

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

-----x  
GEORGE SASSOWER,

Plaintiff

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,  
VINCENT G. BERGER, JR., JOHN P. FINNERTY,  
ALAN CROCE, ANTHONY GRYMALSKI, CHARLES  
BROWN, HARRY E. SEIDELL, NEW YORK NEWS,  
INC., and VIRGINIA MATHIAS,

Defendants.

New York Co.  
Index #  
5774-1983

Suffolk Index #  
78-17671

AFFIRMATION IN  
OPPOSITION

-----x  
STATE OF NEW YORK, COUNTY OF SUFFOLK:

ERICK F. LARSEN, an attorney, under penalties of perjuries pursuant to CPLR 2106 affirms the truth of the following:

1. I am associated Of Counsel to the Suffolk County Attorney, attorney for the Public Administrator Anthony Mastroianni, the Sheriff John P. Finnerty, and Deputy Sheriffs Alan Croce and Anthony Grymalski (hereinafter the Suffolk defendants).

2. I make this Affirmation in opposition to the plaintiff's application for the relief set forth in the plaintiff's Notice of Motion dated April 20, 1983 concerning the Suffolk defendants. I am fully familiar with the facts and circumstances surrounding this action, as well as the

multitude of factually and legally related other actions and proceedings which have been pending in the State and Federal trial and appellate courts.

3. For approximately five years preceding January 28, 1983, your affirmant served as an Assistant Suffolk County Attorney and was primarily responsible for the multitude of State and Federal actions and proceedings involving plaintiff herein, George Sassower, his wife Doris, and his daughter Carey. Upon leaving the office of the Suffolk County Attorney your affirmant was retained as Special Counsel in order to continue the defense to these actions and proceedings.

4. The action at bar was originally improperly commenced in Westchester County since venue in an action against a County officer is proper only in such county. CPLR §504. Upon your affirmant's application this action was transferred thereafter to the County of Suffolk.

5. Extensive proceedings and consolidated applications in this action and in legally and factually related ancillary proceedings were heard in the Supreme Court, Suffolk County. An excellent overview of the underlying facts is set forth in the Memorandum Decision of Justice Gowan dated March 20, 1980 (annexed hereto as Exhibit A). It must be noted that the plaintiff, George Sassower, was held in contempt on two separate occasions by two separate Surrogate Court Judges in Suffolk County. It also should be

noted that Justice Gowan ordered the plaintiff back to jail.

6. Simultaneously, in factually related proceedings pending in this Court, the Appellate Division, First Department by decision dated September 18th, 1980 affirmed an Order of this Court (Hughes, J.) also punishing plaintiff, George Sassower, for contempt (annexed hereto as Exhibit "B").

7. This Court must be made aware that the instant plaintiff, George Sassower, has masterminded a number of frivolous and vexatious factually and legally related actions throughout the New York Metropolitan area. Due to the short period of time between receipt of the instant motion papers and the return date of the present application, it has simply been impossible for your affirmant to set forth in detail all of the relevant facts and circumstances which must be considered in order to render a just determination upon the instant application. It is, therefore, respectfully requested that the Suffolk defendants be given additional time in which to address the issues raised by plaintiff's application.

8. Plaintiff's litigation tactics have been so abusive in legally and factually related proceedings that the Supreme Court, Westchester County (Coppola, J.), was forced to take the extraordinary measure of enjoining plaintiff George Sassower and his wife, Doris, "from instituting any further proceedings in any New York State

courts based upon incidents relating to the Matter of Eugene Paul Kelly." In invoking this extraordinary remedy the Court stated:

Suffice it to say that the plaintiffs have embarked on a course of endless, unceasing, vexatious litigation . . .

. . . There must come a time when the multitudinous actions and the mountains of papers generated therefrom must cease in the interest of preventing judicial gridlock. To my view, that time has arrived. The instant action involves nothing more than a rehash of allegations : previously asserted in one form or another, in one forum or another, and either dismissed or presently pending. (Westchester Index No. 14373-82, Decision dated 12/22/82, annexed hereto as Exhibit "C").

9. As a matter of fact, part of the relief which plaintiff seeks in the instant application, to take the deposition of your affirmant, Erick Larsen, was just sought and denied in the companion action in Westchester County. There, under almost identical circumstances, with plaintiff herein George Sassower acting as attorney of counsel to his wife Doris Sassower plaintiff pro se, plaintiff moved to disqualify your affirmant from acting as defense counsel and sought an order requiring your affirmant to submit to an examination before trial. This relief was denied by Decision of Justice Coppola dated December 20, 1982, (annexed hereto as Exhibit "D").

10. Moreover, plaintiff seeks, upon information and belief, to depose the Suffolk defendants herein upon matters of fact and law which have previously been adjudicated against him. For example, the United States Court of Appeals for the Second Circuit has affirmed the granting of summary judgment in favor of the Suffolk defendants by then Chief Judge Mishler in two separate Federal District Court actions which were consolidated for purposes of appeal. Docket No. 77-7511, 12 1978, annexed hereto as Exhibit "E".

11. Undaunted by the fact that each Court, he has appeared before has decided against him, the plaintiff keeps appealing every adverse decision and, at the same time, commences or attempts to commence a new action either in his own name or the names of his family members against the same or similar defendants in a new forum. Plaintiff with his law office in his home with the aid of a computerized Word Processor is able to crank out volumes of applications and appeals faster than any conscientious defense attorney or Court can deal with them.

12. In the brief period of time which plaintiff afforded your affirmant to oppose the instant multiple applications it has been impossible to properly set forth to this Court all the evidence which mandates that they be denied in their entirety. However, it must be pointed out to this Court that the plaintiff himself on this very application has disclosed under oath that he is simply seeking to further

abuse the process of this Court through his knowledge and status as an attorney:

"My intention has been similarly disclosed!

Consistent with my repeatedly expressed intention .... I intend to find some appealable issue, perfect such appeal for the next available term, and thereby compel my adversary to perfect his appeal."

In other words, the plaintiff has interposed the instant application merely to raise an appealable issue in order to further litigate in the appellate courts. It must be noted that upon information and belief the plaintiff, George Sassower, is currently suing Judges of both the Appellate Division, First and Second Departments, in the United States District Court for the Southern District of New York, concerning collateral matters arising from the initial Surrogate Court proceedings in Suffolk County.

