

SITTING AS COURT OF IMPEACHMENT

JOURNAL OF THE SENATE

Tuesday, July 23, 1957

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The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 9:30 o'clock A. M., in accordance with the rule.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable Thomas D. Beasley and Honorable Andrew J. Musselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt and Honorable Glenn E. Summers, appeared in the seats provided for them.

By direction of the Presiding Officer, the Secretary of the Senate called the roll and the following Senators answered to their names:

Adams	Carraway	Hair	Neblett
Barber	Clarke	Hodges	Pearce
Beall	Connor	Houghton	Pope
Belser	Davis	Johns	Rawls
Bishop	Dickinson	Johnson	Shands
Brackin	Eaton	Kelly	Stenstrom
Branch	Edwards	Kicklitter	Stratton
Cabot	Gautier	Knight	
Carlton	Getzen	Morgan	

—34.

A quorum present.

CHIEF JUSTICE TERRELL: Some of the Senators suggested that we start these proceedings with prayer. There certainly can't be any objection to anything of that kind in a country like ours.

The Senator from the Twenty-Fifth will offer the Invocation this morning.

SENATOR KNIGHT: May we pray, Blessed Lord, we beseech Thee, Supreme Judge of the universe, to look upon this body here assembled with sympathy; to give them understanding, give them the strength and the courage to know, recognize and do their duty, and in all that we do, may we revere and respect Thy Holy Name.

In the name of Our Savior, we pray. Amen.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Monday, July 22, 1957, was dispensed with.

The Senate daily Journal of Monday, July 22, 1957, was corrected and as corrected was approved.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will make the proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

SENATOR SHANDS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Shands.

SENATOR SHANDS: I received this morning a communication relative to Senator Bronson not being here, from the physician in the case, and if there's no objection, I think that it should appear in the record, as to why Senator Bronson is not here; and I move that it be admitted to the record.

CHIEF JUSTICE TERRELL: Is there a second to the motion?

SENATOR BELSER: Second the motion.

CHIEF JUSTICE TERRELL: You've heard the motion. All in favor of it let it be known by saying "aye." Opposed, "no."

The "ayes" have it, the motion is passed, and the excuse will be recorded as part of the record.

KISSIMMEE HOSPITAL AND CLINIC

423 Church Street . . Kissimmee, Florida

July 20, 1957

TO WHOM IT MAY CONCERN:

This is to inform you that Mr. George Bronson is a patient under my care and is critically ill with a possibility of death at any time. Prognosis is uncertain and it is my considerate opinion that the patient would be much helped by the presence of his son at this time.

Yours very truly,

MAURICE L. JEWELL, M. D.

MLJ/dmc

CHIEF JUSTICE TERRELL: Are you ready to proceed, Mr. Musselman?

MR. MUSSELMAN: We're waiting for one of the Senators, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Musselman.

MR. MUSSELMAN: Mr. Chief Justice, before I decide as to our opening statement, I would like to know the intention of counsel for the respondent, as to what they intend to do about their opening statement at this time.

CHIEF JUSTICE TERRELL: It's a long-established practice in the United States Senate that the leaders on each side for the Managers and for the respondent to open these proceedings with a statement. The purpose of that statement is to give the Court an outline of what you intend or expect to prove, and the substance of your pleadings, and, in other words, give the Court a picture of the case, that they will understand the objective, and at this point, I think it's proper that that be done, if counsel are prepared to.

MR. MUSSELMAN: Does counsel for the respondent wish to make an opening statement at this time, or do they wish to reserve their opening statement?

MR. HUNT: Counsel for the respondent will abide by the ruling of the Chair.

SENATOR SHANDS: Mr. Chief Justice, I would like to make an inquiry of this Senate as to what is going to be the disposition of - - - every morning, every time we assemble, somebody is absent from roll call. We have one absent this morning, and as was stated on this floor yesterday, the time of every member here is just as valuable as any other member's time; and I would like to see some definite rule made by this group, as to what is going to be your disposition in compelling attendance here by the members of this Senate.

I think that should be decided before we proceed any further on this trial.

CHIEF JUSTICE TERRELL: Senator Shands, I think you're entirely correct in your position, or suggestion, whichever it is.

SENATOR SHANDS: Now, we've got to hold up here on account of one member being absent. There ought to be some way that we could handle those situations.

CHIEF JUSTICE TERRELL: I suggest to the Rules Committee that - - - I understand, under the Rules, the Senate can cite a man for contempt, but that doesn't cure the evil; and I suggest that the Rules Committee bring in something in the morning about - - - unless you've got something in the Rules that covers it already, to bring in something tomorrow morning.

SENATOR DAVIS: Mr. Chief Justice, the only thing in the Rules to cover a situation of this type, as I understand, is this, that if a Senator is not present during the taking of testimony, he is from then on disqualified to act. I don't know whether that would apply if a man were two or three minutes late.

Personally, I think there ought to be some fine placed on everybody who is late, just the same as it would be in Court. However, that's merely my own personal opinion.

CHIEF JUSTICE TERRELL: Well, that's the way those matters have been handled in the United States Senate in trials, and those are the Rules that we're attempting to follow here, and I think that that's something which applies to a witness' absence, or a member of the Senate.

SENATOR DAVIS: Mr. Chief Justice, I move that we recess here for about fifteen minutes while the Rules Committee meets and reports back.

(The motion was seconded from the floor)

CHIEF JUSTICE TERRELL: Gentlemen, you've heard the motion and the second. All in favor, let it be known by saying "aye." Opposed, "no."

The "ayes" have it. The Senate will be at ease for fifteen minutes.

SENATOR DAVIS: Mr. Chief Justice, as Chairman of the Special Rules Committee, I'd like to request that the Chief Justice, together with the President of the Senate, meet with the Committee in the President of the Senate's office immediately.

Whereupon, the Senate stood at ease at 9:45 o'clock A. M., until 10:00 o'clock A. M., when it was called to order by the Chief Justice.

CHIEF JUSTICE TERRELL: The Senate will come to order. Unless some member questions the presence of a quorum I hereby declare a quorum present and we will dispense with the calling of the roll.

At this point Senator Boyd entered the Senate Chamber and asked to be recorded as present.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: The Special Rules Committee has had a meeting, together with the Chief Justice and the President of the Senate, and we have suggested the following rule, which I'll ask the Secretary of the Senate to read.

SECRETARY DAVIS: (Reading): "On and after July 23, 1957, during the deliberations of the Senate of the State of Florida, sitting as a Court of Impeachment, all the members of the Court, witnesses, attaches, and others connected with the Court or attached to it in any way, who fail to respond with their presence at the appointed hour at each of its meetings, shall have imposed on them a fine of fifty dollars unless a reasonable excuse to be accepted by the Court is offered for their absence. An excuse should be in the hands of the Secretary of the Senate on meeting."

SENATOR DAVIS: Mr. Chief Justice, Members of the Senate, there's just one part of that rule that I think needs a little explanation, and that is with reference to witnesses. We have "at the appointed hour."

It is our understanding that the party summoning the witness should make that appointed hour, say, at ten or eleven or two o'clock, tell the witness to be here at that time, and then, if the witnesses are not here, they, too, will fall under the rule.

Mr. Chief Justice, I move the adoption of the rule.

SENATOR SHANDS: Second the motion.

CHIEF JUSTICE TERRELL: Gentlemen of the Court, you've heard the motion and the second. Any further question?

All in favor of the rule let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the rule is adopted.

Mr. Musselman, it's been suggested that the witnesses in this case might be called in and put under the rule prior to the - - - as I understand it, both sides want the witnesses put under the rule, and they should be called in and put under the rule before you commence your statement.

MR. MUSSELMAN: All right, sir. We do not have, of course, all the witnesses that we intend to use throughout the trial.

CHIEF JUSTICE TERRELL: Well, advise those that you have present, and as they come in, they will be treated the same way.

MR. MUSSELMAN: All right, sir.

Is the Sergeant-at-Arms going to call - - - we request that he call the witnesses in.

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: Mr. Chief Justice, may I take this opportunity to announce the absence of my associate, Mr. Pierce, due to illness.

He's confined under medical care, to his room in the Duval Hotel, but he expects to be here.

CHIEF JUSTICE TERRELL: You've heard the announcement, gentlemen.

MR. BEASLEY: Mr. Chief Justice, and Members of the Court:

It has been agreed between the counsel for the - - - on the part of the House and the counsel for the respondent, that all witnesses just simply remain out of the Senate Chamber, including the Gallery.

In other words, they are to remain out of the hearing of the Court.

CHIEF JUSTICE TERRELL: The Secretary tells me that Room thirty-one has been prepared for these witnesses, and I would suggest, in addition to what you say, that they repair to Room thirty-one, where they can be found.

MR. BEASLEY: That's fine.

CHIEF JUSTICE TERRELL: Room thirty-one is through the door and to the right, for any of you who don't happen to know it.

MR. BEASLEY: Mr. Chief Justice, there may be some witnesses in the Gallery at this time, who have been subpoenaed, and if there is, they should retire from the Gallery.

CHIEF JUSTICE TERRELL: If there are witnesses in the Gallery, you should observe the suggestion that's just been made, that is, to go to Room thirty-one, on this floor.

UNIDENTIFIED MAN (In Gallery): Your Honor, may I ask a question?

CHIEF JUSTICE TERRELL: Yes.

UNIDENTIFIED MAN: I have been requested to be here this morning to make myself available. I have not been subpoenaed as a witness.

CHIEF JUSTICE TERRELL: Well, I think you'd come in that class, Mister; so, if you'll just come down here and get in Room thirty-one, why, that will be in compliance with the rules.

MR. MUSSELMAN: Mr. Chief Justice, they are getting the witnesses now. I'm sorry for the delay.

CHIEF JUSTICE TERRELL: Now, as I understand, these witnesses are not to be sworn until they come in to testify (indicating several persons who had come into the Senate Chamber, and then were escorted out).

MR. MUSSELMAN: All right, sir.

CHIEF JUSTICE TERRELL: Mr. Musselman, are you ready to proceed?

MR. MUSSELMAN: Yes.

CHIEF JUSTICE TERRELL: Do you have any objection to the procedure, that is, as to Mr. Hunt making his statement - - -

MR. MUSSELMAN: Yes sir, we would like for the rule to be complied with, as to Mr. Hunt making his opening statement at this time.

MR. HUNT: I know of no rule, Mr. Chief Justice, which prevents the respondent from reserving his privilege of opening statement until the conclusion of the State's case, and that's what we intend to ask for, with the permission of the Chair.

CHIEF JUSTICE TERRELL: I think there's no rule that would prohibit making your statement, but I think the practice has been, Mr. Hunt, that both statements are made here at the opening; that's been my observation from a study of practice in the United States Senate, that both - - - unless there is consent to it, why, both statements are made at the outset.

MR. HUNT: Well, I have two thoughts in mind, Mr. Chief Justice: An opening statement, as to what the defendant proposes to prove would be of much more value to the members of the Court at the conclusion of the State's case, and before the defendant begins the production of his own case; and in the second place, it will permit this proceeding to begin a great deal earlier if the State would make their opening statement, and then begin calling their witnesses.

