings heretofore had herein and make this affidavit in support of the instant motion for a judgment on the plaintiffs.

3. Plaintiff, George Cassever, was appointed preliminary executor of the estate of Leonard and Sally on June 1, 1974. The will of the decedent was admitted to probate on September 9, 1974 and letters testamentary were issued to the plaintiff on that date.

4. On October 31, 1974, Leonard Scorpione, a Defendant under the will, presented to the Surrogate's Court a petition praying for judicial settlement of the account of George Cassever as executor of the estate. Upon the reading of the petition, the

March 20, 1975 and an Order dated March 27, 1975, George Sassower was ordered to file the requested account within thirty days (A).^{*} The accounting was not filed as ordered.

5. By Order to Show Cause dated September 3, 1975, Edward Kelly petitioned the Surrogate's Court to punish George Sassower for contempt and to remove him as executor of the estate. After repeated adjournments the matter was submitted to the court on January 12, 1976. By decision dated January 28, 1976 and Order dated March 9, 1976 the application to punish the plaintiff herein for contempt and for his removal as executor was granted. Therein, however, George Sassower was given the opportunity to purge himself of contempt by complying with the terms of the Order within thirty days from service of said Order upon him (B, C).

6. Plaintiff commenced a proceeding to judicially settle his account by filing the required account. Thereafter, the court having directed the respective counsel to appear from time to time with respect to the matters at issue, conferences were held. The last of such conferences was on March 17, 1977.

7. At said conference, Ernest Wruck, Guardian ad Litem, in order to continue the administration of the decedent's estate made an application to the court for the appointment of the Public Administrator of Suffolk County as temporary administrator of decedent's estate. The application was granted and the appointment ordered on March 25, 1977 (D).

Objections to the accounting as filed by George Sassower were made by Ernest Wruck, Guardian ad Litem, on March 2, 1977 and by Edward Kelly, a legatee, on March 25, 1977.

^{*} Parenthesized letters refer to the marked exhibits annexed hereto.

8. Subsequently, by Order dated April 28, 1977, George Sassower was directed to transmit to the Public Administrator all books, papers and property of the estate of Eugene Paul Kelly on or before May 5, 1977 (D). Said Order was served personally upon George Sassower in open court on April 28, 1977.

9. Plaintiff appealed the above orders of the Surrogate's Court dated March 25, 1977 and April 28, 1977 to the Appellate Division of the Supreme Court of the State of New York, Second Department. On the motion of Ernest Wruck and Edward Kelly the appeal from the order dated March 25, 1977 was dismissed. Plaintiff's cross-motion to stay enforcement of both orders was denied (F).

10. By Order to Show Cause dated June 6, 1977 George Sassower commenced a proceeding against the Hon. Ernest Signorelli, Surrogate of Suffolk County. The relief requested included, inter alia, that Ernest L. Signorelli be restrained from enforcing the Order of the Surrogate's Court dated March 9, 1976 contending that the court was without jurisdiction to remove plaintiff as executor. Plaintiff further contested the propriety of the Order of the Surrogate's Court dated March 25, 1977 and April 28, 1977. By Decision dated July 1, 1977 and Order dated August 1, 1977 the petition was dismissed (G, H).

11. Thereafter by Decision and Order dated June 8, 1977 a trial date was set for the proceeding in the matter of plaintiff's accounting. By the same Order, George Sassower's application to depose Edward Kelly was granted to the extent that the examination be held at the Surrogate's Court on June 13, 1977 (I).

12. The plaintiff was not present at the Surrogate's Court on June 13, 1977. Nor did the plaintiff contact the court (J2-5).

13. On June 15, 1977 the respective counsel including George Sassower appeared before the Surrogate's Court and the Hon. Ernest L. Signorelli (K). At the commencement of proceedings held that day, Vincent G. Berger, Attorney for the Public Administrator informed the court that the plaintiff had not complied with the Order dated April 23, 1977. Mr. Berger was joined by Ernest Wruck and Charles E. Abuza, Attorney for Edward Kelly, in his application to the court to remedy the situation (K4-7).

14. The court inquired of the plaintiff as to whether he had complied with the Order to turn over all books, papers and property of the estate to the Public Administrator (K13). The plaintiff answered that he had not; contending that the Order of the Surrogate's Court was unlawful (K26).

15. The plaintiff was warned that his wilful refusal to obey the order of the court may result in his being held in contempt; fined in the amount of two-hundred fifty dollars (\$250.00) and/or thirty (30) days imprisonment (K31-32).

16. The court asked the plaintiff if he wished to be heard before a determination on the question of contempt was made. Plaintiff responded in the affirmative but offered no defense (K22).

17. The court summarized that as a result of plaintiff's refusal to obey the lawful mandate of the court, plaintiff was interfering with the orderly processes of the court (K35). And again inquired of the plaintiff if he was going to obey the Order (K36). The plaintiff agreed to comply without prejudice and under protest (K38).

18. The court reminded plaintiff that nothing was negotiable and full compliance was expected (K40). And the plaintiff was given a further opportunity to comply with the

order (145). Full compliance was to be had by June 22, 1977 (146). The court directed the plaintiff to return on that day (147, 48).

19. On June 22, 1977, George Cassover did not return to the Surrogate's Court. The plaintiff did not contact the court either (142). The Deputy Public Administrator of Suffolk County appeared, was sworn and testified that George Cassover had not turned over any assets of the decedent's estate to the Public Administrator (143).

20. Immediately thereafter the court pursuant to Section 750 of the Judiciary Law adjudged the plaintiff herein to be in criminal contempt of court for unlawful disobedience of the order dated April 28, 1977 and the direction of the court of June 15, 1977 to turn over the books, papers and property of the estate of Eugene Paul Kelly to the Public Administrator of Suffolk County. It was ordered that the plaintiff be imprisoned for a period not exceeding thirty (30) days and that a warrant of commitment issue (110-11). See also 1 and 4.

21. On June 23, 1977, George Cassover was taken into custody at his home in New Rochelle, Westchester County, New York by representatives of the Sheriff of the County of Suffolk (106). Plaintiff pursuant to the warrant of commitment was forthwith presented before the court (142). However, prior to being transported to the court plaintiff was given the opportunity to stop at two banks and the post office (147). En transit plaintiff requested that he be given the opportunity to present an application for a writ of Habeas corpus to the Appellate Division of the Supreme Court of the State of New York, Second Department; the Supreme Court of the State of New York, County of Nassau and the Supreme Court of the State of New York, County of Nassau (104-5).

Upon his arrival at the Surrogate's Court plaintiff

requested that he be given the opportunity to present an application for a writ of habeas corpus to a justice of the Supreme Court of the State of New York, County of Suffolk (14). When brought before the court, the court inquired of plaintiff whether he was going to comply with the order. Plaintiff expressed his intention to comply with the law as he saw it (15).

22. Plaintiff was informed that as soon as he complied with the order, the court would entertain an application to vacate the order (16). Again, plaintiff was asked if he was going to comply (16). Plaintiff's reply was not responsive to the question.

23. Plaintiff was then returned to the county jail (17).

24. At approximately five o'clock in the afternoon of June 23, 1977, a petition for a writ of habeas corpus was presented on behalf of the plaintiff to the Hon. Charles L. The, a Justice of the Supreme Court of the State of New York, County of Suffolk. A writ of habeas corpus issued returnable at ten o'clock in the forenoon on June 27, 1977 at the Supreme Court of the State of New York in the County of Suffolk before a Special Term, Part I, in the courthouse thereof. Plaintiff was released and bail was set in the amount of three hundred dollars (\$300.00) (18).

25. On June 27, 1977 plaintiff, your deponent, the attorney for the Public Administrator of Suffolk County and the Assistant County Attorney appeared before the court. The matter was adjourned until July 7, 1977.

26. Thereafter by order to show cause dated June 27, 1977, returnable at ten o'clock in the forenoon on July 7, 1977, the plaintiff's appearance. A proceeding pursuant to Article 7. of

the Civil Practice Law and Rules to nullify the contempt order and warrant of commitment. The plaintiff again asserted that the court was without jurisdiction to direct him to transmit the books, papers and assets of the estate of Laurence Paul Kelly to the Public Administrator of Suffolk County.

