SUPREME COURT - STATE OF NEW YORK
COUNTY OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK, :

Plaintiffs, :

-against- :

GEORGE GRAHAM RICE, also known as JACOB S. HERZIG, WALL STREET ICONOCLAST, INC., and ROSE McKERNAN, :

Defendants. :

- -

State of New York)SS.:
County of New York)

KEYES WINTER, being duly sworn, deposes and says:

I am a Special Assistant Attorney General and prior to October 1, 1927, was an Assistant Attorney in charge of the enforcement of the Martin Act, Article 23-A of the General Business Law of the State of New York, and had full charge on behalf of the Attorney General of the State of New York of all investigations and prosecutions brought by him under that Act in the State of New York.

Although I was in full charge, I consulted Mr. Ottinger and his first deputies, Mr. Thomas Fennell and Mr. Oliver B. James, at least once every week with regard to the matters pending in this office and particularly the prosecution of this action and other proceedings referred to by the defendant Rice in his affidavit. The Attorney General and his chief deputies were at all times fully informed of all these matters and were in entire agreement with me about the manner in which I was handling them and the

acts that I and my subordinates were doing in investigating the practices of the defendant Rice and in prosecuting him.

I deny the allegations contained in the affidavit of George Graham Rice that I am in any way actuated by malice or have any personal interest in any proceedings that I have brought against him and his associates. The fact of the matter is that this litigation was a part only of a great number of inquiries, to wit, about ten thousand, pending in our office, and that I necessarily have been unable to give my complete and full attention to this litigation but I have assigned it to subordinates giving it as much of my personal attention as I could.

This action was commenced in February, 1926, and was tried at Special Term Part III before Mr. Justice Valente on March 5th, 1927. The delay in bringing the case to trial was due in part to the attack on the constitutionality of the Martin Act which was finally upheld and declared constitutional by the Court of Appeals in May 1926. The case was noticed for trial in October 1926 but its trial was delayed until March by the repeated requests for adjournment of the defendant's counsel on one excuse or another. The plaintiff at all times has been ready and willing to try this case since October 1926. After the decision of Mr. Justice Valente in March, 1927, an appeal was promptly taken to the Appellate Division which resulted in a reversal, the decision being handed down in the latter part of July, 1927. In the month of August, by agreement with Mr. Nash Rockwood, Attorney for the defendant, I withheld any action in this case on account of his and my vacations during the month of August and part of September. Upon my return, the order to show caus in this case was promptly signed and served upon the defendant.

The answering affidavit of George Graham Rice is for the most part filled with arguments, inuenda and conclusions. What statements of facts it makes are for the most part from hearsay.

The difficulty of answering an affidavit of this character is manifest and I am limiting myself to a brief statement of the facts disputing and showing the utter falsity of the greater part of his allegations and conclusions.

1. As to Incident No. 1 – The statement of the so-called raid upon the office of the Wall Street Iconoclast at 44 West 57th Street is utterly false. I was present at the office of the Wall Street Iconoclast at West 57th Street on January 7th, 1926, accompanied by Mr. Milholland, a Deputy Attorney General, and a trooper. Subpoenas were served upon Mrs. Wolf requiring her examination before me at that place. She refused to be sworn and refused to answer any questions in direct violation of the Martin Act which makes such conduct a misdemeanor and subjects her to an arrest. Mr. Milholland of his own motion directed the trooper to put Mrs. Wolf under arrest for failure to answer, a procedure ordinarily followed with refractory witnesses. The trooper used no violence whatever. Subsequently Andrews and McGuiness entered the room and after some conversation with them the examination was adjourned to the Attorney Gneral's Office where it was agreed between counsel that Mrs. Wolf should attend and submit to the questions. Thereupon she was released and subsequently appeared at the Attorney General's office and continued the examination and answered questions put to her by the Attorney General.

2. As to Incident No. 3 – The facts about this are as follows: An investigator employed by me named Murray Stravers was informed by Sonking and

Daniels that two professional swindlers named Guest and Quinn had in their possession stock of the Idaho Copper Corporation and a check and that they believed that this stock had been taken by Guest and Quinn from the stockholders by means of false representations made over the telephone. My investigator was instructed by me to have Sonking discover the name of the victim of this swindling and to get possession of the stock and hold on to it until the victim could be brought on to New York and swear out a warrant for Quinn's and Guest's arrest. While they were engaged in carrying out these instructions, Detective Doughtery and Officer McCann called at the Attorney General's office. They asked me if I had any information about this particular transaction and I told them that Sonking and Daniels were working for the State in an endeavor to apprehend the real thieves, Guest and Quinn. I arranged a conference between Sonking and Daniels and Dougherty and McCann at an office on Broadway. I informed Sonking and Daniels to have the stock with them at the conference and to show it to Dougherty and McCann and to give them any information they desired. Instead of conferring with Sonking and Daniels and co-operating with the State, these detectives violated my instructions and arrested Sonking and Daniels.