We'll make our opening statement when the State has finished with their presentation of testimony, if there's no objection.

MR. BEASLEY: We object to that, Mr. Chief Justice, and Members of the Court.

The rule, I believe, that has been followed, as the Chief Justice announced this morning, is that both sides make their opening statements before any testimony is produced.

MR. HUNT: Mr. Chief Justice, there is no such rule.

CHIEF JUSTICE TERRELL: I don't know of any written rule to that effect, but I think the practice has been - - -

SENATOR KNIGHT: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: - - - otherwise.

What is it, Senator Knight?

SENATOR KNIGHT: For the purpose of expediency, I move that the defendant be allowed to make his opening statement at the conclusion of the State's case.

SENATOR CLARKE: I second the motion.

CHIEF JUSTICE TERRELL: You've heard the motion. All in favor, let it be known by saying "aye." Opposed, "no."

The "ayes" have it, and the motion prevails.

MR. BEASLEY: Mr. Chief Justice, at this time I would like to move that Mrs. George E. Holt be excused from the rule, and be allowed to sit in on the hearing, if she likes.

CHIEF JUSTICE TERRELL: Any objection to Mr. Beasley's motion? If there's no objection, of course, that will be the order; Mrs. Holt can sit here at the table, at the counsel table.

SENATOR JOHNS: Mr. Chief Justice, is Mrs. Holt going to be a witness in this case?

CHIEF JUSTICE TERRELL: Will Mrs. Holt be a witness?

MR. BEASLEY: Well, she may or she may not, but I'd just like for her to be excused from the rule, and be allowed to sit in the hearing.

I think that's convenient with the Senate.

CHIEF JUSTICE TERRELL: Senator Johns, if the State has - - - attorneys for the Managers have no objection to Mrs. Holt sitting here, why, that - - -

MR. HUNT: Judge Holt would be delighted to have Mrs. Holt sit by him, and I think it's a gracious gesture on the part of the Managers.

CHIEF JUSTICE TERRELL: That will be the order, then, that Mrs. Holt will be permitted to sit here at the table with Judge Holt, her husband.

SENATOR STENSTROM: Mr. Chief Justice, may I inquire as to how long the accused and the House Managers are going to have for these opening and closing statements?

CHIEF JUSTICE TERRELL: I think, under the rules, Senator Stenstrom, they're limited to thirty minutes.

Go ahead, Mr. Musselman.

MR. MUSSELMAN: Mr. Chief Justice, and Members of the Senate, sitting as a Court of Impeachment:

In the interests of conserving time, of course, the opening statement of the House Managers will be very brief.

In brief, Circuit Judge George E. Holt is charged, in one Article of Impeachment. You've had much discussion and argument before you, as to the items that go to compose the charge, as set forth in the one Article of Impeachment.

The central theme of the Article itself, and the misdemeanor in office, as is charged, is set forth in the first paragraph of the second paragraph of the Article, which appears on the May 27, 1957 Journal of the House of Representatives, at Page 1689, and I read:

"The reasonable and probable consequences of the actions and conduct of George E. Holt hereunder specified and indicated in this Article since he became Judge of said Court, as an individual, or as said Judge, or both, has been such as to bring his Court into scandal and disrepute, to the prejudice of said Court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the State Judiciary and to render him unfit to continue to serve as such Judge."

Thereafter, paragraphs were set forth, (a) through (f), charging him specifically with misconduct in certain facts.

On the opening day of this trial, we submitted a Bill of Particulars, setting forth therein the details, the dates, the times, the amounts and the persons involved in the specifications.

This Bill of Particulars was printed and published in the Senate Journal of the second day, of July 9, I believe. Rather than go into these particular items, I refer you to them; and I believe, upon reading them and following them as the testimony progresses, the one Article of Impeachment, as shown, will become clear to you.

I believe that will conclude the opening statement on the part of the State.

CHIEF JUSTICE TERRELL: Do you have any testimony, Mr. Musselman?

MR. MUSSELMAN: Yes sir. Mr. Joseph J. Gersten will be the first witness on the part of the prosecution.

We would also like to request, Mr. Chief Justice, if it is amenable to the Court, that we be allowed to sit at our table with a microphone during interrogation, rather than standing.

CHIEF JUSTICE TERRELL: If there's no objection, that will be the order.

MR. HUNT: There's no objection, if this wire is long enough for us to get one over here, Judge.

CHIEF JUSTICE TERRELL: If it's not long enough we can have this gentleman here to piece it.

MR. HUNT: Thank you.

Was it the Court's ruling that counsel may sit or may stand, at their own election?

CHIEF JUSTICE TERRELL: Yes, you can sit or stand, as you choose.

MR. HUNT: Sir?

CHIEF JUSTICE TERRELL: I say, counsel may sit or stand, as they choose.

MR. HUNT: Thank you, sir.

Judge, we're going to have to make some other arrangements on account of this set-up. We can't see the witness from here. I don't know whether we ought to move the witness chair forward, or what.

CHIEF JUSTICE TERRELL: I think you'd better move the witness chair forward.

MR. HUNT: Tom, what do you think about moving the witness chair out?

MR. BEASLEY: I think we're going to have some - - - we're going to have to make some arrangement there.

MR. JOHNSON: Mr. Chief Justice, are you ready to proceed?

CHIEF JUSTICE TERRELL: Yes, if you are ready. Thereupon,

JOSEPH J. GERSTEN,

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name and profession now, please sir?

A Joseph J. Gersten. I am an attorney at law.

SENATOR KNIGHT: Mr. Chief Justice, I'd like to have the witness repeat his name.

THE WITNESS: Joseph J. Gersten, G-e-r-s-t-e-n. I am an attorney at law.

BY MR. JOHNSON:

Q When were you admitted to the practice of law in the State of Florida, Mr. Gersten?

A In November, 1947.

Q And where have you practiced since that date?

A I had taken the D. C. Bar, and successfully passed it in 1941.

Q When were you admitted to practice in the State of Florida? Did you testify to that?

A November, 1947.

Q And where have you practiced since that date?

A Dade County, Florida.

Q Mr. Gersten, in the early part of 1955, did you have a conversation with Circuit Judge George E. Holt, concerning lending him some money?

A Yes, I did.

Q Will you just state to the Senate, what was the nature of that conversation, how it came about?

A On an occasion that I happened to be at the Court House, I stopped in to say hello to Judge Holt. While I was there, I had conversed with him, where we had discussed matters concerning national and international matters, and we had discussed, among other things, the preparedness of this country.

We had talked about war; we had talked about the threat of Communism, and - - -

Q Well, just - - - I want you to limit your answer to the conversation concerning the loan, please sir.

A But I - - - I beg your pardon; I was leading up to that.

And after we had finished discussing that, I believe he was on his way out, and I had made an exit with him, and before we had gotten to the outside door, while we were moving on, I had inquired about his son, who was away at college, asked how he was coming along; and Judge Holt had said to me, substantially, that his son was coming along all right. He said that he was driving an old automobile that was costly to maintain; and I had suggested to him, "Why don't you trade

it in?" or "Why don't you buy him a new one?" and Judge Holt said that he could not afford it, and I then had suggested that I would loan him the money with which to buy the car.

Q What was his response when you offered to lend him the money?

A It was not a response, it was - - -

MR. HUNT: Will the witness speak up a little bit, please?

THE WITNESS: It was not a direct response; it was in the form of an acquiescence, I should say; and we had then discussed the type of automobile that he might be interested in, and it was determined that he was interested in a Plymouth car, and - - -

BY MR. JOHNSON:

Q Did he make any request of you concerning helping him to purchase the Plymouth?

A No, he had suggested the type of car that he was interested in, and it was at that time that I told him that I thought that I could get a car for him.

Q Well, what was his reaction or response then? Did he ask you to go ahead and do it?

A It was not a direct request; it was just, as I say, an acquiescence, which would be tantamount to a reply of "see what you can do."

Q Well, Mr. Gersten, did you then, after that conversation, whether you call it "acquiescence," or what you call it, did you then take steps to arrange for the purchase of an automobile?

A Yes, I did.

Q Will you just tell the Senate what you did?

A It was, I believe, the following day that I had made inquiry concerning a Plymouth car at an automobile agency known as Christopher Motors.

Q Who did you deal with there, Mr. Gersten?

A I dealt with a salesman by the name of Ralph Holmes.

Q Did you later make an appointment for you and Judge Holt to go to Christopher Motors to look at the cars with Mr. Holmes?

A I don't recall whether Judge Holt or I went down there. I am inclined to believe that I might have gone down there.

Q Well, did you subsequently go there with Judge Holt?

A Yes, I did.

Q Did you obtain any money from any sources prior to going to Christopher Motors to purchase the Plymouth automobile? Did you get any money to purchase the car? Who furnished the money for the car?

A Oh, I had furnished the money, yes, yes.

Q Well, where did you get the money?

A I had accumulated some money that I had kept in my cabinet in the office.

Q Well, how much money did you get, Mr. Gersten?

A I got \$2,185.

Q Was that in cash?

A Yes sir.

Q Then did you go to Plymouth - - - to the Christopher Motors with Judge Holt, and look at the various automobiles?

A I don't know whether he was with me. He may have been; I don't recall.

That was - - - well, we had gone down there the day that the car was purchased and delivered.

Q I'm speaking of the day the deal was consummated; did you go to Christopher Motors with Judge Holt?

A Yes, I did.

Q How much time did you spend there with him, looking at cars and discussing the price with the salesman?

A Oh, I should say not more than an hour.

Q Well, didn't you do a little trading there, in trying to get the salesman to reduce the price to the best possible deal?

A I believe so, yes.

Q Well, who was doing that? Were you handling the deal, or was Judge Holt doing it?

A I was - - - I think that it was I who broached the subject of obtaining the best price.

Q Mr. Gersten, I would like to ask you this question:

Was it you who handled the whole transaction in the haggling, or whatever you might want to call it, with the salesman throughout?

A Yes, you might say I negotiated for the purchase of the car.

Q Did you handle that, to the exclusion of Judge Holt? That's my question.

MR. HUNT: Is that a question?

MR. JOHNSON: Yes sir.

THE WITNESS: Yes, I would answer that affirmatively.

BY MR. JOHNSON:

Q Was the transaction consummated at that time?

A Yes sir.

Q Did you take any evidence of the loan from Judge Holt?

A Yes, I did.

Q What was the amount of that loan, Mr. Gersten?

A \$2,185.

Q What evidence did you take of that loan?

A I took a demand promissory note.

Q In what amount?

I have here a note. I hand you this note, and ask you if this is the note which Judge Holt gave you at that time?

A Yes, yes, this is the note.

Q Well, what is the amount of that note?

A The amount of the note is \$1,785.

Q I understood you to say that you loaned him a total of \$2,185?

A That is correct, Mr. Johnson.

Q But you took a note only for \$1,785?

A I took a note for \$1,785.

Q Was he to give you some of the other money soon?