27. Plaintiff did not appear personally before the court on July 7, 1977. He did submit by mail an affidavit in support of an application for an adjournment of one (1) week. The application for the adjournment was denied. Plaintiff's purported Article 78 proceeding was dismissed for failure to place the motion upon the calendar (22 N.Y.C.P.S. 790.15b). The decision on the writ of habeas corpus was reserved (q).

28. By Order of the Supreme Court dated July 2, 1977, a hearing upon the writ was set down for July 13, 1977. A hearing was had on July 13, 20 and 21, 1977. By Decision dated July 20, 1977, the writ was allowed and the adjudication of contempt annulled (r).

ROBERT F. HUGHES

Sworn to before me this
23rd day of August, 1977

Assistant Attorney General
of the State of New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
GEORGE SASSOWER,

Plaintiff,

-against-

ERNEST L. SIGNORELLI, ANTHONY
MASTROIANNI, VINCENT G. BERGER,
JR., JOHN P. FINNERTY, ALLEN
KROOS, ANTHONY WISNOSKI, and
LEONARD J. PUGATCH,

Defendants.
-----X

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:
: Index No. 77 C 1447
:
:
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:
:

EXHIBITS

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Pugatch and Signorelli
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 486-3014

LEONARD J. PUGATCH
Deputy Assistant Attorney General
of Counsel

LIST OF EXHIBITS

EXHIBIT "A" Order for Compulsory Account
March 27, 1975

EXHIBIT "B" Decision of Surrogate's Court
January 28, 1976

EXHIBIT "C" Order Directing Punishment for
Contempt and Removal of Executor
March 9, 1976

EXHIBIT "D" Decree of Surrogate's Court
March 25, 1977

EXHIBIT "E" Order of Surrogate's Court
April 28, 1977

EXHIBIT "F" Decision of Appellate Division
June 8, 1977

EXHIBIT "G" Decision of Supreme Court,
Suffolk County
July 1, 1977

EXHIBIT "H" Order of Supreme Court,
Suffolk County
August 1, 1977

EXHIBIT "I" Decision of Surrogate's Court
June 8, 1977

EXHIBIT "J" Transcript of Surrogate's Court
Proceedings
June 13, 1977

EXHIBIT "K" Transcript of Surrogate's Court
Proceedings
June 15, 1977

EXHIBIT "L" Transcript of Surrogate's Court
Proceedings
June 22, 1977

LIST OF EXHIBITS

EXHIBIT "M"	Contempt Order June 22, 1977
EXHIBIT "N"	Warrant of Commitment June 22, 1977
EXHIBIT "O"	Transcript of Surrogate's Court Proceedings June 23, 1977
EXHIBIT "P"	Petition for Writ of Habeas Corpus; Writ of Habeas Corpus June 23, 1977
EXHIBIT "Q"	Decision of Supreme Court, Suffolk County July 7, 1977
EXHIBIT "R"	Decision of Supreme Court, Suffolk County July 28, 1977

MICROFILMED
MAR 27 1975
MERWIN S. WOODARD
CLERK

At a Surrogate's Court, held in and for the County of Suffolk, at the Courthouse, Riverhead, N.Y., on the 27th day of March, 1975.

PRESENT:

HON. PIERSON R. HILDRETH,

Surrogate.

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

MAR 27 1975

MERWIN S. WOODARD
CLERK

-----x
Application for a Compulsory
Accounting in the Estate of

File #736 P/1972

EUGENE PAUL KELLY,

ORDER FOR COMPULSORY
ACCOUNT

Deceased.

-----x
EDWARD KELLY, having presented a Petition, dated and verified October 31, 1974, praying for the judicial settlement of the account of George Sassower, Esq., as Executor of the Last Will of Eugene Paul Kelly, deceased, and that he may be required to show cause why he should not render and settle such account and process having issued accordingly requiring the said George Sassower, Esq. to show cause before the Surrogate's Court, Suffolk County, at the Surrogate's office in Riverhead, N.Y., why the prayer of said Petition should not be granted, and the said process having been returned with due proof of service thereof upon the said George Sassower, Esq. and, upon the return of said process, the said George Sassower, Esq. having filed his Opposing Affidavit, sworn to March 14, 1975, and failed to appear personally

and upon reading and filing the Affirmation of Charles Z. Abuza, Esq., dated December 4, 1974, one of the attorneys for the petitioner, and Charles Z. Abuza, Esq. having appeared for the petitioner; and upon reading and filing the decision of the Surrogate dated March 20, 1974, it is

ORDERED that the said GEORGE SASSOWER, as Executor of the Estate of EUGENE PAUL KELLY, file the account requested, together with a petition for its judicial settlement, and to obtain issuance of a citation thereon, within 30 days after service upon such fiduciary of a copy of such order, with notice of entry thereof, upon said George Sassower, by certified mail, at 75 Wykagil Station, New Rochelle, N.Y. 10804, and to complete service of such citation without delay.

Pierson R. Hildreth
Pierson R. Hildreth, Surrogate

FILED
CLERK OF SURROGATE COURT
NEW ROCHELLE, N.Y.
MAY 20 1974

Col

SURROGATE'S COURT - SUFFOLK COUNTY

Application for a Compulsory Accounting in

the Estate of

EUGENE PAUL KELLY,

Deceased.

DECISION

By: HON. ERNEST L. SIGNORELLI, Surrogate

Dated: January 28, 1976

File # 736 P 1972

MICROFILMED
MAR 9 1976
MERWIN S. WOODARD
CHIEF CLERK

Application to punish respondent for contempt and for his removal as executor is granted. The respondent has had ample time to comply with the order of this Court made March 27, 1975, directing respondent as Executor to file his account, together with petition for its judicial settlement.

Respondent may purge himself of contempt by complying with the terms of the aforesaid order within 30 days from service of a certified copy of the order to be entered hereon. Should respondent fail to comply with the order within the time allowed, petitioner may make application ex parte for issuance of a warrant of commitment.

Submit order accordingly.

Ernest L. Signorelli
Ernest L. Signorelli, Surrogate

Schacter, Abuza & Goldfarb, Esqs.
Attorneys for Petitioner
225 Broadway,
New York, New York 10007

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

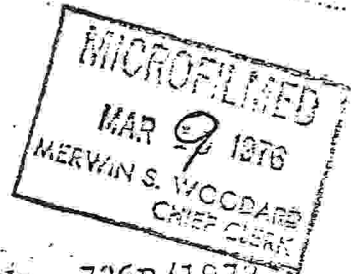
JAN 28 1976

MERWIN S. WOODARD
CHIEF CLERK

At a Surrogate's Court, held in and for the County of Suffolk, at the County Center, Riverhead, N.Y., on the 9th day of ~~February~~ March, 1976.

PRESENT:

HON. ERNEST L. SIGNORELLI,
Surrogate.



-----x
Application for a Compulsory Accounting in the Estate of

File No. 736P/1972

EUGENE PAUL KELLY,
Deceased.

ORDER DIRECTING PUNISHMENT FOR CONTEMPT AND REMOVAL OF EXECUTOR

-----x
Upon reading and filing the Order to Show Cause to punish for contempt and to remove the executor, signed by this Court on the 8th day of September, 1975; and upon the Petition of Edward Kelly, verified the 29th day of August, 1975, upon which said Order to Show Cause was based; and said Order having been made returnable before this Court on the 10th day of October, 1975; and due proof of service having been filed herein; and the matter having been adjourned to November 17, 1975; and the matter having been further adjourned to December 22, 1975; and the matter having been further adjourned to January 12, 1976; and the matter having been marked "Submitted" upon the adjourned return date of January 12, 1976; and due deliberation having been had; and the Court having rendered its written decision, dated January 28, 1976;

At a Surrogate's Court held in and for the County of Suffolk at the County Center, Riverhead, New York on the 25 day of March 1977

MICROFILMED
MAR 29 1977
MERWIN S. WOODWARD
CHIEF CLERK

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

MAR 25 1977

MERWIN S. WOODWARD
CHIEF CLERK

Present:

HON. ERNEST L. SIGNORELLI,
Surrogate

----- X
In the Matter of the appointment :
of a Temporary Administrator of :
the Estate of :
EUGENE PAUL KELLY, :
Deceased. :
----- X