13. This action should never have been transferred to New York County. It was transferred merely because of an inadvertent oversight on the part of defense counsel. Plaintiff's application to transfer venue from Suffolk to New York County was interposed in the final days of your affirmant's tenure as an Assistant County Attorney. The return date of the application was actually set down for a day after the expiration of such tenure. Due to administrative delay in the assignment of defense counsel

the application to change venue from Suffolk to New York County was submitted to the Court without opposition. Since an application to consolidate all proceedings in one Court is contemplated and in order not to unnecessarily expand this already unmanageable web of litigation, the Order transferring venue was not appealed. It is, however, not beyond the power of this Court, especially under these circumstances, to sua sponte transfer this action back to Suffolk County, where it belongs.

14. In the alternative, especially since 'almost identical litigation has been pending for years in Westchester County, this Court also could transfer sua sponte this action to Westchester County, or in light of the similarity of facts and law this Court could order the instant action consolidated in Westchester County with the action currently pending entitled "Doris Sassower, et al. v. Ernest L. Signorelli, et al., Index No. 3607-1979."

15. For the reasons stated herein, it is respectfully requested that plaintiff's applications be denied in their entirety or, in the alternative, that the applications be consolidated with the Suffolk defendants' applications which are currently returnable in this Court on Monday, May 16th, 1983. In the alternative, this action should be

transferred sua sponte back to Suffolk County. In the alternative, this action should be consolidated with the aforementioned related action in Westchester County.

Dated: May 4th, 1983  
Smithtown, N.Y.



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ERICK F. LARSEN

TO:

GEORGE SASSOWER, ESQ.

ROBERT ABRAMS, ESQ.  
Attorney General

PATTERSON, BELKNAP, WEBB & TYLER, ESQS.



MEMORANDUM

Exh. "A" - Opinion - Opinion (90-102)

31-106N

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM, PART I

GEORGE SASSOWER,

Petitioner,

VS.

JOHN P. FINNERTY, Sheriff of Suffolk County,

Respondent.

BY COWAN

J. S. C.

DATED March 20

MAR 21 1980

INDEX #77-11984

MOTION #153,154 and 7179

DATE: 2/20/79

LAW 19 80

ATTORNEY

SUFFOLK COUNTY

DATE: 2/20/79 and 5/8/79

PEOPLE OF THE STATE OF NEW YORK  
ex rel. GEORGE SASSOWER,

Petitioner-Relator,

- vs -

SHERIFF OF THE COUNTY OF SUFFOLK,

Respondent.

GEORGE SASSOWER,

Plaintiff,

vs.

INDEX #78-17671

MOTION #1700

DATE: 2/20/79

ERNEST L. SIGMORELLI, et al.,

Defendants.

GEORGE SASSOWER,

Plaintiff,

vs.

SHERIFF, SUFFOLK COUNTY,

Defendant.

GEORGE SASSOWER, ESQ.

Petitioner pro se

75 Wykaqyl Station

New Rochelle, N.Y. 10804

SUFFOLK COUNTY ATTORNEY

Veterans Memorial Highway

Hauppauge, N.Y. 11787

Attorney for JOHN P. FINNERTY

Attn: ERICK F. LARSEN, ESQ.

VINCENT G. BERGER, JR., ESQ.

Attorney for Temporary Administrator

Estate of EUGENE PAUL KELLY

6351 Jericho Turnpike

Commack, New York 11725

TOWNLEY & UPDIKE, ESQS.

Attorneys for Deft. NEW YORK NEWS

220 E. 42nd Street

New York, New York 10017

STATE OF NEW YORK

DEPARTMENT OF LAW

Attorney General's Office

Attn: EMANUEL KAY, Assistant Attorney General

Attorney for JUDGES SIGMORELLI and SEIDELL

Two World Trade Center

New York, New York 10047

EXHIBIT A

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM, PART I

VS.

BY GOWAN J. S. C.

DATED March 20 1980

INDEX #77-11984

MOTION #153, 154 and 7179

DATE: 2/20/79 and 5/8/79

INDEX #78-P7671

MOTION #1700

DATE: 2/20/79

For the purpose of this decision only, the following are consolidated:

(1) the motion by the Public Administrator of Suffolk County for leave to intervene in two of these actions and to have them referred to the Appellate Division of this Court for determination; (2) the motion by JUDGES SIGNORELLI and SEIDELL, defendants in Action #3, to dismiss plaintiff's causes of action against them; (3) the motion by GEORGE SASSOWER, as plaintiff in Action #3, for summary judgment and ancillary relief against the defendant NEW YORK NEWS, INC.; (4) the habeas corpus proceeding (Action #2) instituted by SASSOWER to review his contempt citation by the Surrogate's Court of Suffolk County, and his application for summary judgment with respect to the latter proceeding; (5) the Article 78 proceeding (Action #1) instituted by SASSOWER to stay the Sheriff of Suffolk County from executing a warrant of commitment issued by the Surrogate's Court; and (6) the application by defendants in Action #3 for a consolidation of these three actions, summary judgment in their favor in Action #3, and for a hearing on petitioner's habeas corpus application, and are determined as follows:

The Public Administrator's application for leave to intervene, is denied. While it is true that the moving party's claims against SASSOWER ultimately gave rise to the contempt citation being challenged in the pending habeas corpus proceeding, nonetheless, his interest in the outcome of that proceeding is tangential at best, and his claims against SASSOWER do not involve questions of law or fact common to the limited legal grounds raised in that proceeding.\* Cf. Taw International Leasing, Inc. v. Overseas Private Investment Corp., 57 AD2d 799; CPLR 1012. In the exercise of discretion, the Court also declines to permit intervention pursuant to CPLR 1013. Moreover, the Public

\*In light of this Court's determination with respect to the Article 78 proceeding, infra, the propriety of intervention in that proceeding need not be addressed.

VS.

BY GOWAN J. S. C.

DATED March 20 1980  
 INDEX #77-11984  
 MOTION #153, 154 and 7179  
 DATE: 2/20/79 and 5/8/79  
 INDEX #78-17671  
 MOTION #1700 DATE: 2/20/79

Administrator's further contention that this Court lacks jurisdiction to review the validity of an Order of the Surrogate's Court of Suffolk County was previously rejected by this Court (McINERNEY, J.), and affirmed by the Appellate Division, Sassower v. Signorelli, 65 AD2d 756.

Defendants SIGNORELLI and SEIDELL's motion to dismiss plaintiff's causes of action against them is granted pursuant to CPLR 3211(a)(7). A complaint purporting to state a cause of action for libel or slander must set forth the actual words complained of (CPLR 3016(a); Escoett & Co. v. Alexander and Alexander, Inc., 31 AD2d 791), and mere conclusory allegations such as those comprising plaintiff's complaint are legally insufficient to state a cause of action for libel and slander. Seltzer v. Fields, 20 AD2d 60. Moreover, to the extent that plaintiff's complaint purports to assert a claim for false arrest and malicious prosecution, the moving defendants, as Judges of the Surrogate's Court, are absolutely immune from suit for acts performed within the scope of their judicial functions (Stump v. Sparkman, 435 US 349; Imbler v. Pachtman, 424 US 409; Murray v. Brancato, 290 NY 52), even if such acts are found to have been outside their jurisdiction and are alleged to have been done maliciously or corruptly. Murray, supra, 290 NY at 56.