A Yes sir. I had an understanding with Judge Holt that he would take steps to sell an automobile which his son was driving, which was physically located in North Carolina, and I was told by Judge Holt that the car, upon its sale, would yield at least \$400, which \$400 would be turned over to me.

Q In other words, you were just depending, then, on him selling the car for as much as \$400?

A Yes sir.

Q The car hadn't been sold, though, at the time you assumed you'd receive the \$400, had it?

A No, it had not been. I was told that it would bring at least \$400.

Q Well, you relied upon that, and took a note for only a portion of what you had loaned him, is that correct?

A I relied upon his representation, yes sir.

Q Did you take any security for that note?

A No sir, I did not.

Q Did you have any understanding as to when the sum of \$2,185 would be repaid?

A An understanding as to the \$400.

Q Well, let me ask you about the \$1,785, as represented by this note. Was there any understanding or agreement, as to when, or if it would ever be paid?

A There was no understanding as to - - - in point of time - - - when it was to be repaid.

Q So, that was in January, the latter part of January of '55, is that right?

A That is correct, Mr. Johnson.

Q Now, subsequent to lending Judge Holt this sum of \$2,185, and taking this note for a portion thereof, were you appointed as a guardian ad litem in the curatorship of E. Vose Babcock?

A Yes sir, I was.

Q Did you subsequently receive a fee for that guardianship?

A I did, sir.

Q I show you this "Order Substituting Guardian Ad Litem," appointing you, dated March twenty-fifth of 1955.

Was that the order by which you received the appointment?

A This appears to be a copy of the order.

Q A photostatic copy?

A Yes.

Q That was approximately two months after you had made this loan without any security to the Judge, is that right?

MR. HUNT: If the Court please, I object to counsel half-way arguing his case, and making a jury speech with his questions to the witness.

MR. JOHNSON: I think I have a right to bring in the point of time.

BY MR. JOHNSON:

Q Let me phrase it this way:

How long after your loan to Judge Holt, which was unsecured, was it before he appointed you as guardian ad litem in this case?

A Approximately two days short of two months.

Q Now, on July 5 of the same year, July 5, 1955, did you receive a fee, awarded by Judge Holt, in said guardianship?

A Yes, I did.

Q I show you this photostatic copy of "Order Discharging Guardian Ad Litem," dated July 5, 1955. Is that the order whereby you received your fee?

A Yes, this appears to be a copy of the order.

Q How much fee did you receive?

A I received a fee of one thousand dollars.

Q Mr. Gersten, was there any agreement between you and Judge Holt that he would repay you this loan by appointing you to receiverships, or guardian ad litem, and give you fees?

A No sir.

Q There was no understanding of that nature?

A No sir.

Q Mr. Gersten, when was the first payment made to you on that note?

A I will have to refer to some records, Mr. Johnson.

Q All right, sir.

A The first payment received for the note was transmitted to me by letter from Judge Holt, dated October 12, 1956.

Q What was the amount of that payment, Mr. Gersten?

A \$500.

Q Mr. Gersten, prior to receiving that payment, on October 12, had you had occasion to be called before a Grand Jury of Dade County, and give testimony concerning this loan to Judge Holt?

A Yes sir.

Q Had you testified, in substance, what you have told the Senate here today?

A I believe I testified there that I had not received any payment on the then existing promissory note.

Q At the time you appeared before the Grand Jury, you had not received any payment whatsoever on the promissory note, had you, Mr. Gersten?

A That is right, sir.

Q Did you see a published report of the Grand Jury, criticizing Judge Holt for borrowing that money from you?

A Yes.

MR. HUNT: I object to published reports, if Your Honor please.

CHIEF JUSTICE TERRELL: Objection sustained.

MR. JOHNSON: If the Court please, the purpose in asking that question concerning the Grand Jury report that was published and disseminated to the public, is for the purpose of showing that no payment whatsoever was made on this note until after a report of the Grand Jury of Dade County had been entered, criticizing Judge Holt for borrowing this money and not repaying it, from a lawyer subject to practice before him, and that is the only reason we're asking this question, and for no other purpose.

MR. HUNT: If Your Honor please, the celebrated Grand Jury report the gentleman refers to has been manually expunged from the record by opinion of the Supreme Court of Florida, as being an unlawful document, and I think any reference to Grand Jury reports which, by law, have been withdrawn and expunged, is improper material to come before this body.

BY MR. JOHNSON:

Q Let me ask you a couple of other preliminary questions.

MR. HUNT: I'd like a ruling from the Chair, if you don't mind, Mr. Johnson.

CHIEF JUSTICE TERRELL: I think that's correct, Mr. Johnson.

BY MR. JOHNSON:

Q Let me ask these questions.

Mr. Gersten, don't discuss the nature of the Grand Jury report, but was this report disseminated in the newspapers?

MR. HUNT: Mr. Chief Justice, I object to the question.

This Senate is composed of very able men, who are able to distinguish the dates of payment, the date of the note, the date of the alleged Grand Jury report, without any reference to Miami newspapers.

CHIEF JUSTICE TERRELL: Will you state your question again, Mr. Johnson?

MR. JOHNSON: I withdraw that, and ask Mr. Gersten to examine this copy of the interim report of the Grand Jury of the Fall Term of 1956, dated the twenty-first day of September, 1956, and ask him if he has had occasion to read this report?

MR. HUNT: I object to the question, your Honor please, and it's irrelevant, immaterial and highly prejudicial to the rights of this respondent.

CHIEF JUSTICE TERRELL: Propound your question again, Mr. Johnson. I was reading this - - -

MR. JOHNSON: All right, sir.

BY MR. JOHNSON:

Q Mr. Gersten, prior to receiving the first payment from Judge Holt, did you have occasion to read that Grand Jury report which I just submitted to you?

A Yes.

Q Mr. Gersten, prior to receiving the first payment on the note, did you also have occasion to read an article in the Miami Daily News, publicly disseminating the contents of that Grand Jury report?

I now hand you a copy of the front page of the Miami Daily News, dated September 22, 1956.

MR. HUNT: If the Court please, the question is highly objectionable and prejudicial to the rights of the respondent.

We object to it.

CHIEF JUSTICE TERRELL: That was not one of the documents that was considered yesterday?

MR. HUNT: No sir.

MR. JOHNSON: Yes sir, it was.

MR. HUNT: No sir.

MR. JOHNSON: Yes sir. Yesterday, at the pre-trial conference, if Your Honor please, we submitted these newspapers, we submitted the Grand Jury report, and asked--

MR. HUNT: Yes, you submitted them, but that was not one of the ones that was agreed to.

CHIEF JUSTICE TERRELL: Let's hear from one at a time - - -

MR. HUNT: Excuse me, Judge.

CHIEF JUSTICE TERRELL: - - - I can't listen to but one.

MR. JOHNSON: If the Chief Justice please, at the hearing before Your Honor yesterday, in an attempt to clarify technical matters of proof, we submitted to counsel for Respondent the same newspaper article which I have just submitted to Mr. Gersten; we submitted to him the copy of the Grand Jury report, and he refused to stipulate that those articles were what they represented to be.

We did not ask him to agree to the admissibility, but asked him to agree only that they were a copy of the Miami Daily News, which publicly disseminated this information, and a copy of the Grand Jury report, which criticized Judge Holt, and those were both presented to counsel, and he had an opportunity to study them both at pre-trial conference, and he did so.

MR. HUNT: Mr. Chief Justice, I had the opportunity, and I objected then, as I am objecting now.

I don't believe that the Senate, or the Chief Justice will permit the naivete of prosecution counsel to bring before this court evidence which, by all rules of law, is improper. You cannot try any man on the basis of newspaper headlines or unlawful, expunged Grand Jury reports by any method, by submission, naively, or otherwise, of the questions regarding them to a witness.

MR. JOHNSON: If the Chief Justice pleases, it is not our intention to try Judge Holt, or any person - - - nor has it ever been my intention, at any time in my public life, to try anyone in the newspapers.

The only purpose for which we are offering this newspaper report and the Grand Jury report, is to show that it was a public dissemination of the Grand Jury report, criticizing Judge Holt for borrowing this money prior to the repayment of any portion of that loan, over a year later.

MR. HUNT: He has admitted that he's trying to get the Grand Jury report before the Court as evidentiary material, and we object to it.

CHIEF JUSTICE TERRELL: I think the evidence in the newspaper report is improper, Mr. Johnson.

I sustain the objection.

MR. JOHNSON: All right, sir. Has the Court ruled upon the introduction of the Grand Jury report at this time?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: Yes sir.

CHIEF JUSTICE TERRELL: Yes, I ruled.

Here's a question that was sent up by Senator Eaton to the Managers:

"Are these documents being discussed in evidence in this cause, notes and orders, and so forth?"

MR. JOHNSON: At this time we offer the promissory note; we offer the order substituting guardian ad litem; we offer the order discharging guardian ad litem, and fixing his fee at \$1,000; and we make a formal proffer in evidence, for the purpose of the record, of the Grand Jury report and the newspaper article heretofore referred to.

CHIEF JUSTICE TERRELL: That's some of the evidence that was agreed to be submitted yesterday afternoon, was it?

MR. JOHNSON: Yes sir, the copies of the file on record in the Circuit Court of Dade County, Florida, I understand, was agreed to by counsel, that if we produced photostatic copies of papers and documents on file, they would be received in evidence.

That's my understanding.

MR. HUNT: If the Court please, we have no objection to the proffer of the promissory note, nor of the two photostats of the orders, and request that they be read to the Court at this time.

We do renew our objection to the newspaper clipping and the outlawed Grand Jury report.

CHIEF JUSTICE TERRELL: The Court's ruled on them.

MR. HUNT: Yes sir.

CHIEF JUSTICE TERRELL: Ruled that they are incompetent.

(Whereupon, the promissory note, the order substituting guardian ad litem, and the order discharging guardian ad litem, approving final report and compensation, were received and filed in evidence as House Managers' Exhibits 1, 2 and 3, respectively)

BY MR. JOHNSON:

Q Now, Mr. Gersten, you stated that the first payment, or repayment on the loan - - -

MR. HUNT: Mr. Chief Justice, I think, in order of evidence, that it would be proper for those orders to be read to the Senate at this point; otherwise, they will be passed over and not again referred to.

CHIEF JUSTICE TERRELL: If there's no objection, the orders will be read.

MR. HUNT: I think it's proper that evidence be explained or read when it's introduced.

SENATOR STENSTROM: Mr. Chief Justice, how long are these orders? I think there are three there.

MR. HUNT: A page each, I think.

CHIEF JUSTICE TERRELL: A page each, Senator.

SENATOR STENSTROM: Mr. Chief Justice, I object to the reading of the orders.

The witness has testified that he was paid a thousand dollars, that he was appointed in March, and that he was paid in July. I don't think the time of the Senate should be taken up.

I so move.

SENATOR SHANDS: Second the motion.

CHIEF JUSTICE TERRELL: Do you move, Senator Stenstrom, do you move that the reading of them be dispensed with?

SENATOR STENSTROM: Yes, I do.

CHIEF JUSTICE TERRELL: All in favor of the motion, let it be known by saying "aye." Opposed, "no."