Two or three days later they were indicted by the Grand Jury, as I understood at the time, for having stolen property in their possession. This indictment was procured over my protest made to Mr. Ferdinand Pecora and after I had obtained an order from Judge McIntyre directing the District Attorney to permit me to conduct the proceedings before the Grand Jury and give the entire evidence of the transaction. Contrary to the statement contained in Rice's affidavit, my application to Judge McIntyre was not denied but it was granted. The order to that effect is on file at the Clerk's office in General Sessions.

Immediately after the arrest mentioned in Incident No. 3 I was in frequent consultation with Judge Otto Rosalsky, Justice of General Sessions, who was fully informed by me of the transactions of Harold Sonking. The reason for my consulting with Judge Rosalsky was that Sonking was out on a suspended sentence and was reporting to Judge Rosalsky monthly and I had informed Sonking that if he would work for the State in this transaction, his conduct would be taken into consideration in connection with his sentence before Judge Rosalsky. I also submitted to Judge Rosalsky the correspondence between myself and Mr. Banton and it had his full approval. Furthermore, the letter referred to in Incident No. 3 dated April 23, 1926 and written by me to Hon. Joab H. Banton in which I assumed responsibility for the acts of Sonking and Daniels in receiving the property of McCarthy from Quinn and Guest, was discussed with Mr. Pecora before I wrote the same. It was written in response to his suggestion in order to make the same a part of his application to cancel bail and later to dismiss the indictment. Mr. Pecora was in full possession of all the facts relating to the arrest of Sonking and Daniels and was in full agreement with me that the indictments against them were not justified and should be dismissed. I deny that these two men, Sonking and Daniels, were engaged in stealing at the time of their arrest. The securities that they had in their possession, of which I noted the serial numbers and the names, were restored to McCarthy through the Police Department and this was done solely through the efforts of my detectives Sonking and Daniels. Instead of criticising them, they are to be commended for their work. The affidavit of George Graham Rice makes no reference whatever to the recovery of this property.

In connection with my letter of April 23, 1926, I was visited by Eugene McGee, a disbarred lawyer, and Arnold Rothstein, a notorious professional gambler, at the office of the Attorney General on March 18, 1927, and was threatened by them that unless I discontinued my proceedings against Rice, including the action against him with regard to the Columbia Emerald stock, Rice would ruin me socially and professionally and drive me out of public life. The conversation between the two gentlemen and myself was in the presence of Deputy Attorney Generals Milholland and Donovan and lasted about two hours. The impression was given me in so many words during this conversation that Rice would use my letter to Banton, which had come into his possession, and would publish it with other matter in his paper the Wall Street Iconoclast and elsewhere and would also have me prosecuted.

About two weeks after this conversation, Henry A. Wise, one of Rice's trial counsel, called upon me and in the presence of the Attorney General made a similar threat. The statement referred to on page 21 of Rice's affidavit made to the New York Evening Post is a part only of the interview that I gave to the reporter in which I set forth this attempt to illegally and criminally coerce me to refrain from performing my official duties.

I deny that there was any attempt on my part to stifle any prosecution on account of the theft of McCarthy's stock, but I do assert that I was attempting to obtain an indictment against the actual thieves who took his property, namely, Guest and Quinn, and that if it had not been for the interference of this defendant Rice and his procuring the arrest of my two operators, I would have obtained sufficient evidence not only to indict them but to have convicted them. Attached hereto is a copy of the order of Mr. Justice

McIntyre which directly disputes the allegations of Rice that my application to appear before the Grand Jury was denied.

3. As to Incident No. 4 – The statements appearing in Rice's affidavit on page 24 under this heading are all of them false and misleading. The proceedings referred to by Rice before the Grand Jury of Nassau County were not thrown out and dismissed, but culminated in the indictment of Nat Calvin and Edward Harrison under the name of John Doe and Richard Roe. The testimony before the Grand Jury which was produced by Sonking and Daniels convinced the Grand Jury that Calvin and Harrison, impersonating Rice, had procured property of Dr. Douty by false representations. The defendant Rice was a witness before the Grand Jury only to the fact that he had not communicated with the witness Douty and that Calvin and Harrison were not his employees. The defendant Rice was not charged with the commission of a crime in those proceedings and he had nothing whatever to do with them except as a witness who was subpoenaed to appear and answer to the questions that were put to him by Assistant District Attorney Wood.