SASSOWER's application for summary judgment against the NEW YORK NEWS, INC., defendant in Action #3, is denied. The sole basis advanced in support of the requested relief is that the newspaper has, in its answer, allegedly "admitted the publication (Para. 21 of the complaint) of patently defamatory material ..." Examination of the pleadings reveals that Para. 21 of the complaint indicates the admission relates solely to a conclusion "(t)hat such published material is annexed hereto and marked 'Exhibit 1' and 'Exhibit 2'". Moreover, an examination of the entire pleading makes it clear that defendant had pre-

BY COWAN J. S. C.

VS.

DATED March 20 19 80  
 INDEX #77-11984  
 MOTION #151, 154 and 7179  
 DATE: 2/20/79 and 5/8/79  
 INDEX #78-17671  
 MOTION #1700 DATE: 2/20/79

viously denied the falsity of the published material as well as the plaintiff's allegation that its publication constituted gross irresponsibility. Accordingly, plaintiff's further requests for a protective order and for severance of his claim against the NEW YORK NEWS are also denied.

Turning to the petition for a writ of habeas corpus, it is appropriate to survey the events culminating in petitioner's present application. SASSOWER was nominated as Executor in the Will of one, GENE PAUL KELLY, who died on April 26, 1972. The Will was admitted to probate on September 9, 1974, and Letters Testamentary were issued to SASSOWER. On November 13, 1974, a petition to compel the Executor to account was filed with the Surrogate's Court. Although the original citation was returnable on December 5, 1974, the return date was ultimately adjourned to March 17, 1975, it appears, because of the difficulties encountered in serving SASSOWER. When the Executor defaulted on that date, the Court issued an Order, requiring him to account on March 27, 1975. When SASSOWER failed to comply with the order to account, by order to show cause made returnable on October 20, 1975, the Surrogate directed him to show cause why he shouldn't be removed as Executor and punished for contempt of court because of his failure to obey the March 27, 1975 direction of that Court. Because of petitioner's repeated applications for adjournment, the matter was submitted to the Court for decision on March 12, 1976, and by Order dated March 25, 1976, SASSOWER was removed as fiduciary and determined to be in contempt of court but was given an additional thirty days to purge himself by filing the account.

On April 15, 1976, SASSOWER filed an accounting for the period of April 26, 1972 to September 9, 1974, and after several further adjournments, the matter was scheduled for

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM, PART I

BY GOWAN

J. S. C.

VS.

DATED March 20

19 80

INDEX #77-11934

MOTION #153, 154 and 7179

DATE: 2/20/79 and 5/8/79

INDEX #78-17671

MOTION #1700

DATE: 2/20/79

a conference on September 21, 1976. On March 2, 1977, following five further adjournments, several interested parties filed objections to the account. On March 25, 1977, the Surrogate's Court appointed the Public Administrator as temporary administrator and on April 28, 1977, SASSOWER was served in open Court with a written Order directing him to turn over all books, papers and other property pertaining to the Estate to the Public Administrator on or before May 5, 1977. The matter was ultimately set down for trial on June 1, 1977, at which time it became apparent that the former Executor had not complied with the Court's turnover order, and was granted a further adjournment to June 22, 1977, to enable him to comply, having been previously warned by the Surrogate that his failure to do so, would constitute contempt of court. He was explicitly directed to return on June 22, 1977, to enable the Court to determine whether in fact he had complied with the prior Order. When SASSOWER again failed to appear on June 22, 1977, the Surrogate's Court conducted a hearing and determined that SASSOWER's failure to comply with the turnover Order constituted contempt. He was adjudged to be in contempt and sentenced to thirty days in County Jail. On the following day, he was apprehended by deputies from the Suffolk County Sheriff's Office and was remanded to Suffolk County Jail to serve the sentence after he had refused to avail himself of the opportunity to purge himself of the contempt before the Surrogate. On the same day, he obtained a writ of habeas corpus and was released on bail pending the hearing scheduled for the following day. Following that hearing, Special Term granted petitioner's writ and annulled the contempt adjudication without prejudice to commencement of new proceedings. In affirming that determination, the Appellate Division held "that a summary adjudication of contempt is only permitted if the contemtor is

VS.

BY COWAN J. S. C.

DATED March 20 1980

INDEX #77-11984  
MOTION #153, 154 and 7179  
DATE: 2/20/79 and 5/8/79  
INDEX #78-17671  
MOTION #1700

DATE: 2/20/79

within the Court's presence (see, Judiciary Law, Sec. 751; Cooke v. United States, 257 US 517)." Sassower v. Signorelli, supra at page 757. The Appellate Division noted further, on the same page, that petitioner's successive applications for writs of habeas corpus and bail pending the hearing violated the provisions of CPLR 7002, subdivision c, paragraph 6,

Subsequently, by order to show cause dated January 25, 1978, served personally upon petitioner, further criminal contempt proceedings were commenced on behalf of the Public Administrator for petitioner's continued failure to comply with the Surrogate's April 28, 1977 turnover Order. The moving papers on their face contain the statutory warning concerning possible arrest and imprisonment and in all other respects, comply with the applicable provisions of the Judiciary Law. On February 15, 1978, petitioner filed an affidavit, sworn to on February 2, 1978, in which he stated:

"This affidavit ... constitutes the appearance of your deponent pursuant to the notice appended to the moving papers."  
(Emphasis supplied).

By means of the same affidavit, petitioner also "entered" a plea of "not guilty" and requested a "plenary trial." On February 22, 1978, the Public Administrator filed a reply affidavit and on the same date, "a notice of calendar disposition" was mailed to petitioner by the Surrogate's Court, notifying him that the proceeding had been transferred to Acting Surrogate Harry E. Seidell, "who adjourned the matter for a hearing, on Tuesday, March 7, 1978, at 2:00 P.M. Acting Surrogate, the Honorable Harry E. Seidell, has directed you personally to appear at said time and date." SASSOWER again failed to appear on March 7, 1978, for the hearing and it was subsequently held on that date in his absence. Evi-

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM, PART I

BY GOWAN

J. S. C.

VS.