The "ayes" have it. The reading will be dispensed with.

BY MR. JOHNSON:

Q Mr. Gersten, when did you receive the next payment on the note?

A The next payment I received by letter of transmittal, dated April 11, 1957.

Q What was - - - do you have that letter there?

A Yes sir.

Q What was the amount of that payment, sir?

A The amount of the payment was \$1,285.

Q Mr. Gersten, do you know whether or not that payment was made after the resolution had been introduced in the House of Representatives of the state of Florida, calling for a committee to be appointed to study as to whether Judge Holt should be impeached or not?

MR. HUNT: Mr. Chief Justice, that's argumentative. The Senate can determine those dates.

MR. JOHNSON: I think, if the Court please, it's material to show the sequence of these payments in reference to official action of the Legislature of the State of Florida, I think it's certainly material that the Legislature had this resolution introduced, calling for the investigation of this transaction, and then, a few days after that resolution was introduced, he then paid the larger part of the transaction.

I think that's very material.

CHIEF JUSTICE TERRELL: The objection is overruled.

BY MR. JOHNSON:

Q Do you know whether that was after the resolution was introduced in the House, calling for the investigation of Judge Holt?

A My opinion would be that it was subsequent to the adoption of the resolution.

Q And when was the last payment which you received on the note, Mr. Gersten?

A The sum of \$1,285 that I just referred to constituted the retirement of the principal balance of the obligation.

The subsequent payment I received was by letter of transmittal, dated April 17, at which time I received the interest.

Q And what was that sum, sir?

A The interest was \$221.15.

Q Mr. Gersten, I hand you a check on the Peoples National Bank, signed by Christine F. Holt, payable to J. J. Gersten, in the amount of \$400, dated February 7, 1955. Do you recognize that check, and how do you recognize it?

MR. HUNT: Let me see that.

BY MR. JOHNSON:

Q Do you find your signature on the back, endorsing that check?

A Yes, that is my signature.

Q That is the first payment that you received, of \$400?

A That is the \$400 to which I referred to as having been promised to me upon the sale of the automobile.

Q I show you a check, dated October 11, 1956, payable to Joseph Gersten, in the sum of \$500, drawn on the Peoples National Bank of Miami Shores, signed "Christine F. Holt."

What does that check represent?

A This check represents the \$500 payment toward the unpaid promissory note.

Q Do you find your signature, endorsing that check on the back?

A Yes, that is my signature.

Q I show you a check, dated April 11, 1957, drawn on the Peoples National Bank of Miami Shores, "Pay to the order of Joseph J. Gersten, \$1,285," signed, "Christine F. Holt."

Do you recognize that check? Do you find your signature there?

A Yes, this is my signature.

Q Endorsing the check on the back?

A Yes, endorsing the check on the back.

Q That is the check you received, as you have previously testified?

A That is the \$1,285 check that I received, as I have previously testified.

Q I show you check, dated April 17, 1957, drawn on the Peoples Bank of Miami Shores, "Pay to the order of Joseph Gersten, \$221.15," signed, "Christine F. Holt."

Do you recognize that check?

A I - - - yes, the endorsement bears my name. I recall this check.

MR. JOHNSON: We offer these checks in evidence as the next exhibits for the Managers.

MR. HUNT: No objection, Your Honor.

(Whereupon said instruments were received and filed in evidence as House Managers' Exhibits 4, 5, 6 and 7, respectively.)

BY MR. JOHNSON:

Q Mr. Gersten, you have the original letters you received from Judge Holt on these various transactions?

A Yes, I do.

Q I hand you a letter, dated October 12, 1956, addressed to "Honorable Joseph J. Gersten," signed by "George E. Holt."

Is that the letter you testified receiving from Judge Holt on October 12?

A Yes sir.

MR. JOHNSON: We offer this in evidence as Managers' Exhibit Number 8.

MR. HUNT: May I see it, please?

MR. JOHNSON: Oh, surely. Excuse me; I thought you saw it yesterday, Judge.

MR. HUNT: No objection.

(Whereupon said letter, dated October 12, 1956, was received and filed in evidence as House Managers' Exhibit 8.)

BY MR. JOHNSON:

Q Do you have the next letter?

A Yes. Let me get my subpoena, so I can tell what it was.

Q All right. I hand you a letter, dated April 11, 1957, addressed to "Honorable Joseph J. Gersten," signed by "George E. Holt," and ask you if that is the letter you previously testified receiving?

A That is correct, sir.

MR. JOHNSON: We offer this in evidence as Managers' Exhibit 9 - - - I'm sorry, Judge, excuse me.

(Whereupon said letter, dated April 11, 1957, was received and filed in evidence as House Managers' Exhibit 9.)

SENATOR JOHNSON: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Johnson.

SENATOR JOHNSON: Some of the jurors, or judges out

here, we'd like to know what's in those letters; we'd like to have them read to the Court.

MR. JOHNSON: I was going to suggest to the Court that they be read as soon as we have all the letters concerning this transaction in evidence.

CHIEF JUSTICE TERRELL: The Secretary will read them.

MR. JOHNSON: Would you like to do it piecemeal, or do it after all the letters are in? It doesn't matter to the Managers.

CHIEF JUSTICE TERRELL: Senator Johnson, you moved that they be read right now, didn't you?

SENATOR JOHNSON: It doesn't matter, just so they are read to us.

CHIEF JUSTICE TERRELL: Suppose you wait, then, until he gets through with them, and then read them all at once.

BY MR. JOHNSON:

Q I show you a letter, dated April 17, 1957, addressed to "Honorable Joseph J. Gersten," signed by "George E. Holt."

Is that the letter you previously testified receiving?

A Yes sir, that is.

Q And the envelope is attached thereto?

A Yes, I did.

MR. JOHNSON: I offer this in evidence as the Managers' next exhibit.

MR. HUNT: No objection.

SECRETARY DAVIS: Number ten.

MR. JOHNSON: Number ten?

SECRETARY DAVIS: Yes.

(Whereupon said letter, dated April 17, 1957, was received and filed in evidence as House Managers' Exhibit 10.)

MR. JOHNSON: Mr. Chief Justice, it might be more beneficial to the Senate to have the letters read as they are introduced. I, then, will ask the Secretary to read the letters in chronological order, if he will at this time, before we proceed further.

CHIEF JUSTICE TERRELL: That will be the order. The Secretary will read the letters.

MR. J. BIRNEY LINN (Assistant to the Secretary) (Reading):

"George E. Holt, Circuit Judge, Eleventh Judicial Circuit of Florida

"Miami, Florida

"April 17, 1957

"Honorable Joseph J. Gersten,

"1101 Ainsley Building

"Miami, Florida

"Dear Joe:

"This will acknowledge receipt of your letter of April 16, 1957, enclosing promissory note which I gave to you for \$1,785, dated January 28, 1955, and acknowledging receipt of Mrs. Holt's check in the sum of \$1,285, the note being marked paid by you, \$500 having previously been paid on this obligation.

"As I stated before I did not know what the interest was, and since you have informed me I am enclosing check in the sum of \$221.15 as requested. Please acknowledge receipt of this.

"I thank you for your thoughtfulness and kindness in the entire matter.

"Sincerely yours,

"(s) GEORGE E. HOLT"

The next one is on the letterhead of George E. Holt, Circuit Judge:

"October 12, 1956

"Honorable Joseph J. Gersten

"Ainsley Building,

"Miami, Florida

"Dear Joe:

"I am enclosing check payable to your order in the sum of \$500 to be applied on the note which you hold of mine.

"I regret that I have delayed in making this payment, but you know I have been under considerable financial strain with doctors, hospital, medical and recuperative bills in the past several months.

"I will try to discharge this obligation as soon as it is humanly possible.

"This is the second payment I have made on my obligation to you.

"Thanking you, and with best wishes, I am

"Sincerely yours,

"(s) GEORGE E. HOLT"

SECRETARY DAVIS: Mr. Chief Justice, these are being read in reverse chronological order.

MR. LINN: On the letterhead of George E. Holt, Circuit Judge, Eleventh Judicial Circuit of Florida:

"Miami, Florida

"April 11, 1957

"Honorable Joseph J. Gersten

"Ainsley Building,

"Miami, Florida

"Dear Joe: Re: NOTE

"The \$500 payment of a few months ago reduced this obligation to \$1,285 plus interest from January, 1956.

"A member of my family has made it possible for me to retire the balance of this loan in full; accordingly, my check in the sum of \$1,285 is herewith enclosed.

"I would appreciate it if you would compute the interest to date and furnish me a memorandum. I will send you a second check upon receipt of your computation.

"I regret that I have not been able to clean up this matter before now, but circumstances beyond my control gave me a little setback in both health and finances, as you are well aware. I do sincerely appreciate your generosity and patience in the matter."

"Sincerely yours,

"(s) GEORGE E. HOLT

"P. S. Please mark note paid and return to me."

BY MR. JOHNSON:

Q Mr. Gersten, I show you letter, dated April 16, 1957, on your letterhead, addressed to "Honorable George E. Holt, Circuit Judge."

Do you recognize that letter?

A It bears my signature, yes sir.

MR. JOHNSON: We ask that this letter be read to the Senate.

MR. HUNT: No objection.

(Whereupon said letter, dated April 16, 1957, was received and filed in evidence as House Managers' Exhibit 11.)

MR. LINN: This is on the letterhead of "Joseph J. Gersten, Attorney at Law, Suit 1101 Ainsley Building, Miami 32, Florida; Member District of Columbia Bar

"April 16, 1957

"Honorable George E. Holt

"Circuit Judge

"Fourth Floor

"Dade County Court House Building

"Miami, Florida

"Re: Promissory Note

"Dear Judge Holt:

"I had this day returned to my office after a brief absence occasioned by an emergency trip to Connecticut, the purpose being to visit with my dear, very ill mother, who suffered a severe coronary thrombosis and is in critical condition.

"I hasten to acknowledge your letter of April 11, 1957, together with Mrs. Holt's check in the amount of \$1,285, in full payment of the outstanding principal balance. The interest runs from January, 1955, and not January, 1956, as you state in your letter, which interest amounts to \$221.15, computed as follows:

"\$1,785 from January 28, 1955 to October 14, 1956, \$182.75.

"\$1,285 from October 15, 1956 to April 15, 1957, \$38.40

"Total interest to date, \$221.15

"I shall appreciate payment of the interest by return mail, and pursuant to your letter, you will find the note enclosed and marked paid.

"With highest personal regards and best wishes, I remain,

"Respectfully,

"(s) JOSEPH J. GERSTEN"

MR. JOHNSON: We offer that in evidence as Managers' Exhibit Number 11.

MR. HUNT: No objection.

BY MR. JOHNSON:

Q Mr. Gersten, let me ask you this additional question, concerning the purchase of the Plymouth automobile for Judge Holt:

Who actually took the money out to the Christopher Motors, the Plymouth Agency?

A I did, sir.

Q You kept it in your possession until the deal was ready to be consummated?

A Yes sir.

Q And then what did you do with the money?