4. As to Incident No. 5 – The indictment obtained against Rice referred to in this paragraph was found by the Nassau County Grand Jury in March, 1927 upon the testimony of Dr. Douty and other witnesses. Upon the defendant's motion to inspect the minutes, Judge Scudder held in open court that the indictment was invalidated because the Deputy Attorney General Donovan who conducted these proceedings had offered in evidence before the Grand Jury the complaint in this action. Upon this grounds, as he stated in open court, he granted the motion to inspect. This took place as I recall it on March 16, 1927. The following day I was called up on the telephone by Nash

Rockwood, the attorney for Rice, who asked me if I would consent to dismiss the indictment if his client would repay to Dr. Douty in cash all the money that he had lost through buying stock from Rice. He mentioned the sum of $9000 to me and stated that he had it in his inside pocket ready to hand over to Douty when the indictment was dismissed. He also stated to me that Mr. Lewis Marshall, their counsel, had given an opinion that the payment of this money would not be a compounding of a felony. I told Mr. Rockwood that I believed the indictment was invalid and should be dismissed, but that the payment of this money to Douty must not be taken as consideration of the dismissal of the indictment. He assured me however that notwithstanding this, Dr. Douty would be fully compensated for his losses by Mr. Rice. He also added that his client was under very heavy legal expenses on account of the indictment and that it would cost him $20,000 to argue the motion to dismiss the indictment. I then said that under the circumstances I would consent to dismissing the indictment and that if Dr. Douty was reimbursed his losses that would be taken into consideration by me as an act of good faith on Rice's part. Shortly afterwards, Mr. Rockwood submitted to me a stipulation dismissing the indictment which I signed on behalf of the Attorney General and I am informed that Mr. Edwards, the District Attorney of Nassau County, also signed. In this connection I was also informed by Mr. Rockwood that Mr. Edwards had told him that he had no objection to dismissing the indictment. The statement in Rice's affidavit that I voluntarily called Rice's counsel on the telephone and offered to consent to a dismissal is utterly false, as is also the inuenda that I dismissed the indictment for any other reason than stated by me. I also deny that I gave out any publicity with regard to this indictment. The only article that I saw relating to the same in the paper was a short statement

emanating from Mineola. I had nothing whatever to do with this publicity and did not know about it until I saw it in the paper.

5. As to Incident No. 7 – I deny that I ever sent Police Detective McGean to call upon Rice and state that I would cause his indictment in three upstate counties. Whether or not McGean made any such statement to Rice, I am utterly ignorant but if he did so, it was entirely of his own responsibility. I certainly am not in the habit of discussing the matters in the Attorney General's office with Police Detectives.

To the letter referred to in Incident No. 7 signed by Nash Rockwood and addressed to the District Attorney of the County of New York was attached a copy of the Wall Street Iconoclast which I have attached to this affidavit.

Subsequent to the receipt of this letter, Mr. Kreiger, the District Attorney of Cattaraugus County, convened the Grand Jury and subpoenaed several witnesses upon whose testimony the Grand Jury found an indictment against the defendant Rice. The minutes of the proceedings before the Grand Jury show that Dr. Allen was induced by Rice to buy about 30,000 shares of the stock of the Columbia Emerald Development Corporation by false statements and that he paid Rice approximately $11,000 by reason of false statements of the value of this stock and by the same fraudulent scheme that is proven in this action. Reference is hereby made to these minutes and I am prepared to substantiate this statement by submitting the minutes if necessary.

6. As to Incident No. 8 which refers to the speech I made before a gathering of the employees of the Better Business Bureaus of the country on September 20, 1927, at the Bar Association in New York City, the people whom I addressed at this meeting were the investigators of this bureau which is a quasi public organization of the

business men to suppress fraudulent practices in the sale of securities and merchandise. It is maintained entirely by public subscriptions from business men and assists by investigation and gathering of facts, the various prosecuting officers throughout the country. Since I took office I have worked with a great many of the men who attended this meeting and enjoyed a confidential and friendly relationship with all of them on account of our mutual co-operation. The loyal and public spirited members of this bureau have been constantly vilified by George Graham Rice in the same articles in which he has vilified me and the Attorney General of this State.