DATED March 20  
INDEX #77-11984  
MOTION #153, 154 and 7179  
DATE: 2/20/79 and 5/8/79  
INDEX #78-17671  
MOTION #1700

19 80

DATE: 2/20/79

dence was taken and SASSOWER was held in criminal contempt for the second time.

The decretal paragraphs of the Acting Surrogate's Order, dated March 8, 1978, read as follows:

"ORDERED, ADJUDGED AND DETERMINED that the said GEORGE SASSOWER is guilty of a criminal contempt of court by reason of his wilful disobedience of the lawful order of this court made and entered on the 28th day of April 1977, in that he has failed and refused to turn over and deliver to ANTHONY MASTROIANNI, Temporary Administrator of the estate of EUGENE PAUL KELLY, all books, papers and other property of the estate of EUGENE PAUL KELLY, in his possession or under his control, on or before the 5th day of May, 1977, and it is further

ORDERED, ADJUDGED AND DETERMINED, that the conduct of the said GEORGE SASSOWER in failing and refusing to turn over the books, papers and other property of the estate of EUGENE PAUL KELLY was calculated to, and has, defeated, impaired, impeded and prejudiced the rights and remedies of the Temporary Administrator, ANTHONY MASTROIANNI, Public Administrator of Suffolk County, in his administration of the estate and the rights of the beneficiaries of such estate, and it is further

ORDERED, ADJUDGED AND DETERMINED, that the said GEORGE SASSOWER, by reason of and in punishment for such criminal contempt, be imprisoned in the County Jail of the County of Suffolk, New York, for a period of thirty (30) days, unless he shall sooner purge himself of such contempt, and it is further ..."

JUDGE SEIDELL also issued a warrant of commitment directed to the Sheriff of the County of Suffolk, commanding him to take SASSOWER into custody and detain him until judgment and sentence of the Court is satisfied, unless sooner released by further order of the Surrogate's Court. By affidavit dated March 6, 1978, which SASSOWER subsequently stated was not mailed until late in the afternoon of that date and which bears the notation that it was received by the Surrogate's Court on March 8, 1978, petitioner, after challenging the pending proceeding based on unspecified egregious defects (procedural and substantive), informed the Court that he would be actually engaged in another Court

BY

GOWAN

J. S. C.

VS.

DATED

March 20

19<sup>80</sup>

INDEX #77-11984

MOTION #153, 154 and 7179

DATE: 2/20/79 and 5/8/79

INDEX #78-17671

MOTION #1700

DATE: 2/20/79

in Brooklyn, New York, on March 7, 1978, acknowledged receipt of the "notice of calendar disposition" and requested an adjournment of at least five weeks, to permit him to "simultaneously bring on (proper) motions to hold Ernest L. Signorelli and Vincent G. Berger, Jr., in criminal contempt of court for reasons which will be set forth in such papers."

As limited by his supporting memorandum of law, petitioner's principal contention in challenging the validity of the proceedings culminating in his contempt citation and subsequent commitment, is that the procedure followed by the Surrogate's Court deprived him of his constitutionally guaranteed right to be present at all stages of the proceedings and of his additional constitutional and statutory right to allocution before imposition of sentence. In a related vein, he also avers that the proceeding under review does not differ significantly from the procedure followed in his previously annulled adjudication of contempt.

Two categories of criminal contempt are (1) direct contempt, committed in the immediate view and presence of the Court; and (2) constructive contempt, committed outside of the presence of the Court. Direct contempt may be punished summarily "if the acts constituting such contempt 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." Douglas v. Adel, 269 NY 144, 146-7. However, in the case of constructive contempt, since the Court is unable to state such facts, it is necessary to afford the alleged contemnor the opportunity to be heard upon adequate notice of the charges. Judiciary Law Section 751 expressly recognizes the distinction in the manner of dealing with these two classes of criminal contempt. This codification of the elusive concept



BY

GOWAN

J. S. C.

VS.

DATED March 20

1980

INDEX #77-11984

MOTION #153, 154 and 7179

DATE: 2/20/79 and 5/8/79

INDEX #78#17671

MOTION #1700

DATE: 2/20/79

of constitutional due process is clearly "intended to protect the right of an accused to appear and defend himself." Spector v. Allen, 281 NY 251.

The first Order of the Surrogate adjudging the petitioner guilty of criminal contempt was an exercise of the summary power to punish direct contempt pursuant to Judiciary Law Section 750(a)(1). In annulling that determination, both Special Term and the Appellate Division held that a summary adjudication of contempt is not permitted if the allegedly contumacious acts were not committed within the immediate presence of the Court. The instant order of the Acting Surrogate, again adjudging petitioner to be guilty of criminal contempt, however, does not purport to rest on the summary exercise of the Court's power to punish petitioner. Since the second proceeding did not culminate in a summary adjudication of contempt, the sole question presented by petitioner is whether the notice and opportunity to respond afforded to him comport with due process requirements. This Court finds that they did.

Judiciary Law Section 751(1) requires that a person charged with indirect contempt be notified of the accusation and be afforded a reasonable time to make a defense. (See, also, 22 N.Y.C.R.R. Sec. 701.3). The due process overtones of the statutory scheme simply reflect the law's general disfavor of summary procedure (see, e.g., Sacher v. United States, 343 US 11), and recognition that "(r)easonable notice of a charge and an opportunity to be heard in defense before punishment is basic to our system of jurisprudence." Fernos-Lopez v. United States District Court, 599 F.2d 1087. However, it is recognized that the question of what constitutes sufficient notice of the charges and opportunity to prepare a defense largely depends on the circumstances of the particular case. Spector v. Allen, *supra*; Cirillo v. Warden of City Prison, 11 NY2d 51.

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM, PART I

BY GOWAN

J. S. C.

VS.

DATED March 20 1980  
 INDEX #77-11984  
 MOTION #153, 154 and 7179  
 DATE: 2/20/79 and 5/8/79  
 INDEX #78-17671  
 MOTION #1700 DATE: 2/20/79

In general, "procedural due process" 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." Re Green, 369 US 689, 691-692, citing Re Oliver, 33 US 257, 275. In the instant case, even discounting petitioner's prior history of unparalleled dilatory tactics before the Surrogate's Court, the notice of the pending proceeding, including ample detail of the prior order allegedly violated by him, and the opportunity to prepare and present his defense, clearly satisfies the constitutional and statutory requirements of due process. See, e.g., United States v. Bukowski, 435 F.2d 1094.

Although proceedings to punish criminal contempt have generally been regarded as sui generis and not "criminal prosecutions" (Blackmer v. United States, 264 US 95, 104-105), petitioner correctly notes that "criminal contempt is a crime in every fundamental respect." Bloom v. Illinois, 391 US 194, 201. However, at least in the context of this proceeding, this assertion proves too much.