A I placed it on the desk at which Judge Holt was sitting, and I had walked out to the showroom.

Q Mr. Gersten, at the time Judge Holt borrowed this money from you, and at the time you arranged for the purchase of the Plymouth automobile, were you practicing and subject to practice before Judge Holt in the Circuit Court of - - in and for Dade County, Florida?

A Yes sir, I was a member in good standing, and a practicing attorney.

Q I say, you were practicing before Judge Holt in his capacity as Circuit Judge, is that right, sir?

A I was subject to practice, to answer your question, Mr. Johnson, yes sir.

MR. HUNT: The question was, if the Court please, was the witness practicing before Judge Holt, as I got it.

MR. JOHNSON: I asked was he practicing and was he subject to practice.

MR. HUNT: Well, that's two questions.

BY MR. JOHNSON:

Q Do you answer in the affirmative as to both matters, Mr. Gersten?

A I was subject to practice. I don't recall that I had practiced before him.

Q You had and did subsequently receive an appointment from him, did you not, in his Court?

A Yes sir.

Q An appointment which you received by virtue of being an attorney, is that correct?

A Yes sir.

Q That was the thousand-dollar fee you received as guardian ad litem, is that right, sir?

A That is correct, sir.

MR. JOHNSON: Counsel for respondent may inquire.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Gersten, with reference to the purchase of the Plymouth - - -

CHIEF JUSTICE TERRELL: Mr. Hunt - - -

MR. HUNT: Yes sir.

CHIEF JUSTICE TERRELL: - - - Before you start another question, Senator Davis wants to know what services Mr. Gersten performed in connection with the guardianship.

I guess it should be brought out; it hasn't been brought out yet, and I think that now would be a proper time to answer that question.

MR. HUNT: We will start out with that one.

Do you have the Court file, Mr. Johnson, the Babcock Estate matter?

MR. JOHNSON: Yes sir, I do.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I would like to have the Court's permission to make an announcement, and then I'd like to make a motion.

It's been suggested by various members of the Senate that we split the morning session and the afternoon session into two parts, and have a ten-minute recess about the middle of the session, or at a convenient time.

I think that this is as convenient a time as we can get this morning, and I, therefore, move that the Senate stand in informal recess for ten minutes.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: Without objection, that will be the order.

The Senate will be at ease for ten minutes.

Whereupon, the hearing was recessed from 11:05 a.m. to 11:15 a.m.

CHIEF JUSTICE TERRELL: The Senate will come to order. In the absence of any question, the Chair declares a quorum present. If there's any question we'll have a roll call.

(No response)

CHIEF JUSTICE TERRELL: For the benefit of the photographers, I want to read Rule Twenty-nine:

"The taking of pictures, photographs, tape and other recordings, including movies, television and other pictures, and similar devices, are prohibited in the Senate Chamber while the Court is in Session. This Rule shall not prevent the use of recording instruments by reporters making a record or transcript of the proceedings as a public record."

The Chair construes that to mean during the recesses of the Senate too; so, photographers will please refrain from

taking pictures in the Senate Chamber during any time of the day, during the sessions of the Court.

If there's any objection to that ruling, why, appeal from the Chair right now.

(No response)

MR. HUNT: Is the Chair ready?

CHIEF JUSTICE TERRELL: We left off with this question. Senator Davis was interested in the services that Mr. Gersten performed in this guardianship.

BY MR. HUNT:

Q Mr. Gersten, will you answer the question posed by a member of the Court, which has been stated by the Chairman?

A In connection with the services that I have rendered regarding this matter, I would have to read from the report, the preliminary report, to reflect just what I had done.

Q Well, will you go right ahead and do it as speedily as possible?

A All right, sir. This is the preliminary report of the guardian ad litem:

"Pursuant to an order of appointment heretofore entered by this Honorable Court appointing Joseph J. Gersten Guardian Ad Litem to represent E. Vose Babcock, Jr. and the minor children, Mary Areca Babcock, Charlotte Babcock and E. Vose Babcock III, wherein the said Guardian Ad Litem was required to inquire into the situation and take such further action as to the best interests of the wards require; and in furtherance of the oath of the said Guardian Ad Litem to faithfully discharge the duties of such office, and also in furtherance of the Court's instructions I report as follows:

"Your Guardian Ad Litem to protect the interests and rights of E. Vose Babcock, Jr., Mary Areca Babcock and E. Vose Babcock III, deemed it necessary to investigate the property interests and determine the quantity of assets of E. Vose Babcock, Jr., and on the 9th day of April, 1955, together with the Honorable Roscoe Brunstetter, the attorney for the Curator, did visit the ranch known as V B Ranch Company located in Belle Glade, Florida" - - -

Q What ranch was that?

A The V B Ranch Company.

Q Located where?

A Located in Belle Glade - - - "the purpose of which visit was to make an inventory and elicit information from the foreman of the said ranch, James Tolliver McDaniel, in order that the rights and interests of the said E. Vose Babcock, Jr. would be fully protected and the operation of said ranch would continue uninterrupted and unimpaired, and as a result of the said visit an inventory disclosed the following:

"The said ranch known as V B Ranch Company contains fifty sections with twelve sections constituting the V B Ranch and thirty-eight sections located Frazier Hammock; that upon the twelve sections known as the V B Ranch are approximately 3,250 head of cattle of mixed herds;

"That at Lake Okeechobee on a range other than the one owned by E. Vose Babcock, Jr. there are 207 head of cattle which are being readied for sale;

"That the equipment and machinery (automotive and farm) consists of and is itemized as follows:

"One Jeep, pick-up, 1948; one Jeep, small, 1948" - - -

Q I believe, if there's no objection, you might skip the ranch machinery.

A All right.

"Your Guardian Ad Litem would further report that no expenses are anticipated aside from gasoline and oil required in the operation of the automotive equipment and the food necessary to feed the ranch help which would approximate Twenty Dollars per week.

"Your Guardian Ad Litem would further report that the general condition of the ranch is good and that the help used in the operation of the said ranch is competent. However,

your Guardian Ad Litem would recommend that frequent visitations to the ranch be made and inquiries continue to insure full protection of the rights in the property of the wards of the Court.

"The facts contained in this report are based upon information furnished by James Tolliver McDaniel, foreman of the V B Ranch, and a personal survey.

"Attached hereto is a physical inventory together with estimated requirements for the operation of the said ranch on a monthly basis.

"(s) J. J. Gersten, Guardian Ad Litem"

Q Mr. Gersten, had you, prior to the filing of that report, visited the ward, and observed his condition?

A I did not visit the ward; I had visited the hospital and made an investigation at the hospital.

The ward was in no condition to talk. He had gone into a diabetic coma, and was unable to converse.

Q Is it true that Mr. Babcock did not recover from that coma?

A I believe you are right, yes.

Q What did you do, other than visiting the hospital? Did you attend the Court at any hearings?

A I attended the Court hearing. I had interviewed Doctor Strain; I had interviewed Mrs. Babcock; I had several conferences with Mr. Brunstetter; I had prepared inventories; I had performed all the duties that were incumbent upon me from the time of the appointment to the discharge.

Q Now, did you later file a further report?

A Yes, I did.

Q Will you refer to that as briefly as possible?

A "Final report of Guardian Ad Litem:

"Joseph J. Gersten, the duly qualified and acting Guardian Ad Litem" - - -

Q Would you omit the formal parts, Mr. Gersten?

A Yes sir. Reading from the fifth line down:

"your Guardian Ad Litem was required to inquire into the situation and take such further action as to the best interests of the wards require, and in furtherance of the oath of said Guardian Ad Litem to faithfully discharge the duties of such office, files this his final report of his acts and doings as such Guardian Ad Litem as follows:

"Your Guardian Ad Litem is of the opinion as of this day that the interests and rights of E. Vose Babcock, Jr., Mary Areca Babcock, Charlotte Babcock, and E. Vose Babcock III, are protected and further investigation by your Guardian Ad Litem is unnecessary; that there is no change in the status of the estate other than the disposition of approximately 207 head of cattle referred to in your Guardian Ad Litem's preliminary report heretofore filed in this cause.

"It appears to your Guardian Ad Litem that the estate is being preserved and protected by the Curator and no necessity exists for the continuation of said Guardian Ad Litem and the preliminary report heretofore filed in this cause should be considered and made the final report of your Guardian Ad Litem."

Q Will you state whom the Court appointed Curator in Mr. Babcock's case?

A Mrs. Babcock, Areca Babcock, the wife of E. Vose Babcock.

Q Now, did Mr. Brunstetter file a petition to effect your discharge as Guardian Ad Litem?

A Yes, he did.

Q Will you refer to that, please?

A "IT APPEARING to the Court from the Final Report of the Guardian Ad Litem, filed in connection with this Petition for Discharge, that no necessity exists for the continuation of said Guardian Ad Litem, and that the Guardian Ad Litem has

fully performed all his duties required of him as such Guardian Ad Litem, and

"IT FURTHER APPEARING to the Court that the function of said Guardian Ad Litem has been concluded, and the Court being fully advised in the premises, it is therefore

"ORDERED, ADJUDGED AND DECREED that said Guardian Ad Litem be, and he is hereby discharged in the above stated cause, and the Final Report filed by said Guardian Ad Litem is hereby approved and allowed. It is further

"ORDERED, ADJUDGED AND DECREED" - - -

Q That is not the petition, though, is it, Mr. Gersten? That's the order.

A That's the order. I beg your pardon.

I think it might save time if I look at my own copy. I can find it faster.

The memorandum in support of the motion for the discharge of Guardian Ad Litem:

"Areca S. Babcock, wife of E. Vose Babcock, Jr., a heretofore adjudged incompetent, as Curator in the estate of E. Vose Babcock, Jr., files her motion for the entry of an order determining the compensation to be paid to Joseph J. Gersten for services as Guardian Ad Litem, and authorizing payment of compensation determined, and discharge as Guardian Ad Litem, and respectfully submit, in support of said motion, that the Curator and her counsel both wish to emphasize that this motion to discharge Guardian Ad Litem" - - -

Q Read it plainer, will you, please? Read it a little more distinctly.

A All right, sir.

"The Curator and her counsel both wish to emphasize that this motion to discharge the Guardian Ad Litem is purely a matter of law and economics, and is in no way a reflection upon the character or ability or the fidelity of the Guardian Ad Litem.

"If there is to be a Guardian Ad Litem, it is decided by both Curator and her counsel that Joseph J. Gersten be retained as such Guardian Ad Litem."

Q Is that Mr. Brunstetter's petition?

A Yes.

Q Now, when he presented the Petition for your discharge as Guardian Ad Litem to Judge Holt, were you present?

A I was not.

Q Had you spoken to Judge Holt in any way about the amount of compensation you expected, or would like to have in that case?

A I did not.

Q Did he discuss it with you in any way prior to the entry of the order which was submitted by Mr. Brunstetter?

A He did not discuss it with me before or after.

Q Did Mr. Brunstetter and Mrs. Babcock accede to the \$1,000 fee and submit Mrs. Babcock's check for it?

A Yes sir.

Q Did you receive a letter of transmittal, thanking you, from Mrs. Babcock?