My address to these gentlemen was delivered in a humorous vein with exaggerations without any idea that it would be taken or considered seriously. The stenographic minutes of my speech show that my remarks, and particularly those about George Graham Rice, were punctuated with laughter. The ridiculousness of the speech can be readily seen by my opening remark: “Confidentially I don’t want anybody in the Better Business Bureau to disclose anything I say here because Mr. George Graham Rice is likely to print it and put me behind the bars.” The stenographic minutes show that this was followed by laughter. The intentional ridiculousness of this remark is apparent when it is considered that the whole proceedings were being reported and that I was preceded by the President of the New York Stock Exchange with a prepared address which had already been given out to the press. So, also, my remarks were intentionally ridiculous about the constitution and the raids made by the Attorney General’s office upon bucket shops and our walking off with hushaphones and everything but jewelry. Each of these remarks was followed by laughter. They were intended to be humorous and were considered so. This speech was nothing but an attempt to be amusing before a gathering

of acquaintances and friends who had been subjected to an irritating campaign of unjust vilification at the hands of this defendant when both they and I had been merely attempting to do our duty. For a man like this defendant Rice to secrete a reporter in a gathering like this and publish such a speech of mine and use it for the purpose of defeating the ends of justice in this way, is a most atrocious piece of bad taste and unscrupulous conduct and utterly without conscience.

The report of the speech attached to the defendant's papers is incomplete as the notations about the laughter are omitted.

The defendant Rice since March 1927 has cunningly and assiduously sought to make this litigation a personal controversy between me and himself and that I am actuated by malice only. I have consistently refused to be drawn into a personal controversy with him and have declined to answer the scandalous and libelous matter that he has been publishing about me and distributing throughout the United States. I am submitting herewith copies of his paper, the Wall Street Iconoclast, in addition to that one attached to the affidavit of Nash Rockwood which clearly show the motive of this defendant in attacking me and inciting the stockholders of the Idaho Copper Corporation and of his other corporations to transfer their animus from him to me and to put the blame upon me for the depression in his stock. I herewith categorically deny each and every charge that Rice has made against me with regard to publishing any matter about his stocks or distributing any circulars among his stockholders. I have never known anything about these circulars until they were called to my attention either through his paper or by some outsider. They are obviously the work of some competitor of this defendant who is trying to switch these stockholders into other stocks.

In reference to the collateral matter injected into this case by the defendant Rice, I wish to call the attention of the court to the same tactics followed by him in the trial of an indictment against him in January, 1920, for grand larceny. The venue of the indictment was New York County. The record on appeal in that case shows that Rice claimed that his prosecution was the result of a conspiracy against him between the District Attorney and "Wall Street". Mr. Rice testified to certain specific instances in an endeavor to prove his charges. At folio 3078 of that record, and after enumerating many instances of alleged corruption, the following question and answer appears:

> "Q Now have you finished your answer, Mr. Rice?
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> "A I will finish it by making this statement, that at least a thousand things have happened, day by day, in the course of my duties as editor of the New York Mining Age, and as the head of house of George Graham Rice, from 1914 to date, that convinced me, beyond the shadow of a doubt, that the District Attorney's office of this county is protecting criminals on Wall Street, while they filching from the American public anywheres from $100,000,000 upwards."

The trial court permitted the District Attorney to place witnesses on the stand to deny charges made by Rice. Among those witnesses was District Attorney Swann himself and Ex-Governor Whitman, also a former District Attorney. The jury brought in a verdict of guilty for grand larceny in the first degree. The defendant Rice appealed and the judgment appealed from was reversed and a new trial ordered "upon the ground that reversible error was committed in permitting the testimony to be received in evidence of the witnesses Whitman, Swann, Perkins, Vorhaus, Goldstein, Ecker and Kilroe, and that thereby a collateral issue was raised quite apart from that of the guilt of the defendant upon the indictment in question, the decision of which adversely to the defendant must

have prejudiced the determination of the main issue and prevented a fair trial of the case. Settle order on notice."

Mr. Justice Martin, however, delivered the following dissenting opinion in which Mr. Justice Smith concurred:

> "The guilt of the defendant having been conclusively established, I think the jury would have arrived at the same result if the errors committed on the trial had not been committed. I therefore vote to affirm."

This case is reported at 210 A.D. 806; 205 N.Y.S. 943.

Sworn to before me this

18th day of November, 1927. ____________________________

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