DECREE

File No. 736 P 1972

It appearing that one George Sassower was appointed Executor of the Estate of EUGENE PAUL KELLY, deceased, pursuant to a decree of this court dated September 9, 1974 which admitted the will of said decedent to probate and that Letters Testamentary were issued to said George Sassower on September 9, 1974, and that such Letters Testamentary were thereafter revoked pursuant to an order of this court dated March 9, 1976, and it appearing that there is a pending accounting proceeding in the matter of said decedent's estate which was commenced on April 15, 1976 in which the said George Sassower requests that his account of proceedings as submitted to this court be judicially settled and it further appearing that neither the alternate executor named in the will of decedent, who was the attorney for said George Sassower as petitioner in the proceeding for probate of decedent's will and who is his attorney in the said pending accounting proceeding, nor any person interested in decedent's estate have made application for the appointment of a personal representative of decedent's estate and it being necessary that a fiduciary be ap-

37 ST. ST. NEW YORK 10014
COMM. CHAMBER, BRANDEGEE BLDG. 2ND FL.
200 W. 3RD ST. NEW YORK, N.Y. 10014
MAR 27 1977

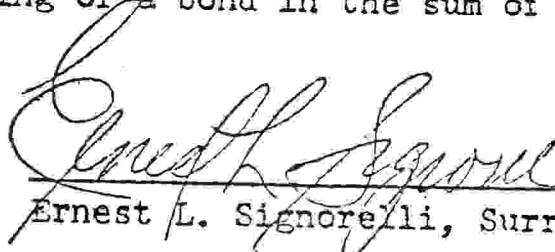
pointed in decedent's estate in order to continue the administration thereof, to appear and participate in such pending accounting proceeding and to institute a New York State Estate Tax proceeding, and the court having directed the respective counsel in said accounting proceeding to appear at the court from time to time with respect to the matters which appear to be at issue in such proceeding, and the attorney for said George Sassower who coincidentally is the alternate executor named in decedent's will never having appeared at such conferences despite such direction and the need for a personal representative of decedent's estate having been presented to the court by Ernest Wruck, Guardian ad Litem, who appeared at the last of such conferences to date, held on March 17, 1977, and said George Sassower having been present thereat and there being no objection by those present, other than said George Sassower to the application of Ernest Wruck, Guardian ad Litem, that the court appoint the Public Administrator of Suffolk County as temporary administrator of decedent's estate, now therefore, it is

ORDERED and DECREED that Anthony Mastroianni, Public Administrator of the County of Suffolk, New York be and he hereby is appointed Temporary Administrator of the Estate of EUGENE PAUL KELLY, and that Letters as such be granted and issued to him upon qualification and the filing of a bond in the sum of \$50,000.00.

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

MAR 25 1977

MERWIN S. WOODARD
CHIEF CLERK


Ernest L. Signorelli, Surrogate

-86-

At a Surrogate's Court held in and for the County of Suffolk at the County Center, Riverhead, New York on the 28th day of April, 1977

Present:

HON. ERNEST L. SIGNORELLI,
Surrogate

-----x
In the Matter of the appoint-
ment of a Temporary
Administrator of the
Estate of

EUGENE PAUL KELLY,

Deceased
-----x

ORDER
File No. 736 P 1972 .

It appearing that Letters Testamentary issued to one GEORGE SASSOWER were revoked by order of this court dated March 9, 1976 and

It further appearing that by order of this court dated March 25, 1977 one ANTHONY MASTROIANNI, Public Administrator of Suffolk County was appointed Temporary Administrator of the estate of EUGENE PAUL KELLY and that Letters have issued to said ANTHONY MASTROIANNI as Temporary Administrator

It is ORDERED that GEORGE SASSOWER transmit to the Temporary Administrator, ANTHONY MASTROIANNI, all books, papers and other property of the estate of EUGENE PAUL KELLY in his possession or under his control on or before May 5, 1977.

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

APR 28 1977

MELVIN S. WOODARD
CHIEF CLERK



Ernest L. Signorelli, Surrogate

EXHIBIT "E"

N.Y.L.J.

June 9, 1977

p. 12

MATTER OF ESTATE OF EUGENE
PAUL KELLY, dec'd (Kelly and Wruck,
res; Sassower, ap)—No. 2389: Motion by
respondents Ernest G. Wruck, Esq., guar-
dian ad litem and Edward Kelly to dis-
miss the appeal from a decree/order of
the Surrogate's Court, Suffolk County,
dated March 25, 1977, on the grounds that
said appellant has no standing and no in-
terest in the decree appealed from.

No. 2943: Cross-motion by appellant to
stay the enforcement of the decree and
order of the Surrogate's Court, Suffolk
County, dated March 25, 1977, and April
28, 1977, respectively, pending determina-
tion of appeals therefrom.

Motion granted: appeal from
decree/order dated March 25, 1977, dis-
missed, without costs. The appellant was
not an aggrieved party (CPLR 5511).

Cross-motion for a stay is denied.

EXHIBIT "F"

MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM

Petitioner,
THE STATE OF NEW YORK and HON.
ERNEST L. SICOMELLI, Surrogate
of Suffolk County,
Respondents,

BY [Signature]
DATED July 1, 1977
Index No. 77-10276

RECEIVED
BY MAR

JUL 7 - 1977

DEPARTMENT OF LAW
NEW YORK CITY OFFICE

Respondent
from issuing or enforcing any
Body Attachment or Order of Arrest
against petitioner, adjudicating
various sections of the Judiciary
Law to be unconstitutional, and
for other relief.

GEORGE BASSONER, Pro se
75 Hynnyl Station
New Rochelle, N.Y. 10804

CHARLES ABUEA, ESQ.
Attorney for Respondent
551 Fifth Avenue
New York, New York 10017

VINCENT G. BERGER JR., ESQ.
Attorney for Public Administrator
6351 Jericho Turnpike
Commack, New York 11725

SIDEN & SIEEN, ESQS.
Attorneys for Respondent
90 East Main Street
Bay Shore, New York 11705

ERNEST G. WEISCK, ESQ.
Guardian ad Litem
31 Oak Street
Patchogue, New York 11772

LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the
State of New York
Attorney for Respondent
Two World Trade Center
New York, New York 10047

In the above-entitled proceeding pursuant to CPLR Article 78,
Petitioner seeks (1) to prohibit the Surrogate of Suffolk County
from issuing any body order or attachment of arrest against Petitioner,
and (2) to review certain orders issued by the Surrogate's Court and
the Surrogate's interpretation of said orders, in a proceeding pending
in the Surrogate's Court.

It is well settled that the extraordinary remedy of prohibition
lies only when a Court acts or threatens to act without jurisdiction
in a matter over which it has no power over the subject matter or where it
exceeds its authorized powers in a proceeding over which it has juris-
diction (Matter of State of New York v. King, 36 NY2d 59, 63). The
Supreme Court sitting at Special Term does not possess the power of
appellate review over the orders or the interpretation thereof of the
Surrogate's Court (McKinney's Const. Art. 6, §§ 4 and 5).

Petitioner has failed to establish that he is entitled to the
remedies of prohibition or certiorari. (CPLR 7201).

Petition dismissed.

[Signature]

the affidavit of George Sassover, sworn to the 11th day of June, 1977, and the exhibits annexed thereto, the affidavit of George Sassover, sworn to the 16th day of June, 1977 and the affidavit of George Sassover, sworn to the 21st day of June, 1977 in support thereof, and the answer of the respondent verified on the 10th day of June, 1977, duly served on petitioner and filed herein together with the affidavits of Leonard J. Pugatch, sworn to on the 10th day of June, 1977 and the 14th day of June, respectively, in opposition thereto and it appearing to this Court that on the pleadings and accompanying papers that no triable issue of fact is raised thereby and a memorandum decision directing that the petition in the above entitled proceeding be denied for the reasons stated therein, having been entered and filed in the office of the Clerk of the County of Suffolk on the 5th day of July, 1977, it is

ORDERED, ADJUDGED AND DECREED that the petition is denied and that the petition be and the same is hereby dismissed on the merits.