A I did.

Q I'll ask you to refer back to the order which is in evidence here, appointing you, the order dated March 25, 1955, and ask you to state the significance of the first paragraph, which refers to another appointment having been made.

A Was that the order substituting, sir?

Q The order substituting Guardian Ad Litem, on the 25th day of March, 1955.

A Yes sir, I have that here.

Q Will you read the first paragraph?

A (Reading): "The Court having appointed John G. Thompson to be Guardian Ad Litem for E. Vose Babcock, Jr., and for the minor children of said E. Vose Babcock, Jr., and having set a final hearing at 10:00 o'clock a.m., Monday, March 28, 1955, and the Court being advised that John G. Thompson is out of the city and not available to serve under the circumstances stated,

"IT IS ORDERED, ADJUDGED AND DECREED that J. J. Gersten, an attorney practicing law in this Court be and hereby is substituted as Guardian Ad Litem in place of said John G. Thompson.

"DONE AND ORDERED at Miami, Florida, this 25th day of March, A. D. 1955"

Q So, Mr. Gersten, Judge Holt did not appoint you as the first Guardian Ad Litem of that estate, is that correct?

A That is right.

Q You were substituted in place of John G. Thompson, of the Smathers firm?

A Yes.

Q When it was found that he was unavailable, is that correct?

A That is correct, sir.

Q Do the files reflect the approximate value of the Babcock estate which was in Court at that time, involved in the Curatorship? Do you know?

A Yes, it does, it does.

If you're talking dollar-wise, it exceeded the sum of three million dollars.

Q It exceeded three million dollars, according to the file?

A Yes, yes, that's what it was before the final inventory had been made. It was far greater than that amount.

Q The thousand dollars I think you said was paid you by check received from Mrs. Babcock?

A That's right.

Q Did that have any connection whatever with the loan transaction which existed between you and Judge Holt?

A None whatsoever.

Q Have you ever given any presents or favors to Judge Holt?

A I have never given Judge Holt a gift.

Q Now, as to the Plymouth transaction, Mr. Gersten, had you had any previous dealings with Christopher Motors?

A Yes sir.

Q And prior to going down for the actual closing, had you arranged, you might say, a knock-down, a cheaper price, something below list, for the purchase of that car?

A A discount, yes.

Q What was that?

A A discount.

Q That's a good word.

You did get it below the advertised value, is that correct?

A Yes sir.

Q And did you negotiate down there with Mr. Holmes, or - - -

A With Mr. Holmes.

Q Now, it had been ascertained, then, before the day of actual purchase, that \$2,185 would be required to purchase the automobile, is that correct?

A That is correct, sir.

Q And was it at that time that it was arranged that you were to receive, for the \$2,185 advance, the \$400 to be relayed from North Carolina to Miami, and that that would be immediately applied on the \$2,185 indebtedness, is that correct?

A That is correct.

Q And that in addition, you were to receive a demand note in the sum of \$1,785?

A That is correct, sir.

Q And that was an interest-bearing note at what percent?

A Six percent, sir.

Q Now, I believe Judge Holt suffered his automobile misfortune in December of the same year, did he not?

A Yes sir.

Q And did you ever make demand on Judge Holt for any of these payments?

A No sir, I did not.

Q Any one of them; did you ever speak to him and request any money from him?

A I did speak to him concerning the interest.

Q Was that after the principal was paid?

A Yes sir.

Q Well, didn't he, in his letter to you, ask you to compute the interest and advise him of what it was?

A Yes, he did.

Q Well, is that what you did?

A I did.

Q Well, in what regard did you speak to him concerning the interest?

A He had called me one day and asked me what the interest was. I told him I would compute it and let him know, and that I should like to have him send it to me.

Q Well, then, this loan obligation has been completely retired, both as to principal and interest, is that correct?

A That is correct, sir.

Q Was there ever any understanding between Judge Holt and you, either direct or indirect, that he was to barter to you any favors of his judicial office in consideration of the advance of that money?

A No.

Q Was it, on the other hand, understood that it was a completely valid business transaction, and that you expected the return of your money with interest?

A It was a legitimate money-market transaction.

MR. HUNT: That's all.

If Your Honor please, I don't believe it's necessary to formally offer these Court files which eventually have to go back to the Eleventh Circuit. However, I do feel that files referred to in the evidence should be made available here for the examination of any member of the Court throughout these proceedings, before they are sent back.

CHIEF JUSTICE TERRELL: Your suggestion is, then, that they just be held here until final disposition in the matter?

MR. HUNT: Yes sir, yes sir.

CHIEF JUSTICE TERRELL: That will be the order, without - - -

MR. BEASLEY: That's okay.

CHIEF JUSTICE TERRELL: The Senator from the Thirty-fourth, Mr. Gersten, wants to know how far it is from Miami to the Belle Glade ranch?

THE WITNESS: In terms of miles, I don't recall, but it's a couple of hours, driving at a moderate rate of speed.

MR. HUNT: A couple of hours, you can't get to Clewiston.

THE WITNESS: Yes sir.

CHIEF JUSTICE TERRELL: Mr. Gersten, the Senator from the Seventeenth sends up this question:

"Had Mr. Gersten ever practiced before Judge Holt prior to the making of this loan?"

THE WITNESS: Not that I recall.

CHIEF JUSTICE TERRELL: The second question:

"Had Mr. Gersten ever received such an appointment as he did receive prior to the making of this loan to Judge Holt?"

THE WITNESS: I didn't understand that.

CHIEF JUSTICE TERRELL: I'll read it again, the second question:

"Had Mr. Gersten ever received such an appointment as he did receive prior to the making of this loan to Judge Holt?"

THE WITNESS: The answer is "no."

MR. JOHNSON: Mr. Gersten - - -

MR. HUNT: May I ask one question?

MR. JOHNSON: Surely. Go ahead.

BY MR. HUNT:

Q Mr. Gersten, in order to get to the Babcock Ranch, do you go to - - - up on 27, through Clewiston?

A Yes.

Q Did you go to the Devil's Garden Road and turn south?

A I don't recall the road designation. I recall having left the arterial road and having turned off on a dirt road, which was some distance off.

Q You don't recall exactly, or approximately how long it took you to make the trip?

A Well, I was gone all day; I was gone from eleven to twelve hours. I don't recall the travel time.

MR. HUNT: Very well.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Gersten, I believe the Chief Justice asked you a question concerning, had you received appointments of any nature before Judge Holt, or by Judge Holt, prior to loaning him this money. Did you answer that question in the negative?

A I didn't understand it that way.

Q Well, in other words, you had never received any Guardian Ad Litem before, but had you received other appointments of some nature - - -

A Oh, yes, yes.

Q - - - whereby you were paid a fee upon order of the Court?

A Yes, I had.

Q And did you receive appointments whereby you received a fee after you loaned this money to Judge Holt?

A Yes.

Q So, when you say you were not practicing before him, actually, you were acting in a - - -

MR. HUNT: I object to counsel summing up his argument, Your Honor.

MR. JOHNSON: Well, I'm trying to find out what the facts are, if Your Honor please.

MR. HUNT: It's an improper question.

CHIEF JUSTICE TERRELL: The objection's overruled. I think counsel has the right to ask if there are any other appointments.

BY MR. JOHNSON:

Q Now, Mr. Gersten, you replied to a question of Judge Hunt's, that you had not practiced before Judge Holt prior to receiving this appointment, but isn't it true that you had received judicial appointments from Judge Holt prior to mak-

ing that loan to him, whereby you were paid fees for your services?

A Yes, that's right.

Q And subsequent to making the loan to him, you received appointments also, is that right?

A Yes, that's right.

Q So, in fact, you were practicing in your capacity as a lawyer before Judge Holt, were you not?

A Well, I construe that question, if I may, Mr. Johnson, as meaning had I appeared in a case before the Judge, in which I was the attorney, not as a Court appointee.

Q You were engaged in the general practice of law in Dade County, were you not?

A Yes, that's right.

Q And you were subject at all times to practice before whatever Judge in whose Division the case fell, is that right?

A That is correct.

Q Mr. Gersten, you're not in the money-lending business, are you, sir?

A No.

Q Do you customarily make loans of that size to friends or acquaintances?

A No.

Q Wasn't it a little unusual to go from January of 1955 to October '56 without making a demand for repayment of a sum of that size, \$1,785, I think it was?

A It might be considered unusual in - - - yes, I would say you were right.

Q Mr. Gersten, I see that this note that you identified as having been given you by Judge Holt is dated January 28, 1955. What was the actual date upon which you received that note?

A I received it on the date that the automobile purchase was made.

Q Are you quite certain that you did not receive this note at a later date, and pre-dated?

A No sir, I received it that day.

Q Well, you've indicated to Mr. Hunt that there was nothing unusual about this loan to Judge Holt, is that correct?

A I don't comprehend what - - -

Q Well, let me rephrase the question. Let me withdraw that.

Was there anything unusual about receiving a payment on October 12, 1956 from Judge Holt?

A There was nothing unusual; it was some time after the obligation arose.

Q Well, I understand, Mr. Gersten, to tell you the truth, that at the time you received the letter, dated October 12, 1956 from Judge Holt, enclosing a check signed by his wife, for \$500, that you photostated both the letter and the check prior to depositing that check in the bank. Is that correct?

A That's right, sir.

Q Was that your customary purpose, to photostat checks which you received prior to depositing them in the bank?

A No, it is not.

Q Well, what was the reason, if this was not unusual, receiving this payment at this time? What was the reason for photostating that check and that letter?

A I had anticipated a perpetual use of these documents. I have retained in my office a photostat machine. In a normal course, where original documents are offered, substitution is made, and the original documents are returned to the holders or the owners of those documents; and I had prepared the photostats as a matter of convenience to all concerned.

Q One other question, Mr. Gersten;

Now, you say the check was given on this note, in the sum of \$1,785, signed by Judge Holt, was given on the same date as it's dated, January 28, 1955.

Now, where was that note given to you, sir?

A No, I said the note was given on the same day that the automobile transaction had been consummated.

Q Well, where was the note given to you? Where were you at the time?

A In Judge Holt's office.

Q Was it prior to the time you went down to actually purchase the automobile?

A Yes.

MR. JOHNSON: That's all.

RECROSS EXAMINATION

BY MR. HUNT:

Q But it was the same day? Is that your testimony?

A The same day that the car was purchased.

Q Now, you stated, in photostating these matters, these documents, that you anticipated some need for them. Will you state whether or not you have testified as a witness several times before other bodies, in connection with this same matter? Is that correct?

A Yes sir.

Q And was the purpose of preparing those photostatic copies for the purpose of facilitating the investigations of those bodies?

A Yes sir.

MR. HUNT: No further questions.

MR. JOHNSON: We have no further questions.

We have no objection to excusing him from his subpoena at this time.

MR. BEASLEY: Mr. Chief Justice, Members of the Senate:

This witness is sick, and if the Respondent has no further use for him, we would like to excuse him from further attendance in this hearing.

MR. HUNT: It will be all right, with the understanding that if he doesn't get any sicker, and we need him, we might have to recall him.