The constitutional and statutory guarantees of the right of a criminal defendant to be present at all important stages of his trial are designed for the protection of the accused and "(l)ike any constitutional guarantee ... (this right) ... may be waived, Snyder v. Massachusetts, 291 US 97, 106, 54 S.Ct. 330, 78 L.Ed. 674 (1934), even if that waiver is implied from the defendant's conduct, Illinois v. Allen, 397 US 337, 90 S.Ct. 1057, 25 L.Ed. 2d 353 (1970). The Supreme Court had long ago held that a defendant who knowingly absents himself from the courtroom during trial 'leaves the court free to proceed with trial in like manner and with like effect as if he was present. Diaz v.

MEMORANDUM

31-106W

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM, PART I

VS.

BY

COWAN

J. S. C.

DATED

March 20

19 80

INDEX #77-11984

MOTION #153, 154 and 7179

DATE: 2/20/79 and 5/8/79

INDEX #78-17671

MOTION #1700

DATE: 2/20/79

United States, 223 US 442, 455, 32 S.Ct. 250, 254, 56 L.Ed. 500 (1912).'" United

States v. Santoro, 464 F.2d 1202, 1208 (2d Cir.), cert. den. 409 US 1063. The Courts

of this State have likewise recognized the waivability of the right of the accused to

be present. See, e.g., People v. Epps, 37 NY2d 343; People v. Byrnes, 33 NY2d 343;

People v. Bunts, 64 AD2d 283; People v. Huggler, 50 AD2d 471; People v. Thomas, 97

Misc.2d 845; People v. Hicks, 90 Misc.2d 609. The record before this Court contains

nothing to warrant disturbing the implicit finding of the acting Surrogate that petitioner's

relinquishment of this known right was made knowingly, voluntarily and intelligently,

particularly in view of the fact that petitioner is an experienced attorney and counsellor

at law who cannot, by any shadow, hide behind the charade of being ignorant of the results

of his actions.

On the contrary, the record demonstrates the futility, if not perversity, of reach-

ing a contrary conclusion in a case of this nature. Since petitioner, who, as an attor-

ney-fiduciary, must be held to a higher standard than executors who are laymen (Cf.

Estate of Kahn, 85 Misc.2d 363), could otherwise evade the power of a court, whose per-

sonal and subject matter jurisdiction he does not now challenge, by mere non-appearance

and non-compliance with its lawful mandates, there appears to be no sound reason in logic

or policy not to accept petitioner's invitation to analogize the challenged proceeding

to any ordinary criminal proceeding in which the accused's non-appearance may give rise

to an inference of the waiver of his right to be heard.

Petitioner's reliance on his March 6, 1978 affidavit of actual engagement and request

for a continuance in an apparent attempt to rebut this finding of waiver is misplaced.

As previously noted, the record indicates that this affidavit was received on the day

BY GOWAN J. S. C.

VS.

DATED March 20 19<sup>80</sup>  
 INDEX #77-11984  
 MOTION #153, 154 and 7179  
 DATE: 2/20/79 and 5/8/79  
 INDEX #78-47671  
 MOTION #1700 DATE: 2/20/79

following the hearing. Since SASSOWER concedes that he mailed his affidavit less than 18 hours before his scheduled appearance, it is difficult to credit his reliance on its efficacy. Moreover, as the Supreme Court has noted, "(t)he matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of request for more time that violates due process even if the party fails to offer evidence ..." Ungar v. Sarafite, 376 US 575, 589.

In this proceeding, the Surrogate's Court was confronted with petitioner's total, continued, steadfast and completely unexplained failure to comply with the lawful mandate of the Court.<sup>(1)</sup> Rather than reacting to petitioner's flagrant disobedience with the lament of Cicero: "Quo usque tandem abutere ... patientia nostra?"<sup>(2)</sup>, the Court gave him specific notice of the charges against him, provided a reasonable and meaningful opportunity to present his defense or explanation in the context of a plenary hearing, appointed an acting Surrogate to assure an unbiased forum (Bloom v. Illinois, supra at 391 US 194, 205), and justifiably interpreted his failure to appear on the hearing date as a voluntary waiver of his right to present evidence. In short, petitioner was afforded all the process that was due.

Accordingly, petitioner's writ is dismissed.

(1) Petitioner has never offered even a semblance of an argument on the merits of the issue before the Surrogate's Court. In addition, this Court notes that the warrant of arrest provided SASSOWER with the opportunity to purge himself of the contempt, which he did not exercise during the four month period between its issuance and execution, nor, indeed, to the present time, almost twenty months after his contempt citation. Petitioner also did not avail himself of the opportunity to vacate the judgment of the sentencing court under the application provisions of the CPLR and he failed to appear personally before this Court.

(2) "How long do you intend to try our patience?" Cicero, First Oration against Catiline.

BY GOWAN

J. S. C.

VS.

DATED March 20 19<sup>80</sup>  
INDEX #77-11984  
MOTION #153, 154 and 7179  
DATE: 2/20/79 and 5/8/79  
INDEX #78-17671  
MOTION #1700 DATE: 2/20/79

In light of the foregoing determination, petitioner's Article 78 proceeding\* to stay the Sheriff of Suffolk County from executing the warrant of commitment issued by the Surrogate is dismissed as academic and his motion for summary judgment with respect to his habeas corpus application is similarly denied.

Finally, the application by defendants in Action #3 for summary judgment, consolidation of these three actions, and an immediate hearing on petitioner's habeas corpus proceeding is granted only to the extent of the hearing already conducted by this Court on March 27, 1979, and is otherwise denied.

Although these actions arose from the same series of events, consolidation is inappropriate because they involve narrow, virtually mutually exclusive sets of legal and factual questions. CPLR 602(a). Moreover, since Action #1 has been dismissed and this Court's involvement with Action #2 has terminated with the rendering of this decision, in a practical sense, there is really nothing to consolidate.

With respect to the application for summary judgment, the foregoing determination is without prejudice to renewal before this Court upon a more detailed substantiation of the moving parties' contention that the plaintiff is barred by principles of res judicata or collateral estoppel from relitigating the factual and legal issues previously determined against him in prior related federal litigation.

Submit order on notice.

\*This proceeding was in fact rendered academic by SASSOWER's arrest on June 10, 1978.

*James A. Gowan*

JAMES A. GOWAN  
J.S.C.

SUPREME COURT, SUFFOLK COUNTY

SPECIAL TERM, PART I

GEORGE SASSOWER,

Petitioner,

VS.

JOHN P. FINNERTY, Sheriff of Suffolk  
County,

Respondent.