E N T E R

CHARLES R. THOMAS

J. S. C.

Lester M. Albertson
Clerk

FILED

AUG 8 1977

LESTER M. ALBERTSON
Clerk of Suffolk County

LESTER M. ALBERTSON
Clerk

SURROGATE'S COURT : SUFFOLK COUNTY

DECISION

In the Matter of the Account of
Proceedings of George Sassower, as
Preliminary Executor in the Estate
of

EUGENE PAUL KELLY,

Deceased.

By: HON. ERNEST L. SIGNORELLI ...
Surrogate

Dated..... June 8th 19.77...

File # 736 P 1972

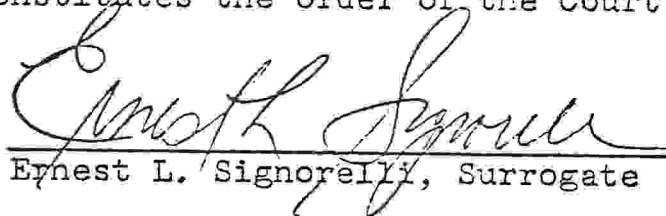
The removed Executor has made application to the Court for an order to examine before trial, Edward Kelly, one of the Objectants in this accounting proceeding, and requests that the said examination be conducted in the County of Queens.

The application is granted to the extent that the examination be conducted at the Surrogate's Courthouse in Riverhead on June 13th, 1977, at nine thirty o'clock in the forenoon of that day.

The Court directs the moving party's attention to Section 1830.18 of the rules of this Court, which require that all such examinations be conducted at the Courthouse in Riverhead before an official reporter.

The moving party as well as the other litigants in this accounting proceeding are put on notice that a firm trial date has been set for this proceeding to be held at the Courthouse in Riverhead on June 15th, 1977, at 9:30 A.M., and all of the parties and their attorneys are directed to appear on the date scheduled for trial.

This memorandum decision constitutes the order of the Court.


Ernest L. Signorelli, Surrogate

George Sassower, Esq.
75 Wykagyl Station
New Rochelle, New York 10804
Executor pro se

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

JUN 8 1977

MERWIN S. WOODARD
CHIEF CLERK

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

-----X

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 13th, 1977.

BEFORE :

HON. ERNEST L. SIGNORELLI,
Surrogate.

APPEARANCES:

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

EDWARD KELLY.
MARIE KELLY.

VIRGINIA D. WILKINS
Surrogate's Court Reporter

THE CLERK: Estate of Eugene Paul Kelly.

MR. ABUZA: Good morning, Your Honor. These are my clients, Mr. and Mrs. Kelly.

THE COURT: Mr. Abuza, kindly give your appearance to the reporter, please.

MR. ABUZA: Charles Z. Abuza, 551 Fifth Avenue, New York, New York. Present with me in court today are Mr. Edward Kelly and his wife, Marie Kelly.

THE COURT: Mr. Abuza, why are we here this morning?

MR. ABUZA: We are here, Your Honor, in response to your setting this date as a time to take the examination before trial of Mr. Kelly.

I might add, Your Honor, that for some time I have told Mr. Sassower that I would be happy to produce Mr. Kelly at any time he desired, in this court, for such examination.

Mr. Sassower never contacted me in any regard, except to bring on a motion

in this court to state that the examination could take place elsewhere. That motion, of course, was not granted.

THE COURT: His motion for examination was granted, only to the extent that he would be given the opportunity to examine your client in Riverhead.

MR. ABUZA: That's correct, Your Honor.

THE COURT: And I so ordered.

MR. ABUZA: That's correct, Your Honor.

THE COURT: Is Mr. Sassower here this morning prepared to take this examination?

MR. ABUZA: Mr. Sassower is not here this morning. He has not appeared in this court this morning. I have been here, myself, since 9:15. It is now almost 11:30, Your Honor. Mr. Sassower's office did not call my office at any time last week to say whether or not he would be or would not be here today.

In addition, as Your Honor knows, there is a matter this morning - an order

to show cause which was returnable in the Supreme Court of this county. It is on the Special Term, Part I Calendar, calendar number 56, before Judge Thom, and the title of that action is George Sassower v. The State of New York, et al., I am advised.

I personally went to the Supreme Court of this county and spoke to the Clerk at Special Term, Part I, who advised me Mr. Sassower did not appear this morning.

THE COURT: All right; Mr. Clerk, is Mr. Sassower in court this morning?

THE CLERK: He is not.

THE COURT: Did you call his name?

THE CLERK: Yes, I did.

THE COURT: And nobody responded?

THE CLERK: Nobody responded; no sir.

THE COURT: Did he call the court?

THE CLERK: No.

THE COURT: Do you know of any calls

made by Mr. Sassover to the court this morning?

THE CLERK: None, Your Honor.

THE COURT: Under these circumstances, let the record note his default on the taking of this examination.

Thank you very much for coming in, Mr. Abuza.

MR. ABUZA: Thank you, Your Honor.

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I, VIRGINIA D. MATHIAS, Official Surrogate's Court Reporter, do hereby certify that the foregoing five pages comprise a true and accurate transcript of the colloquy conducted before Hon. Ernest L. Signorilli, Surrogate, at the Surrogate's Court in Riverhead, on the 13th day of June, 1977, in the matter of the accounting in the estate of Eugene Paul Kelly.

Virginia D. Mathias
Surrogate's Court Reporter.

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

-----X
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. ADOZA, 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.

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

Attorneys for claimant,
Winifred Huck,
98 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. WRUCK: Ready to proceed.

MR. ABUZA: Ready for trial.

MR. SASSOWER: I am here at the dir-
ection of the court.

MR. BERGER: Before any trial pro-
ceeds, I represent the Public Administra-
tor 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 his temporary administrator on March 29th, 1977. Thereafter, the court issued an order on April 23th, 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 28th, 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 in 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. Bruck 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 Hykagyl 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 determination.

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, if 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.

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. Sasso-
wer, and I might add parenthetically,
in eighteen - in the eighteen years that
I have been a Judge, I never saw fit to ad-
judge 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. Sasso-
wer, 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 us, 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 call 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. Wruock 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. Sasser has or has not done.

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

THE COURT: Yes.

(Off the record conference between Mr. Uruck, 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.

7

Surrogate's Court Reporter.

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

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 22nd, 1977.

B E F O R E :

HON. ERNEST L. SIGNORELLI,
Surrogate.

APPEARANCES:

VINCENT G. BERGER, ESQ.,
Attorney for Public Administrator,
6351 Jericho Turnpike,
Commack, N. Y. 11725.

VIRGINIA D. MATTHIAS
Surrogate's Court Reporter

THE CLERK: In the matter of the accounting in the estate of Eugene Paul Kelly.

MR. BERGER: Your Honor, on behalf of the Public Administrator, I have an application, and some information to bring to the attention of the court.

THE COURT: First, is Mr. George Sassower in court?

THE CLERK: (calling out) Mr. George Sassower.

(No response.)

THE CLERK: There is no response, Your Honor.

THE COURT: He has not responded?

THE CLERK: No, Your Honor.

THE COURT: Have you seen him in court?

THE CLERK: No, Your Honor.

THE COURT: Mr. Berger, have you seen him?

MR. BERGER: No, Your Honor, I have not. I would like to report to the court

in that regard. Yesterday afternoon, my secretary received a telephone call from Mr. Sassower - late in the afternoon, late in the day - I believe between 4:30 and 5:00, and advised my secretary - I wasn't in the office at the time - that he would not be able to appear in court today.

She thinks he said something about another court engagement, but he did not specify. He merely said he would not be in court today and that he would send a letter.

I talked with my secretary this morning. He has not called my office or sent me any letter or affidavit of engagement.

I also call your attention to a letter I wrote to Mr. Sassower requesting that he furnish me with the books, records and property of the estate. The letter was written on June 17th and mailed to him on that date, and a copy of that letter was mailed to this court, and I trust that it is in the file of the court.

Your Honor, I would like to report back to you as to what occurred last week. We appeared before you, if you will recall - Mr. Abuza, Mr. Wruck, myself and Mr. Sassower - and there came a time when it looked like Mr. Sassower was willing to turn over certain papers and records to the court, and I, representing the Public Administrator, consented to an adjournment, and I think I have made a mistake.