MR. BEASLEY: Yes, of course.

You may be excused.

(Witness excused)

CHIEF JUSTICE TERRELL: Call your next witness.

MR. BEASLEY: Lamar Bledsoe.

MR. HUNT: Mr. Chief Justice, if counsel will announce what he expects to prove by calling the Chief Clerk of the House, we might be able to stipulate with him, to save time.

MR. JOHNSON: Judge, at this time, we expect to prove, through Mrs. Bledsoe, and introduce in evidence, House Resolution Number Sixty-three, calling for a committee to be appointed to investigate the actions of Judge Holt, and the Journal of the House of Representatives, showing that said Resolution was introduced on April 4, 1957, in the House of Representatives of the Legislature of the State of Florida.

Will you stipulate that we can introduce those?

MR. HUNT: Be glad to.

MR. JOHNSON: All right, sir.

We, then, at this time, offer in evidence, as Respondent's Exhibits - - -

MR. HUNT: I'd rather they be the prosecution's exhibits.

MR. JOHNSON: I stand corrected - - - the Managers' - - - I'm a little confused here - - - Managers' Exhibit Number Twelve, being the House Resolution, and Managers' Exhibit

Number 13, being the Journal of the House of Representatives for April 4, 1957.

MR. HUNT: No objection.

MR. JOHNSON: I'd like to have them admitted.

CHIEF JUSTICE TERRELL: They will be admitted, without objection.

(Whereupon House Resolution Number 63 and Journal of the House of Representatives for April 4, 1957, were received and filed in evidence as House Managers' Exhibits 12 and 13, respectively)

MR. LINN, Assistant to the Secretary (Reading): "House Resolution Number Sixty-three:

"The Resolution provides for the appointment of a House Committee to investigate" - - -

MR. HUNT: Mr. Chief Justice, I don't know whether you want these documents read. They've been in the Journal of the House here before; they're public records, and they're quite lengthy.

SENATOR SHANDS: Mr. Chief Justice, I move that we dispense with the reading of those documents.

(The motion was seconded from the floor)

CHIEF JUSTICE TERRELL: You've heard the motion, gentlemen, that the reading of these documents be dispensed with.

All in favor of it let it be known by saying "aye." Opposed, "no."

The motion is carried.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I'd like to move that the Senate stand in recess until 2:00 p.m.

SENATOR SHANDS: Second the motion.

CHIEF JUSTICE TERRELL: It's been moved and seconded that the Senate stand in recess until 2:00 p. m.

All in favor, let it be known by saying "aye." Opposed "no."

The "ayes" have it. So ordered.

Whereupon, at 11:55 o'clock a.m., the Senate sitting as a Court of Impeachment recessed until 2:00 o'clock p.m. of the same day.

AFTERNOON SESSION

The Senate reconvened at 2:00 o'clock p.m. pursuant to recess order.

The Chief Justice in the Chair.

CHIEF JUSTICE TERRELL: Order in Court. Does anyone question the presence of a quorum?

SENATOR RAWLS: Yes.

CHIEF JUSTICE TERRELL: Call the roll, Mr. Secretary.

Secretary Davis called the roll and the following Senators answered to their names:

Adams	Carlton	Getzen	Morgan
Barber	Carraway	Hair	Neblett
Beall	Clarke	Hodges	Pearce
Belser	Connor	Houghton	Pope
Bishop	Davis	Johns	Rawls
Boyd	Dickinson	Johnson	Shands
Brackin	Eaton	Kelly	Stenstrom
Branch	Edwards	Kicklitter	
Cabot	Gautier	Knight	

SECRETARY DAVIS: Thirty-four members present, Mr. Chief Justice.

At this point Senator Stratton appeared in the Senate Chamber and asked to be recorded as present.

SECRETARY DAVIS: Thirty-five members now present, Mr. Chief Justice, all present.

CHIEF JUSTICE TERRELL: The Sergeant-at-Arms will make the proclamation.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

CHIEF JUSTICE TERRELL: Do you have a witness ready, Mr. Beasley?

MR. BEASLEY: Yes sir. Call the next witness, please. Call Mr. Holmes, Mr. Ralph Holmes.

Mr. Chief Justice, and Members of the Court:

It's been suggested by a member of the Senate that as we call a witness, we advise the Senate as to what portion of the Bill of Particulars he will testify under, and this witness will testify under 1 (a) 5 and 6; and 1 (c) 1, the same as the testimony of Mr. Gersten this morning.

MR. JOHNSON: Are you ready to proceed, Mr. Chief Justice. Thereupon,

RALPH HOLMES,

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name and occupation, please sir?

A Ralph Holmes, salesman for Christopher Motors, automobile dealer.

Q Mr. Holmes, were you employed as a salesman for Christopher Motors in January of 1955?

A Yes sir.

Q Did you have occasion to have a dealing with Joseph J. Gersten, the witness who just testified?

A Yes sir.

Q In the purchase of an automobile for Judge George E. Holt - - -

A Yes sir.

Q - - - in - - - at that time?

A Yes sir.

Q Do you recall whether or not the day the sale was made, both Mr. Gersten and Judge Holt came to Christopher Motors to see you?

A I didn't understand the question.

Q Suppose you just relate to the Senate what transpired in connection with that sale, Mr. Holmes, in your own words.

A Well, Mr. Gersten contacted me about a week previous; said he had a sale for me, so, I met him at the showroom, and we dilly-dallied around there about the price, and so on and so forth, and finally, the deal was consummated on the automobile.

Q Had you agreed upon price prior to Mr. Gersten and Judge Holt coming to the showroom to see you?

A No. We'd agreed on about what it was. I told him I couldn't tell him exactly until I knew what equipment he wanted on the car.

Q How much time did Mr. Gersten and Judge Holt spend there at the showroom of Christopher Motors on the day the automobile was purchased?

A Well, I'd say around an hour or an hour and a half, maybe longer; I couldn't - - - I can't remember exactly. I didn't check my watch.

Q Who did the haggling over the price and the equipment on the automobile?

A Mr. Gersten.

Q What was Judge Holt doing at that time?

A Well, Judge Holt was just looking, mostly, you know; he didn't say too much.

Q Mr. Gersten was handling the transaction, for all practical purposes, is that right?

A Yes sir.

Q Do you know in whose name the automobile was taken? The title?

A Well, yes, when the order was signed, I did.

Q And in whose name was the automobile title placed?

A It was placed in Mrs. Holt's name. I think the name was Christine Holt.

MR. JOHNSON: That's all. You may examine.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Holmes, do you recall the amount of discount Mr. Gersten finally talked you out of?

A No sir, I don't know the amount. To tell you the truth, I don't remember what the exact list price was.

I know it was around a \$400 or \$500 discount, though.

Q Yes. Was it more of a discount than you would have given to anyone else under similar - - -

A No sir.

Q - - - circumstances?

A No sir.

Q Were you paid in cash for this car?

A Yes sir.

Q Is that unusual?

A No sir.

Q Does that happen quite frequently?

A Well, I would say forty to fifty per cent of the sales are cash.

Q Are in cash?

A Yes sir.

MR. HUNT: That's all.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Holmes, you said it was not more of a discount than you would have given someone else.

Was this the rock bottom figure on which you could trade?

A Well, you see, when I got down as low as I thought I could go off the list price - - - you see, I knew about how they would trade, and then I went in to Mr. Houston, see, and told him what I thought I could get.

So then, we all go in his office.

Q But did Mr. Gersten get the best deal that you know of anybody getting on that type of car at the time?

A Yes sir, he was. We were doing the best with him that we could.

Q He had done business with you before, is that correct?

A Yes sir.

MR. JOHNSON: That's all, Mr. Holmes.

MR. HUNT: No questions.

MR. JOHNSON: Come down.

We would like to ask that this witness be excused from his subpoena, if counsel for the Respondent has no objection.

MR. BEASLEY: Do you have any objection to this witness being excused from his subpoena?

MR. HUNT: No sir, that's agreeable.

MR. JOHNSON: All right, you may be excused, Mr. Holmes.

(Witness excused)

MR. HOPKINS: Mr. Eugene Jones, the next witness, please.

MR. HOPKINS: Shall I proceed?

CHIEF JUSTICE TERRELL: Yes.

Thereupon,

EUGENE R. JONES, JR.

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HOPKINS:

Q Will you give us your name, please, Mr. Jones?

A Eugene R. Jones, Jr.

Q Where do you live, Mr. Jones?

A In South Miami, Florida.

Q What is your business?

A I am a building contractor.

Q Mr. Jones, are you the same Eugene Robert Jones, Jr., who is a Defendant in a certain receivership matter in which C. E. Harvey, Jr., was Plaintiff, in the Circuit Court - - -

A I am.

Q - - - of Dade County, Florida?

A I am.

Q This case was filed on or about May 25, 1955?

A Correct.

Q What was your business at that time?

A You mean in connection with the Flame? I was - - -

Q What was your business, generally, at that time?

A Building contractor.

Q Did you have an interest in a corporation that operated a cafe at that time?

A Yes, the Emalf Corporation owned the restaurant called the Flame. I had an interest in the corporation.

Q What was the name of the corporation?

A Emalf.

Q Spell it, please.

A E-m-a-l-f.

Q How long had the Emalf Corporation been operating prior to the receivership?

A It first started operating on the 20th of January of the same year.

MR. HOPKINS: Incidentally, Mr. Chief Justice, I would like to announce that this is in proof of specifications 1 (d) 1.

BY MR. HOPKINS:

Q How long had you been operating a cafe up until the time of the receivership?

A Well, from the 20th of January until the 23rd of May - - - or the 25th of May.

Q Who owned the stock in Emalf, Incorporated?

A I owned thirty-three and one-third per cent of the stock;

C. E. Harvey owned sixteen and two-thirds per cent of the stock; and Mrs. Eleanor Duncan owned fifty per cent.

Q On the date of the receivership, was this a going concern?

A It was.

Q What type of business did this corporation operate?

A It was a restaurant and cocktail lounge. We like to think of it as a very nice restaurant and cocktail lounge.

Q At the time of the receivership, who was manager of the business?

A We had full managers; a Mrs. Duncan and a Mr. Bazinko.

Q Mr. Jones, tell us a little bit about the management of the business, please, for those few months leading up to the receivership?

A Well, when the business was first opened, Mr. Harvey, Mr. C. E. Harvey, Jr., was the manager; and he operated up until the 1st of April.

The 1st of April, his conduct - - - well, prior to the 1st of April, his conduct didn't appear to be the kind of conduct we wanted in our restaurant; Mrs. Duncan and I, as majority stockholders, discharged him.

Q Do you remember the date that you discharged Mr. Harvey?

A We discharged him in the last week, I believe, of March, and paid him until the 1st of April.

Q At the time of the receivership, was the business making money?

A It was.

Q Did it owe any outstanding debts it couldn't pay?

A It was current except for the monthly bills, which were normally paid on the 10th.

I believe we had about \$2300 worth of accounts payable; and then, of course, we had more than that in the bank and in cash.

Q Were you given notice of an application for the receivership of this business?