BY

COWAN

J. S. C.

DATED

April 24,

19 80

INDEX #77-11984

MOTION #153, 154 and 7179

DATE: 2/20/79 and 5/8/79

PEOPLE OF THE STATE OF NEW YORK  
ex rel. GEORGE SASSOWER,

Petitioner-Relator

- vs -

SHERIFF OF THE COUNTY OF SUFFOLK,

Respondent.

GEORGE SASSOWER,

Plaintiff,

- vs -

ERNEST L. SIGNORELLI, et al.,

Defendants.

GEORGE SASSOWER,

Plaintiff,

- vs -

SHERIFF, SUFFOLK COUNTY,

Defendant.

GEORGE SASSOWER, ESQ.

Petitioner pro se  
75 Wykagyl Station  
New Rochelle, N.Y. 10804

SUFFOLK COUNTY ATTORNEY  
Veterans Memorial Highway  
Hauppauge, New York 11787  
Attorney for JOHN P. FINNERTY  
ERICK F. LARSEN, ESQ.

STATE OF NEW YORK  
DEPARTMENT OF LAW  
Attorney General's Office  
Attn: EMANUEL KAY, Assistant Attorney General  
Attorney for JUDGES SIGNORELLI and SEIDELL  
Two World Trade Center  
New York, New York 10047

VINCENT G. BERGER, JR., ESQ.,  
Attorney for Temporary Administrator  
Estate of EUGENE PAUL KELLY  
6351 Jericho Turnpike  
Commack, New York 11725

TOWNLEY & UPDIKE, ESQS.,  
Attorneys for Deft. NEW YORK NEWS  
220 E. 42nd Street  
New York, New York 10017

PUBLISH!

BY GOWAN

J. S. C.

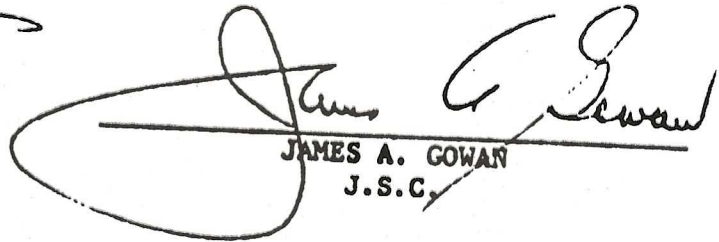
VS.

DATED April 24 19 80  
INDEX #77-11984 and 78-17671  
MOTIONS #153, 154, 7179, 1700  
DATES: 2/20/79 and 5/8/79

On the Court's own motion, the last paragraph in Page 12 of this Court's prior decision, dated March 20, 1980, is amended by the addition of the following:

Pursuant to CPLR §530.60, the Order of Recognizance, dated June 10, 1978, is revoked and petitioner is directed to surrender himself to the custody of the Sheriff of the County of Suffolk within forty-eight (48) hours of service upon him of the Order to be made herein with notice of entry thereon. In the event petitioner fails to comply with the foregoing Order, respondent shall have leave to apply to this Court for an ex parte Order of Commitment.

Submit order on notice.

  
JAMES A. GOWAN  
J.S.C.

APP. DIV. 1st DEP'T DECISION  
KELLY v. SASSOWER  
N.Y.L.J. 9/18/80  
(Page 121)

# First Judicial Department

N.Y.L.J. 9/18/80

## APPELLATE DIVISION

By Murphy, P.J.; Fein, Sullivan  
and Lynch, JJ.

8333. MATTER OF GALAMISON, pet (Blum, res)— Determination of respondent, Commissioner of New York State Department of Social Services dated June 20, 1979, unanimously confirmed, without costs and without disbursements. No opinion. Order filed.

By Murphy, P.J.; Kupferman, Birns, Sandier and Sullivan, JJ.

8553-8556N. KELLY, pet-rea, v. SASSOWER, res-ap— Order of the Supreme Court, New York County (Sutton, J.), entered March 13, 1980, which granted respondent Kelly's motion to punish appellant for contempt, found appellant guilty of civil contempt, fined him \$250, directed him to file an accounting, granted leave to respondent to seek a commitment order and institute removal proceedings should appellant fail to file an updated accounting and denied appellant's cross-motion, unanimously affirmed, with costs and disbursements.

Orders of the Supreme Court, New York County (Hughes, J.), entered October 29, 1979 and March 3, 1980, which respectively: (1) granted respondent Kelly's motion to punish appellant for contempt unless appellant complied with the court's previous order of December 9, 1977, which had directed appellant to file an accounting, within 30 days and granted respondent Kelly leave to seek an order of commitment if appellant did not so comply and denied appellant's cross motion; and (2) granted respondent's motion to punish appellant fro contempt, found appellant guilty of civil contempt, fined him \$250, and granted leave to respondent Kelly to seek an ex parte order of arrest in order to produce appellant before Special Term. Part 2, should appellant fail to pay his fine and to purge his contempt, unanimously affirmed, with costs and disbursements.

Judgment of the Supreme Court, New York County (Hughes, J.), and entered as an order October 29, 1979, which directed that the original order dated June 29, 1979 remain in full force and effect and refused to declare the said order of June 29, 1979 as null and void, unanimously affirmed, with costs and disbursements.

There is no need to recite the detailed facts tracing the history in each of these three proceedings which concern appel-

lant's role as trustee of two trusts established in 1970 of which there were three adult beneficiaries in the first trust and three infant beneficiaries in the second trust. The first trust terminated on January 2, 1974 and the first of these proceedings was commenced on January 24, 1974 because of appellant's failure to account.

It is sufficient to say that our study of the record reflects that appellant, a member of the New York Bar, has chosen to disobey the court orders directing him to account, and by reliance upon legal technicality has succeeded in weaving a complex and tortuous procedural thicket through which he has attempted to frustrate accountability. We need only add that our study of record supports the conclusion that appellant is unwilling to submit comprehensible and detailed accountings as trustee although directed to do so by eight separate court orders dating back to 1974.

Upon argument, appellant stated that he filed the required accountings. The record originally before us did not contain such documents. Respondnet contended that a paper denominated an "accounting" was allegedly filed, but that it is incomprehensible and is the equivalent of no accounting at all.