After leaving the court room, we went to the Public Administrator's office and made the photostating facilities of the Public Administrator available to Mr. Sassower. In fact, photocopies were made over a period of several hours. Mr. Sassower refused to stay in the office within a half hour after we left this court room, and refused to cooperate with me in identifying papers.

He took with him what I think may have been bank statements and bank accounts. He left in the office, certain papers which

were really copies of tax returns and so forth, miscellaneous correspondence, an appraisal, and what purports to be a copy of an estate tax proceeding for this court, right up to the extent of an order fixing tax, which is undated but had his figures on it, and I ask that it be marked as Exhibit I for Identification.

THE COURT: There were certain other documents brought in before.

THE CLERK: This is Exhibit 3. Exhibit 3 has been marked for identification as Court Hearing Exhibit 3.

MR. BERGER: Your Honor, I checked with the tax clerk of the court and she made a search over a period of about fifteen minutes, and reported to me that no tax proceeding whatever was filed in this court. She has no record whatsoever of this estate in the Tax Department.

Your Honor, under the circumstances, I would now like to, just for the record, call to the witness stand, the Deputy Pub-

lic Administrator here in the courtroom, so that she can of her own knowledge, tell the court that we never received anything since Mr. Sassower was last in court.

I call Ms. Audrey C. Amberman to the stand.

AUDREY C. AMBERMAN was called as a witness on behalf of the Public Administrator, and having been first duly sworn, testified as follows:

(Witness stated that her address was Box #486, Aquebogue, New York.)

DIRECT EXAMINATION BY MR. BERGER:

Q You are the Deputy Public Administrator of Suffolk County?

A Right.

Q How long have you been with the Public Administrator's Office?

A For ten years.

Q You are also an assistant to Mr. Mastroianni, the Public Administrator?

A Yes.

Q What do your duties consist of?

A I assist the Public Administrator in whatever way he asks; I do his secretarial work; I can sign legal papers in his absence.

Q Does all the mail - documents, records, assets, copies of bank accounts, bank statements, et cetera, come through your hands?

A Yes.

Q In the course of your duties?

A Yes; they do.

Q Are you familiar with the estate of Eugene Paul Kelly?

A Yes, I am.

Q Are you familiar with the fact that the Public Administrator was appointed the temporary administrator in this estate?

A Yes.

Q Now, Ms. Amberman, do you recall that Mr. Sassower and I were in your office last week, making photocopies of certain papers and records?

A Yes.

Q Since that time, have you received any bank books, bank statements, deeds or any property whatsoever from Mr. Sassower or any other source, with regard to this estate?

A No; nothing has been received.

Amberman - Direct; the Court

8.

Q Does that also include papers, ledgers, documents, letters, et cetera?

A Yes; nothing has been received since last Wednesday.

Q Have you received any telephone call from anyone - Mr. Sassower or anyone on his behalf, or anyone on behalf of the estate?

A No; I have not.

Q Do you have any information whatever to report to the court, based on your own knowledge?

A No.

Q You have been in your office every day since I was there?

A Yes.

MR. BERGER: Thank you. I have no further questions.

BY THE COURT:

Q Have you at any time received any assets whatsoever pertaining to this estate, from Mr. Sassower or someone on his behalf?

A No, I have not, Judge; nothing.

Q What was the date he appeared at your office?

A The 15th of June - last Wednesday.

Q Did he turn over to you any assets on that date?

A No assets at all.

Q Since that time, he has turned over ny assets at all?

A That's correct.

THE COURT: Thank you very much.

(Witness excused.)

MR. BERGER: Your Honor, I have no other witnesses to call, and I think that I have stated already, at least the facts and background on this point.

The Public Administrator, because of these facts and circumstances, has been totally unable to act as administrator or to perform his duties in this matter, so, at this time I think the court has given to Mr. Sassower every opportunity to cooperate with him, and has urged him to cooperate.

I ask that you unconditionally enforce your order of April 28th, 1977, directing Mr. Sassower to turn over to the Public Administrator all books, papers and property of the estate of Eugene Paul Kelly.

Your Honor, specifically, since Mr. Sassower has shown a wilful disregard for the order of this court and for the office of the Public Administrator, I ask that the court hold him in contempt. I don't think that he is going to honor any further directives of this court to appear in court. I think you have already asked him and directed him to appear on many occasions, and he has ignored the court. I don't think anything but an actual contempt citation at this time would produce any results.

THE COURT: Pursuant to Section 750 of the Judiciary Law, I hereby adjudge George Sassower to be in criminal contempt of this court for the unlawful disobedience of an order of this court dated April 28th, 1977, directing George Sassower to turn over the assets and records of the estate of Eugene Paul Kelly, deceased, and the further direction in open court on June 15th, 1977, directing the

said George Sassower to turn over the said books and records. It is hereby ORDERED AND ADJUDGED that the said George Sassower be imprisoned in close custody in the jail of the County of Suffolk, for a period not exceeding thirty days, and it is further

ADJUDGED that a warrant of commitment shall issue to carry out and effect the provisions of this final order.

Mr. Berger, submit the appropriate order and the warrant of commitment for my signature.

MR. BERGER: I will do so. Thank you.

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I, VIRGINIA D. MATHIAS, Official Surrogate's Court Reporter, do hereby certify that the foregoing eleven pages comprise a true and accurate transcript of the colloquy conducted before Hon. Ernest L. Signorelli, Surrogate, at the Surrogate's Court in Riverhead, on the 22nd day of June, 1977 in the matter of the accounting in the estate of Eugene Paul Kelly, deceased.

Surrogate's Court Reporter.

At a Surrogate's Court held in and for the County of Suffolk at the County Center, Riverhead, Suffolk County, New York, on the 22nd day of June, 1977.

P R E S E N T :

HON. ERNEST L. SIGNORELLI,
Surrogate

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

JUN 22 1977

-----X
In the matter of the accounting of :
GEORGE SASSOWER as preliminary
executor of the estate of :

MERWIN S. WOODARD
CHIEF CLERK

CONTEMPT ORDER.

EUGENE PAUL KELLY,

: File #736 P 1972.

deceased. :

-----X
On reading and filing the orders of the Surrogate's Court of Suffolk County dated March 9, 1976 and March 25, 1977, and upon all the proceedings heretofore had herein, and it further appearing that an order was duly made on April 28th, 1977 and personally served upon GEORGE SASSOWER in open court in which the said GEORGE SASSOWER was ordered to transmit to the temporary administrator of the estate of EUGENE PAUL KELLY, Anthony Mastroianni, Public Administrator of Suffolk County, all books, papers and other property of the estate of EUGENE PAUL KELLY in the possession of GEORGE SASSOWER, or under his control on or before May 5, 1977, and it further appearing that the said GEORGE SASSOWER failed to comply with said order, and that he was directed to appear in

court on June 1, 1977 to commence the trial in this proceeding, and that the matter was adjourned upon application by the said GEORGE SASSOWER to June 15, 1977 for the trial of this proceeding, and that on June 15, 1977 said GEORGE SASSOWER appeared in open court and after inquiry by the court as to whether the books, papers and other property of the estate of EUGENE PAUL KELLY had been turned over by MR. SASSOWER to the Public Administrator, and he having admitted that he had not complied with the order of this court dated April 28, 1977, and at that time the court having given MR. SASSOWER the opportunity to be heard, and to explain his conduct in failing to obey said lawful order of this court, and he having failed to offer to the court any excuse for his wilful disobedience of the said court order, and upon further questioning by the court said GEORGE SASSOWER, having stated that he would comply with said order to turn over all books, records and other property of the estate of EUGENE PAUL KELLY to the Public Administrator on or before June 22, 1977, and the court having further advised GEORGE SASSOWER that upon his failure to do so would result in the said GEORGE SASSOWER being found in criminal contempt of the Surrogate's Court for his defiant and contemptuous conduct having been committed in the immediate presence of the court and his failure to comply with the order of this court dated April

28, 1977, and on June 22, 1977, the said GEORGE SASSOWER having defaulted in appearing in court, and a hearing having been conducted by the court at which time the Deputy Public Administrator testified under oath that GEORGE SASSOWER had not complied with the directives of this court directing the said GEORGE SASSOWER to turn over to the Public Administrator the books, papers and other property of the estate of EUGENE PAUL KELLY in his possession or under his control, it is now, on motion of VINCENT G. BERGER, JR., Attorney for the Public Administrator of Suffolk County,

ORDERED AND ADJUDGED that the said GEORGE SASSOWER is guilty of criminal contempt of court committed in the immediate presence of the court by reason of his failure to obey the lawful order and directions of this court dated April 28, 1977 and June 15, 1977 respectively, and the said conduct tending to impair the respect due its authority, and further impairing and prejudicing the rights of the parties in this proceeding as hereinabove set forth and it is further

ORDERED and ADJUDGED that the said GEORGE SASSOWER be imprisoned in close custody in the jail of the County of Suffolk for a period of 30 days, and it is further

ORDERED and ADJUDGED that a warrant shall issue to carry

out and effect the provisions of this final order.