Appellant has now furnished this court, as directed upon oral argument, with copies of five such documents purporting to be filed accountings in this case. Two such documents, bearing County Clerk's Office stamps of July 31, 1974 and January 2, 1975, were before us on a previous appeal in 1976 (52 A. D. 2d 339) in one of these proceedings concerning the first trust. As to such documents, we made the following observations:

"We agree with Special Term that the "accounting" filed is incomprehensible and unacceptable. Inter alia, a proper accounting should state in clear and understandable terms the nature and value of the trust corpus when received; any realized increases or decreases on principal any income received; any disbursements and distributions to beneficiaries; any commissions paid; and the amount and location of any balance on hand. We are at a loss to understand why a proper accounting has not been filed, and a distribution made in accordance with the terms of the trust agreement. It may be that removal proceedings should be considered if there is a continued refusal to account as to the July 25, 1970 trust (EPTL 7-2.6, subdiv. [a], par. [2])."

The other three documents, two bearing County Clerk's Office stamps of July 20, 1976 and March 26, 1979, respectively, and the other without any such stamp, simply dated November 23, 1976, fail to meet the objections stated by this court four years ago. The documents, whether read individually or cumulatively, are still "incomprehensible and unacceptable." They fail to treat the corpus of each trust separately and fail to provide sufficiently detailed explanatory notes illuminating the status of the corpus of each of the trusts, particularly two mortgages which apparently have been or are in the process of being foreclosed (cf. Official Form No. 13 of the Surrogate's Court Procedure Act).

Accordingly, we affirm each of the orders and judgment below. All concur except Kupferman, J. who concurs in the affirmance. Order filed.

EX B



FILED  
AND  
RECORDED  
ON Dec. 23, 1982  
WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
GEORGE SASSOWER and DORIS L. SASSOWER

Index No. 14373/82

Plaintiffs

- against -

DECISION

ERNEST L. SIGNORELLI

Motion date: 10/29/82  
Calendar #75

Defendant  
-----X

COPPOLA, J.

Defendant moves to dismiss plaintiffs' complaint, contending that same is barred for res judicata, absolute immunity, that the Statute of Limitations has run and there are prior pending actions between the parties for essentially the same Causes of Action pleaded in the instant matter. The moving papers detail the various proceedings brought before various judicial tribunals in various jurisdictions and I do not find it necessary to expand further thereon. Suffice it to say that the plaintiffs have embarked on a course of endless, unceasing, vexatious litigation directed at the defendant herein. Notwithstanding, the plaintiffs urge that if this latest complaint sets forth even one cognizable Cause of Action, the

Exhibit #C

motion to dismiss must be denied. I do not feel the law requires such a narrow interpretation and confined approach. On the contrary, there must come a time when the multitudinous actions and the mountains of papers generated therefrom must cease in the interest of preventing judicial grid-lock. To my view, that time has arrived. The instant action involves nothing more than a rehash of allegations previously asserted in one form or another, in one forum or another, and either dismissed or presently pending. Accordingly, the motion is granted and the complaint dismissed [CPLR 3211(a) subd. 4,5].

It seems clear that the plaintiffs are bent upon a course of litigation harassment and under these circumstances and to avoid an unnecessary erosion of judicial resources, the plaintiffs are hereby enjoined from instituting any further proceedings in any New York State Courts based upon incidents relating to the Matter of Eugene Paul Kelly.

That branch of the motion seeking to enjoin the plaintiffs from bringing suit against attorneys charged by law with the responsibility of defending public officials is denied without prejudice to a renewal of the motion upon appropriate showing that the relief requested is required.

Plaintiffs' cross-motion to disqualify Robert Abrams

as defendant's attorney is denied.

Submit order on notice.

Dated: December 22, 1982  
White Plains, New York

---

MATTHEW F. COPPOLA  
JUSTICE OF SUPREME COURT

GEORGE SASSOWER, ESQ.  
DORIS L. SASSOWER, ESQ.  
Plaintiffs Pro Se  
283 Soundview Avenue  
White Plains, New York 10606

HON. ROBERT ABRAMS,  
Attorney General of the State of New York  
Attorney for Defendant  
Jeffrey I. Slonim, Esq., Assistant Atty Gen'l of Counsel  
Two World Trade Center  
New York, New York 10047

FILED  
AND  
ENTERED  
ON Dec 20 1982  
WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

DORIS L. SASSOWER and CAREY A.  
SASSOWER,

Index No. 3607-1979

Plaintiffs

DECISION

- against -

ERNEST L. SIGNORELLI, JOHN P. FIN-  
NERTY, WARDEN REGULA, ANTHONY MASTRO-  
IANNI, and THE NEW YORK LAW JOURNAL  
PUBLISHING COMPANY,

Motion date: 9/2/82  
Calendar #2

(Special I)

Defendants


COPPOLA, J.

There have been presented to this Court a series of motions referable to this action. These motions and decisions referable thereto are as follows:

Plaintiff moves to strike 5 affirmative defenses asserted by defendant SIGNORELLI, 8 affirmative defenses asserted by defendant NEW YORK LAW JOURNAL, and 8 affirmative defenses asserted by defendants FINNERTY, REGULA, and MASTROIANNI. As regards that branch of the motion seeking to strike the affirmative defenses of defendant SIGNORELLI, the motion is granted to the extent that the 1st and 4th affirmative defenses are stricken, and in all other respects the motion is denied. The first affirmative defense asserted by defendant

117  
NEW YORK LAW JOURNAL is stricken and as to the remaining defense, the motion is denied. As to defendants FINNERTY, REGULA and MASTROIANNI, the 3rd and 5th affirmative defenses are stricken and the motion is otherwise denied. That branch of the motion seeking summary judgment as against the defendants is denied in all respects.

Plaintiff's motion that the Court reject the memorandum submitted on behalf of defendant SIGNORELLI is denied. The Court will accord to this submission whatever weight it deems appropriate under the circumstances.

 Plaintiff's motion that ERICK LARSEN, Assistant Suffolk County Attorney, be disqualified from acting as counsel on behalf of defendants FINNERTY, REGULA and MASTROIANNI, is denied as is that branch of the motion seeking an order requiring ERICK LARSEN to submit to an Examination Before Trial.

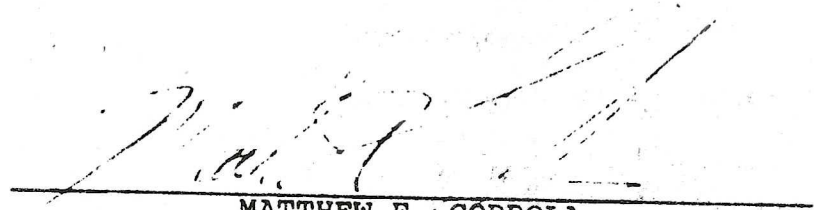
Each of the defendants moves for summary judgment. These motions must be denied. As is the case with plaintiff's motion seeking similar relief, factual issues exist not susceptible of determination on the papers submitted.