ERNEST L. SIGNORELLI, Surrogate.

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

JUN 22 1977

MERWIN S. WOODARD
CHIEF CLERK

original of 5/12/77

FILED
SURROGATE'S COURT
SUFFOLK COUNTY

Surrogate's Court: County of Suffolk

JUN 22 1977

-----X
In the matter of the accounting of
GEORGE SASSOWER as preliminary executor :
of the Estate of :

MERWIN S. WOODARD
CHIEF CLERK

EUGENE PAUL KELLY, :

WARRANT
OF
COMMITMENT

deceased. :
-----X

To the Sheriff of the County of Suffolk:

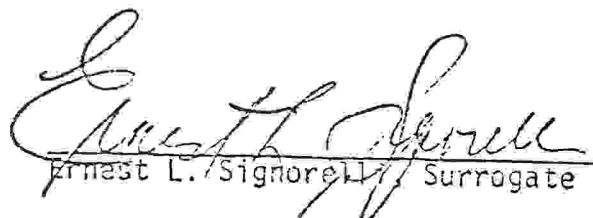
WHEREAS by an order duly made and entered hereon on the 22nd day of June 1977 GEORGE SASSOWER was adjudged guilty by the Surrogate's Court of the County of Suffolk of criminal contempt of court, committed during a sitting of the court and in its immediate view and presence, and due to the said GEORGE SASSOWER'S failure to obey the order and directions of this court dated April 28, 1977 and June 15, 1977 respectively, and

WHEREAS the said GEORGE SASSOWER was duly sentenced to be imprisoned in the County Jail of the County of Suffolk for a period of 30 days,

NOW THEREFORE we command you to take and to receive said GEORGE SASSOWER into your close custody and present him forthwith before the undersigned, Ernest L. Signorelli, Surrogate of Suffolk County at the Surrogate's Court, County Center, Riverhead, New York, to answer for a contempt of this court whereof he stands charged.

Dated:

June 22, 1977


Ernest L. Signorelli, Surrogate

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

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 23rd, 1977.

B E F O R E :

HON. ERNEST L. SIGNORELLI,
Surrogate.

APPEARANCES:

VINCENT G. BERGER, ESQ.,
Attorney for Public Administrator,
6351 Jericho Turnpike,
Commack, N. Y. 11725.

GEORGE SASSOWER, ESQ., pro se,
Preliminary Executor,
75 Nykagyl Station,
New Rochelle, N. Y.

Representatives of the Sheriff's
Office:
SERGEANT ALLEN KROOS and
DEPUTY SHERIFF ANTHONY WISNOSKI.

VIRGINIA D. MATHIAS
Surrogate's Court Reporter

THE CLERK: In the matter of the accounting in the estate of Eugene Paul Kelly.

THE COURT: Could we have the appearances of everybody, please?

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

THE COURT: And may we have the names of the representatives here from the Sheriff's office?

SERGEANT ALLEN KROOS: I am Sergeant Allen Kroos, Sheriff's office, 1 Center Drive, Riverhead.

DEPUTY SHERIFF WISMOSKI: I am Deputy Sheriff Anthony Wismoski.

MR. SASSOWER: George Sassower.

THE COURT: Sergeant, I assume that pursuant to the contempt order which I signed yesterday and the warrant of commitment, you brought Mr. Sassower into court?

SERGEANT KROOS: That's correct,

Your Honor.

THE COURT: Mr. Sassower, would you like to be heard?

MR. SASSOWER: Initially, may I state that we arrived at this courthouse at 10:34 this morning. Prior to our arrival and prior to nine o'clock in the morning, I requested the representatives of the Sheriff's office to communicate with their superiors and the court, and to request that before we arrived at this court room, that I be given an opportunity to present a writ of habeas corpus to a Justice of the Supreme Court. They were in radio contact with this court before our arrival. From 10:34 until now - -

THE COURT: Excuse me, Mr. Sassower. Let me correct you. We have no radio contact with the Sheriff's office. They could not be in contact with this office.

MR. SASSOWER: Your Honor, I would like to make a statement without interruption.

THE COURT: When you are correct, I am going to correct you. You are in my court room, and when you are incorrect I am going to correct you. Now, proceed.

MR. SASSOWER: In any event, since arrival in this court room almost an hour and a half ago, I have made at least three requests to proceed to another part of this building, so that I might present to a justice of the Supreme Court, an application in support of a writ of habeas corpus. I was advised by the representatives of the Sheriff's office that they communicated that request to Your Honor. I still have the writ of habeas corpus here, still waiting to be presented to a justice of the Supreme Court.

As far as I am concerned, directly or indirectly, I have been obstructed in presenting such application to a proper justice of this court. I might also state that in the car, and prior to coming into the court, I asked the Sheriffs

if they would make the request that we stop off at the Appellate Division or the Supreme Court, Queens or Nassau, so that I could present the writ at the earliest possible moment.

MR. BERGER: Your Honor, I object to this statement that Mr. Sassower is making, and I wish that the court would direct Mr. Sassower to direct his attention to what we are here for this morning. He has legal remedies, if he wants to have legal remedies, and he should be thinking about complying with the order of this court. The Sheriff's office does not operate a taxi service, and I resent Mr. Sassower making this statement to the court.

THE COURT: I will hear him; proceed, Mr. Sassower.

MR. SASSOWER: I request Your Honor at this moment that a recess be called for a few moments, since it is necessary for me to go to see a justice

of the Supreme Court to have a writ of habeas corpus signed.

MR. BERGER: I object to that, and ask that the court direct Mr. Sassower to proceed with the business at hand. This is immaterial and irrelevant to this proceeding.

THE COURT: Sergeant, may I ask you please, when did you apprehend Mr. Sassower?

SERGEANT KROOS: At approximately 8:00 A.M., this morning at his residence.

THE COURT: Kindly give me an account of what transpired at the time you apprehended him.

SERGEANT KROOS: Approximately 8:00 A.M. we entered into the private residence of Mr. Sassower, 30 Mildred Boulevard, New Rochelle. We informed him and presented to Mr. Sassower, the warrant of commitment to commit him, for his reading. He subsequently was given the opportunity to read both originals, and

he was then given copies of both for his use.

Then he was given the opportunity to make phone calls, of which Mr. Sassower made two phone calls. He was given the opportunity to gather his personal belongings and legal briefs which consisted of two brief cases.

At that time, Mr. Sassower entered our vehicle. He was given the opportunity to stop at the Chemical Bank in New Rochelle to withdraw some money and was also given an opportunity to stop at another bank in New Rochelle and also given the opportunity to stop at the Post Office in New Rochelle to pick up his mail. Subsequently, he was transported here to this court, Your Honor.

THE COURT: Thank you very much, Sergeant.

Now, Mr. Sassower, obviously, if you wish to make any additional phone call, of course you may. Sergeant, please

afford him that opportunity.

What I want to know from you, Mr. Sassower, is: Are you going to comply with my order?

MR. SASSOWER: Sir, I will comply. Right now I am a defendant who has been convicted by order of this court, and I reluctantly must take my legal rights and assert my legal privileges.

In any event, Your Honor, I have no doubt in my mind that Your Honor has disqualified himself.

MR. BERGER: Again, I ask that this statement be terminated.. He is making an immaterial and irrelevant statement.

THE COURT: Mr. Sassower, you told me the last time that you were here that you would comply with my order, and I accordingly gave you that opportunity and I told you if you didn't comply with my order, I would punish you in contempt.