Each of the defendants moves for a stay of disclosure due to pending motions for summary judgment. These motions are denied as moot in view of the decisions rendered herein.

Each of the defendants moves for a stay of all proceedings in this case pending the determination of an appeal by the Appellate Division in a related case. This motion is denied.

Submit order on notice.

Dated: December 20, 1982  
White Plains, New York



---

MATTHEW F. COPPOLA  
JUSTICE OF SUPREME COURT

**DORIS L. SASSOWER, P.C.**  
**Attorney for Plaintiffs**  
**283 Soundview Avenue**  
**White Plains, New York 10606**

**HON. ROBERT ABRAMS, Attorney General**  
**Attorney for ERNEST L. SIGNORELLI, Defendant**  
**Two World Trade Center**  
**New York, New York 10047**

**Stephen M. Jacoby, Esq., Assistant Attorney General of Counsel**

**DAVID J. GILMARTIN, ESQ., County Attorney, County of Suffolk**  
**Attorney for Defendants JOHN P. FINNERTY, WARDEN REGULA, and**  
**ANTHONY MASTROIANNI**

**Department of Law**  
**Veterans Memorial Highway**  
**Hauppauge, New York 11788**

**Erick F. Larsen, Esq., Asst. County Attorney of Counsel**

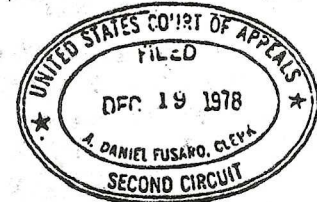
**ABRAMS & SHEIDLOR, ESQS.,**  
**Attorneys for Defendant THE NEW YORK LAW JOURNAL PUBLISHING COMPANY**  
**598 Madison Avenue**  
**New York, New York 10022**

United States Court of Appeals

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the nineteenth day of December, one thousand nine hundred and seventy-eight.

Present: HONORABLE HENRY J. FRIENDLY,  
HONORABLE WALTER R. MANSFIELD,  
HONORABLE THOMAS J. MESKILL,



Circuit Judges.

GEORGE SASSOWER,

Plaintiff-Appellant,

Docket No. 77-7511

-against-

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

Action #1

Defendants-Appellees.

GEORGE SASSOWER, individually, and on behalf of all others similarly situated,

Plaintiff-Appellant,

-against-

Action #2

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,  
VINCENT G. BERGER, JR.; JOHN P. FINNERTY,  
ALLAN CROCE, ANTHONY GRZYMALSKI, CHARLES  
BROWN, LEONARD J. PUGATCH, HARRY E.  
SEIDELL, and THE COUNTY OF SUFFOLK,

Defendants-Appellees.

Upon these two appeals from (1) the Memorandum of Decision and Order of the Eastern District of New York, dated September 20, 1977, Jacob Mishler, Chief Judge, and judgment pursuant thereto dismissing with prejudice plaintiff-appellant's complaint in action No. 77-C-1447, and (2) the Memorandum of Decision and Order of the Eastern District of New York, dated March 21, 1978, Jacob Mishler, Chief Judge, denying plaintiff's application for preliminary injunctive relief and the order and judgment of the same court dated April 20, 1978, dismissing with prejudice plaintiff's complaint in action No. 78-C-124, the orders and judgments of the district court in both actions are affirmed.

The actions, insofar as they seek to enjoin proceedings in the Surrogate's Court of Suffolk County, New York, NY, fail to satisfy the threshold "actual case or controversy" requirement of Article III of the Constitution imposed upon those seeking to invoke federal jurisdiction. See O'Shea v. Littleton, 414 U.S. 488 (1974). No immediate threat to the plaintiff-appellant from the alleged illegal or partisan appointment of administrators by the Surrogate's Court is alleged. Plaintiff-appellant's application for a stay of incarceration pending appeal from the state court's adjudication holding him in criminal contempt must be dismissed as moot, in view of the state court's annulment of the contempt adjudication and its release of plaintiff-appellant on bail.



The district court did not abuse its discretion in refusing to enjoin the state court criminal contempt proceedings, in view of the availability of the state court as the forum for adjudication of the issues raised by plaintiff-appellant with respect to those proceedings and plaintiff's actual invocation of state court procedures. See Judice v. Vail, 430 U.S. 327 (1977).

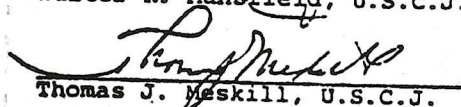
Plaintiff-appellant's damage claims against Surrogate Signorelli, Acting Surrogate Seidell, Public Administrator Mastroianni, Suffolk County Sheriff Finnerty, Assistant Attorney General Pugatch, and Deputy Sheriffs Croce and Grzymalski, to the extent that the claims are based upon acts committed in the performance of their official public duties as part of the judicial process, were properly dismissed on the ground that these defendants are immune from suit founded on such conduct. Stump v. Sparkman, 435 U.S. 349 (1978); Imbler v. Pachtman, 424 U.S. 409 (1976); Pierson v. Ray, 386 U.S. 547, 555-57 (1967); Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir.), cert. denied, 396 U.S. 941 (1969).

In particular, the sheriff and deputy sheriffs acted with reasonable grounds to believe that they were authorized to execute the arrest warrant pursuant to its terms in Westchester County. The process of the Suffolk County Surrogate's Court, including an arrest warrant, N.Y. Judiciary Law §757 (McKinney, 1978), extends statewide, N.Y. Constitution, Art. 6, §1c; N.Y. Surrogate's Court Procedure Act §212 (McKinney, 1978), and the sheriff and deputy sheriffs are obligated to execute the mandate issued by the Surrogate of Suffolk County according to its command, N.Y.C.P.L.R. §2223 (McKinney, 1978); N.Y. Public Officers Law §72-a (McKinney, 1978). See Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir.), cert. denied, 396 U.S. 941 (1969). All other alleged acts, such as failure of the sheriff to serve process at appellant's request, fail to state a claim for relief under 42 U.S.C. §1983.

The allegations against the defendants Vincent G. Berger, Jr., Charles Brown and the County of Suffolk fail to state facts indicating any claim upon which relief might be granted. An allegation, for instance, that Brown, a former Suffolk County employee, embarrassed plaintiff-appellant by exhibiting a "spurious badge or shield" and by loitering and annoying those with whom plaintiff has business relations is wholly insufficient, as are the vague and conclusory allegations with respect to Berger and the County of Suffolk, see Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Williams v. Vincent, 508 F.2d 541, 543 (2d Cir. 1974).

  
Henry J. Friendly, U.S.C.J.

  
Walter R. Mansfield, U.S.C.J.

  
Thomas J. Meskill, U.S.C.J.