I am asking you again, is it your intention to comply with my order?

MR. SASSOWER: My intention is to comply with the law as I see it. I am here as a defendant, Your Honor. All I want is a trial right now, or a writ of habeas corpus signed by a judge so that I can pursue my legal remedies just like anyone else.

THE COURT: You will be given an opportunity to make a telephone call if you wish to. Do you want to make a telephone call?

MR. SASSOWER: May I say this?

MR. BERGER: Is this to be a long statement? If he wants to make a telephone call, I have no objection.

THE COURT: If you want to make a telephone call, I have asked the Sheriff to give you that opportunity; but just let me say this to you - of course, we have discussed this ad infinitum - but what I want to know from you is if you are going to comply with my order directing you to turn over to the Public

administrator all the books, records and property belonging to this estate. I told you that I want my order complied with unconditionally. I tell you this right now: As soon as you comply with the order, you hold the key to your freedom. You would then come to me, and I would be very happy to entertain an application to vacate that order. On the other hand, you hold that key and it is entirely up to you.

Are you going to comply with the order?

MR. SASSOWER: Your Honor, may I - -

THE COURT: Are you going to comply with my order?

MR. SASSOWER: I would like to make a phone call, and be given the liberty in the company of the Sheriff, or anybody else you agree to, as I am desirous of pursuing an application for a writ of habeas corpus.

THE COURT: All you are to do, as

far as I am concerned, you are to comply with my order. You can make a phone call if you wish.

MR. SASSEWER: Could I go before a justice of the Supreme Court?

THE COURT: You are not to be transferred anywhere but to the county jail, my friend.

c00

I, VIRGINIA D. MATHIAS, Official Surrogate's Court Reporter, do hereby certify the foregoing eleven 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 23rd day of June, 1977, in the matter of the estate of Eugene Paul Kelly, deceased.

Surrogate's Court Reporter.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK COUNTY

Index No.

GEORGE SASSOWER,

Petitioner

against

PETITION FOR WRIT OF
HABEAS CORPUS

SHERIFF OF THE COUNTY OF SUFFOLK,

Respondent

To: SHERIFF OF THE COUNTY OF SUFFOLK

The petition of GEORGE SASSOWER

shows that:

1. This petition is made on behalf of GEORGE SASSOWER
who is detained by Sheriff of the County of Suffolk
at

2. The cause or pretense of the detention, according to the best knowledge and belief of the petitioner is,

Warrant of Commitment by Ernest L. Signorelli,

3. That a court or judge of the United States does not have exclusive jurisdiction to order the release of said person.

4. This writ is sought because of an illegal detention, the nature of the illegality being Failure to comply with due process in that no adequate notice given to petitioner, no opportunity for a hearing or hearing held, no contempt in the presence of the Court, Hon. Judge Ernest L. Signorelli, disqualified to adjudicate this matter, attempt by Hon. Ernest L. Signorelli to frustrate legal remedies of the petitioner, and statutes under purported

5. An appeal has been taken from the order by virtue of which said person is detained. The result of said appeal is *unadjudicated* *or order of such contempt order* *not*

being moved on *petitioner's writ* *for that received by* *being* *at the same time with* *Warrant of Commitment* *order* *was raised* *and* *provision for* *Be I.*

No previous application has been made for this relief except pending proceeding in Supreme Court, Suffolk County, Special Term Part I.

Wherefore your petitioner prays that a writ of habeas corpus issue, directed to the respondent, requiring the respondent to produce the said GEORGE SASSOWER before a justice of this court at Term, Part thereof on

Dated: the 23 day of June 1977.

[Signature]
Petitioner (print name beneath signature)
GEORGE SASSOWER
Attorney(s) for Petitioner
Office and Post Office Address

STATE OF NEW YORK } ss.:
COUNTY OF Westchester

GEORGE SASSOWER
he is the petitioner in the within proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Sworn to before me, this 23 day of June EXHIBIT "P"

being duly sworn, deposes and says that
[Signature]
E. SASSOWER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

Index No.

GEORGE SASSOWER

Petitioner

against

WRIT OF HABEAS CORPUS

SHERIFF OF THE COUNTY OF SUFFOLK

Respondent

The People of the State of New York

upon the relation of

GEORGE SASSOWER

TO Sheriff of the County of Suffolk

Greeting:

WE COMMAND YOU, That you have and produce the body of

GEORGE SASSOWER

by you imprisoned and detained, as it is said, together with your full return to this writ and the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged before Hon.

one of the *Forthwith* the Supreme Court of the State of New York
county of Suffolk at Special Term *PART I*
in the courthouse thereof on the *29th* day of *June* 19 *77* at *10:00 A.M.*
to do and receive what shall then and there be considered concerning the said person and have you then and there this writ.

WITNESS, Hon. *CHARLES R. THOM* one of the Supreme of our said Court,
the *23rd* day of June 19 *77*.

Clerk

GEORGE SASSOWER

Attorney(s) for Petitioner

Office and Post Office Address

75 Wykagyl Station
New Rochelle, New York, 10801

The within writ is hereby allowed this *23rd* day of *JUNE* 19 *77*.

6/23/77 Bail fixed at \$3000 cash bail
Charles R. Thom
J.R.

THE COURT: On recall of these matters and a review of the papers submitted, the Court withdraws its dismissal of the writ of habeas corpus and the writ is reinstated and the bail is continued.

The application of the petitioner for an adjournment is denied and the petitioner's motion for change of venue of the writ is submitted and the decision is reserved.

The decision on the writ of habeas corpus is reserved pending decision on the motion for change of venue.

Petitioner's purported Article 78 proceeding returnable July 7, 1977 and brought on by Order to Show Cause dated June 27, 1977 is dismissed for failure to comply with 22NYCRR 79.15b.

I would ask the reporter to transcribe the disposition of these matters and have a copy sent to the petitioner, the Attorney-General and the County Attorney of Suffolk County.

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM

GEORGE SASSOWER,

Petitioner,

vs.

HON. ERNEST L. SIGNORELLI and
SHERIFF OF SUFFOLK COUNTY,
Defendants.

BY McINERNEY

J. S. C.

DATED July 28

RECEIVED
BY MAIL

AUG 2 1977

DEPARTMENT OF LAW
NEW YORK CITY OFFICEHON. LOUIS J. LEFKOWITZ
Attorney General
By: LEONARD J. PUGATCH, ESQ.
Deputy Assistant Attorney General
Two World Trade Center
New York, New York 10047HON. HOWARD E. PACHMAN
County Attorney, Suffolk County
By: MICHAEL P. BAZELL, ESQ.
County Center
Riverhead, New York 11901GEORGE SASSOWER, ESQ.
Petitioner Pro Se
75 Wykagyl Station
New Rochelle, New York 10804

This is a hearing upon a writ of habeas corpus testing the validity of a contempt order incarcerating the contemnor to the County jail for 30 days and directing the issuance of a warrant to carry out such sentence.

The contempt order containing the essential recitals reads as follows:

"On reading and filing the orders of the Surrogate's Court of Suffolk County dated March 9, 1976 and March 25, 1977, and upon all the proceedings heretofore had herein, and it further appearing that an order was duly made on April 28th, 1977 and personally served upon GEORGE SASSOWER in open court in which the said GEORGE SASSOWER was ordered to transmit to the temporary administrator of the estate of EUGENE PAUL KELLY, Anthony Mastroianni, Public Administrator of Suffolk County, all books, papers and other property of the estate of EUGENE PAUL KELLY in the possession of GEORGE SASSOWER, or under his control on or before May 5, 1977, and it further appearing that the said GEORGE SASSOWER failed to comply with said order, and that he was directed to appear in court on June 1, 1977 to commence the trial in this proceeding, and that the matter was adjourned upon application by the said GEORGE SASSOWER to June 15, 1977 for the trial of this proceeding, and that on June 15, 1977 said GEORGE SASSOWER appeared in open court and after inquiry by the court as to whether the books, papers and other property of the estate of EUGENE PAUL KELLY had been turned over by MR. SASSOWER to the Public Administrator, and he having admitted that he had not

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complied with the order of this court dated April 28, 1977, and at that time the court having given MR. SASSOWER the opportunity to be heard, and to explain his conduct in failing to obey said lawful order of this court, and he having failed to offer to the court any excuse for his wilful disobedience of the said court order, and upon further questioning by the court said GEORGE SASSOWER, having stated that he would comply with said order to turn over all books, records and other property of the estate of EUGENE PAUL KELLY to the Public Administrator on or before June 22, 1977, and the court having further advised GEORGE SASSOWER that upon his failure to do so would result in the said GEORGE SASSOWER being found in criminal contempt of the Surrogate's Court for his defiant and contemptuous conduct having been committed in the immediate presence of the court and his failure to comply with the order of this court dated April 28, 1977, and on June 22, 1977, the said GEORGE SASSOWER having defaulted in appearing in court, and a hearing having been conducted by the court at which time the Deputy Public Administrator testified under oath that GEORGE SASSOWER had not complied with the directives of this court directing the said GEORGE SASSOWER to turn over to the Public Administrator the books, papers and other property of the estate of EUGENE PAUL KELLY in his possession or under his control, it is now, on motion of VINCENT G. BERGER, JR., Attorney for the Public Administrator of Suffolk County,

"ORDERED AND ADJUDGED that the said GEORGE SASSOWER is guilty of criminal contempt of court committed in the immediate presence of the court by reason of his failure to obey the lawful order and directions of this court dated April 28, 1977 and June 15, 1977 respectively, and the said conduct tending to impair the respect due its authority, and further impairing and prejudicing the rights of the parties in this proceeding as hereinabove set forth, and it is further

"ORDERED AND ADJUDGED that the said GEORGE SASSOWER be imprisoned in close custody in the jail of the County of Suffolk for a period of 30 days, and it is further

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"ORDERED AND ADJUDGED that a warrant shall issue to carry out and effect the provisions of this final order.

"S/ ERNEST L. SIGNORELLI

"ERNEST L. SIGNORELLI, Surrogate."

The contemnor was apprehended and put in jail from whence he secured this writ.

The issue before this Court is whether a judge of a court can summarily find an attorney guilty of a criminal contempt and immediately impose a jail sentence upon him, when the attorney was not present before him when the adjudication was made, and when it was necessary for the Court to take testimony to determine whether the contempt had been committed.

At the outset, the attorney general argues that a review of the court's action cannot be had under a writ of habeas corpus, citing People ex rel. Verdi v. McQuade, 245 App. Div. 768, 280 N.Y.S. 903. However, under the circumstances of this case it may be. People v. Zweig, 32 A.D. 2d 659, 300 N.Y.S. 2d 651.

The differences between a punitive and remedial contempt are described in Samuel Gompers, et al, v. Buck's Stove & Range Co., 221 U.S. 418, 31 S.Ct. 492.

In the present case, the respondent agrees that the contempt, if any, was a criminal contempt and so the rule stated in Re Oliver, 33 U.S. 257, 274, 68 S.Ct. 499, 508, citing Cooke v. U. S., 267 U.S. 517, 45 S.Ct. 390, is applicable.

"That the holding in the Terry case is not to be considered as an unlimited abandonment of the basic due process procedural safeguards, even in contempt cases, was spelled out with emphatic language in Cooke

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v. United States, 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767, a contempt case arising in a federal district court. There it was pointed out that for a court to exercise the extraordinary but narrowly limited power to punish for contempt without adequate notice and opportunity must not only occur in the court's immediate presence, but that the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct. This court said that knowledge acquired from the testimony of others, or even from the confession of the accused, would not justify conviction without a trial in which there was opportunity for defense." * * * * "Except for a narrowly limited category of contempts, due process of law as explained in the Cooke case requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exceptions to these due process requirements include only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority * * * before the public.' If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the Cooke case, that the accused be accorded notice and a fair hearing as above set out."

Finally, the court states:

"The Terry case and others like it provide no support for sustaining petitioner's conviction of contempt of court upon testimony given in petitioner's absence."

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In a somewhat analogous situation, attorneys who did not appear in court as directed were summarily adjudicated in contempt. U. S. v. Delehanty, 488 Fed. Rep 306, 398. The attorneys argued that their non-appearance was not an act which occurred within the actual presence of the court, and so no summary contempt was possible. The court agreed:

"We find that this matter should not have been dealt with summarily. While the absence of the appellants was obvious to the court, the reasons for their absence was not."

The law of New York is in conformity with these standards. In Social Service Employees Union v. Saypol, 23 A.D. 2d 55, 258 N.Y.S. 2d 246, petitioners sought the annulment of court orders adjudging them "guilty of a criminal contempt of court committed in the immediate view and presence of the court." The petition was granted and the adjudication of contempt was annulled. The lower court had specifically directed the petitioners to return to their employment, to inform their union membership that the court had directed them also to return to work, and directed the petitioners to return before the court at 2:30 P. M. to report to the court regarding their obedience to the order. Upon the petitioners' return they were asked by the court if they had obeyed the directions. After their answer that they had not, they were summarily adjudged to be in contempt. Obviously, these facts are closely parallel to the present situation in the application of the legal theory of contempt.

The court stated at page 248:

"A criminal contempt in the 'immediate view and presence of the court may be punished summarily if the acts constituting such contempt

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are seen or heard by the presiding judge so that he can assert of his own knowledge the facts constituting the contempt in the mandate of commitment' (Matter of Douglas v. Adel, 269 N.Y. 144, 146-147, 199 N.E. 35, 36-37). The orders adjudging petitioners in contempt do not recite any 'court-disturbing misconduct' (In re Oliver, 333 U.S. 257, 275, 68 S.Ct. 499, 92 L.Ed. 682; see Judiciary Law, § 750, subd. A, par. 1). The acts they rely on as constituting the contempt consist of disobeying the interim restraint in the December 30, 1964 order to show cause, the provisions of the January 7, 1965 injunctive order, and the court's above-quoted oral directions. As is evident from respondent's requirement that petitioners return to the courtroom and report regarding their obedience, any acts of disobedience did not occur in the court's 'immediate view and presence' (cf. Brown v. United States, 359 U.S. 41, 51, 79 S.Ct. 539, 3 L.Ed. 2d 609)."

A reading of the minutes of the proceeding held herein discloses that the contemnor was held in contempt on 22 June, 1977, for the disobedience of an order dated 28 April, 1977, and the further order given in open court on 15 June 1977. At that time the contemnor was not in court, and in addition the fact of his non-compliance could only be ascertained by the testimony of a third party, also in the absence of the contemnor. Under the above authority, this may not be done. The respondent cites as authority to the contrary, the case of Cirillo v. Warden of City Prison, Brooklyn, 11 N.Y. 2d 51, 226 N.Y.S. 2d 398. The case can be distinguished in that the defendant there was present at the adjudication of his contempt and the court at pages 56, 401, made the observation that "Perhaps the real question is as to whether under all the circumstances the County Court gave relater a reasonable opportunity to prepare his defense and to be heard in defense. The answer must be based on this particular record." The dissent by Froessel, J., seems more orthodox.

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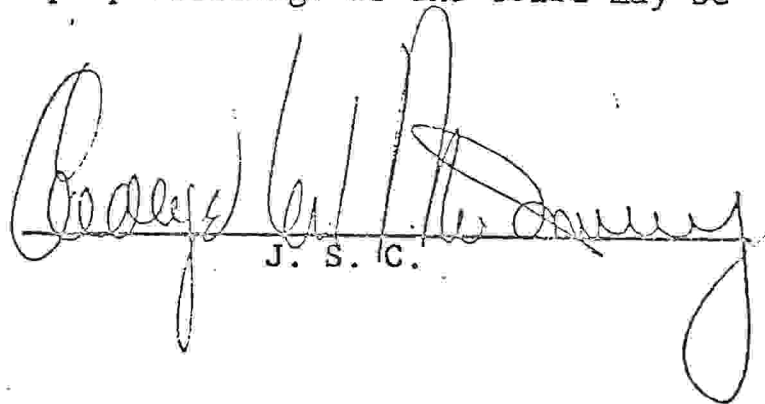
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The writ is allowed, and the adjudication of contempt annulled, without prejudice to such other contempt proceedings as the court may be advised to bring.

Settle order on notice.



 J. S. C.