A We were not.

Q Do you know whether the corporation was made a Defendant in the case of which a receiver was appointed?

A In the original complaint, I guess you would call it, it was not. Mrs. Duncan and myself were named Defendants.

Q Do you know what time of day or night the receivers took over?

A They came in at approximately 8:30 on the evening of May 23.

Q How long did the receiver continue to operate the business of Emalf, Incorporated?

A They operated it for twenty-one days.

Q During the operation and receivership, was there any change in the business, materially?

A Well, not in the income. The receivers, of course, increased the overhead by the amount of the extra personnel that they put in.

Q How much was the receiver paid, if you know, for the three weeks that he operated that business?

A Commander Kurlan was the receiver appointed; he received \$2200.

Q Did the receiver retain the personnel that you had operating the business at the time the receivership was taken over?

A He retained all the personnel, with the exception of Mrs. Duncan, who was named in the suit. She was discharged.

Q Were any other expenses added to the operation of the business other than the \$2200 for the receiver?

A There were three additional employees added to the payroll; a Mr. Neil Merritt, a Mr. Moovers, I believe, M-o-o-v-e-r-s, and the bartender, named Guara, G-u-a-r-a.

Q Do you know how much these other employees were paid?

A I believe Mr. Merritt received \$150 a week, plus expenses; Mr. Moovers received, from the amount of pay-outs indicated by Mr. Kurlan, slightly less than that. I would say - - - well, for the time that he was there, he was paid slightly over \$400.

Q You employed attorneys to represent you in this receivership matter?

A Yes sir, I did.

Q Do you know how many times they had to come to the Supreme Court in that case?

A Three times, I believe.

Q Was the receiver finally discharged?

A Yes, the Court reversed the lower court's decision each time, and the receiver was finally discharged.

Q Did you incur any other loss in regard to the receivership, other than that you've named?

A Well, the fees of the receiver, and of course, the attorney fees, and there seemed to be a reduction in inventory when we took the place back.

Q How much reduction in inventory was there?

A Well, we hadn't taken an inventory for about two weeks prior to the receiver taking over, and it was about four days after they left before we were able to take one again.

Trying to make a perspective of what would be normal business out of the operation, it appeared that there was somewhere between \$1500 and \$2000 in loss in stock.

Q I believe you said that Commander Kurlan was appointed receiver?

A Yes, he was.

Q Did you go around the business from time to time during the receivership?

A Yes, I have a contracting business which takes me out of town quite often, but I visited the business, I would say, at least seven or eight times during the operation by the receiver.

Q Was Commander Kurlan actually in control of this business under the receivership or not?

A Commander Kurlan didn't reside, in the sense of a residential manager there; he appointed this Mr. Merritt and Mr. Moovers to operate the business, and I believe, in the various times that I was there, I only saw Commander Kurlan once.

Q Now, you had a manager there at the time that the receivership started?

A Yes, we did.

Q And that manager was retained?

A Yes, he was.

Q And Commander Kurlan had another manager over the manager?

A Two managers over the manager.

Q Two managers over the manager.

And then, Commander Kurlan was over that?

A Yes sir.

Q Now, did he do any actual work at the place?

A Well, Commander - - - not Commander Kurlan, but Mr. Merritt instructed all the help not to talk to either Mrs. Duncan or I if we came in; so, I'm not sure of too much about the amount of work that they did, not very well.

Q Did Commander Kurlan receive any other benefits from the Flame, the cafe operated there, other than the \$2200 in the way of fees?

A He ran a small tab while he was there, which he never did pay.

Q He did what?

A Which he never paid.

Q He had an account there?

A Yes sir.

Q What was the nature of that account?

A It was for food and beverages.

Q Did you authorize that in any way?

A No.

Q Was he billed for that amount after he had been paid his fees and discharged as receiver?

A Repeatedly.

Q Did Commander Kurlan ever pay that to the corporation, or to you?

A It's still an outstanding accounts payable - - - receivable.

Q Incidentally, do you know where Commander Kurlan is now?

A I read in the paper that he's in Casablanca.

Q How much was the bill for drinks, etc., that was run up by the receiver while he operated the cafe?

A It was a small account, of \$135.

MR. HOPKINS: You may inquire.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Jones, who was your attorney in the case?

A Mr. Seymour Keith was my first attorney, and for the Supreme Court presentation, I employed Marion Sibley.

Q Marion Sibley, the former partner of Judge Giblin?

A I don't know, sir.

Q What kind of gambling went on in your place at the time this suit was filed?

A There was a baseball - - - at the time the suit was filed, there was no gambling whatsoever.

Q Are you sure about that?

A I'm absolutely positive.

Q What did you start to say about baseball?

A There was a baseball pool that operated at the beginning of the winter season, of the small leagues - - - of the major leagues down there, whereby the help put in fifty cents a day, each one picking a team, and the first team that got thirteen runs was the winner of the pool.

It was gotten up by two bartenders named Whitey Crow and Jack Cassidy; they operated for the benefit of the help, or the amusement of the help.

It was discontinued about a month before this case - - - before the suit was filed.

Q Now, I believe in the report of the receiver, there is shown the sum of \$6,289.35, which was in the Defendant's bank account when he took over. Do you recall whether or not that's approximately correct?

A I would say I think it was slightly more than that.

Q What was the \$1,306.02 he found on the premises?

A Well, we were doing around \$2,000 worth of business a night at the time. We had four different cash registers operating, which were used for a bank, in the cash registers.

Q Where was it located in the premises?

A Approximately \$1,200 of it was distributed between the

cash registers. We kept a reserve amount of \$600 in a stool behind the counter of the first cash register.

Q Had the Flame, while it was in your possession, ever been raided, had an arrest there?

A Certainly not.

Q "Certainly not"?

A "Certainly not."

Q Where is your contracting business located, Mr. Jones?

A In Dade County. I also - - -

Q Specifically, where?

A You mean the address?

Q Yes sir.

A 401 Building, Coral Gables.

Q And when did you get out of the Flame Restaurant business?

A Well, I'm still the owner of the lease. We sub-leased it out - - -

Q Yes.

A - - - with option to purchase.

Q When did you do that?

A In December of the year that this action took place. I believe that the agreement was made, and the lease wasn't consummated until early in January.

Q This action took place in 1955?

A That's correct.

Q Now, I believe you testified that an award was made to the receiver of \$2200?

A Yes.

Q Did you or your interests have to pay that?

A No, it was taken out of the corporation money, directed to be paid out of the corporation money, and Commander Kurlan did when the Supreme Court reversed - - -

Q Will you just answer the question, please, sir?

Did you have to pay it?

A No.

Q Do you know what attorney represented the party who did pay it?

A That's Mr. Harvey?

Q I don't know.

A The party that did what, sir?

Q The attorney who represented the Plaintiff.

A Mr. Hackney was his first attorney. Later he brought in a gentleman named Miller.

Q As I understand the case, a receiver was appointed in the early evening, and the process was served out at the restaurant around 8:00 or 9:00 that night, is that correct?

A That's correct.

Q Without notice?

A That's correct.

Q And upon eventual appeal to the Supreme Court, the appointment of the receiver was reversed, is that correct?

A That is correct, sir.

Q And then, did it go back up to the Supreme Court on what question, if you know?

A Well, my attorney is going to appear here in a minute, and I suggest, or - - - I have no right to suggest, but I

know that you'll get a better answer from him, because I'm not familiar with legal terminology.

MR. HUNT: May I ask if the Managers have the file of this case? Do you have it available?

MR. HOPKINS: Yes sir. Would you like to have it?

MR. HUNT: Not now. I just wanted to know if you had it.

MR. HOPKINS: Yes. We expect to introduce it.

MR. HUNT: Thank you.

BY MR. HUNT:

Q Do you know whether or not the amount of the receiver's fee was suggested or negotiated by the Plaintiff and the receiver, or do you know how it was arrived at?

A No sir, I don't.

Q Now, the Flame Restaurant is located about sixteen miles south of Miami, is it not?

A Approximately.

Q And what type of an operation is it? Give us the number of employees, and so forth, roughly.

A Well, employs about twenty people. It seats two hundred forty people at tables; might be some at the bar; serves - - - it's exclusively a steak house.

Q And Mr. Kurlan was the receiver there for approximately three weeks?

A Twenty-one days, yes sir, three weeks.

Q And his fee was \$2200, which was paid by someone else, is that correct?

A Paid by the - - - we paid - - - no, we paid it out of the corporation, and monies that the corporation owed Mr. Harvey were reduced in that amount.

Q That still means that it was paid by the Plaintiff?

A Mr. Harvey paid it, absolutely.

MR. HUNT: No further questions.

REDIRECT EXAMINATION

BY MR. HOPKINS:

Q Mr. Jones, I believe you said that finally, Mr. Harvey paid the \$2200 to Mr. Kurlan?

A That's correct.

Q Who paid these additional superintendents that were brought in there by Mr. Kurlan?

A They were paid out of the corporation, Emalf Corporation.

Q This salary of \$100 a day, is that considerably large for operating a business of that type?

MR. HUNT: I object to that question, Your Honor, as calling for the conclusion of this witness.

MR. HOPKINS: May I reframe the question, and withdraw that?

BY MR. HOPKINS:

Q Have you ever paid any such amount to have a manager operate that business?

A No sir.

Q What's the maximum you've ever paid for the operation of that business?

A \$150 a week.

Q Something was said about the gambling a few minutes ago. What did the gambling consist of?

A It was a baseball pool participated in by the employees. They put in fifty cents a day. Each one picked a team. The first team that got thirteen runs won the pool; and it died

an actual - - - I mean a natural death after about six weeks of operation.

It wasn't in effect at the time of the suit.

Q Was it found by the court that the man who started this suit, Mr. Harvey, participated in the pool?

A Yes, he did, and that's in the testimony.

Q Does the testimony also reveal that the pool stopped after Mr. Harvey left, and prior to the appointment of the receiver?

A It revealed that it stopped shortly after Mr. Harvey left, and prior to the appointment of the receiver.

Q Then, there was no gambling going on, even a pool of the baseball game, at the time of the appointment of the receiver, is that correct?

A No, and hadn't been for several weeks.

MR. HOPKINS: We have no further questions, if the Court please.

MR. HUNT: That's all. You can go.

MR. HOPKINS: If the Court please, I would like, also, permission to excuse this witness, release him from the rule.

MR. HUNT: I would prefer to hold this witness until they complete this phase of the case, and then I'll make an announcement on it.

CHIEF JUSTICE TERRELL: The witness will be governed accordingly.

(Witness excused)

MR. HOPKINS: Mr. Rice, please, we ask to be called as the next witness; the same specifications.

Is Mr. Keith available, if this witness isn't here?

If the Court please, we might announce that we'll be glad to give a witness ahead to the Sergeant-at-Arms, the name of a witness ahead to the Sergeant-at-Arms, if it will help any, so we can have these witnesses close to the door.

CHIEF JUSTICE TERRELL: I think that would be a good idea; it would save a good deal of time.

SENATOR SHANDS: We'll be very glad to do that; and have the witness utilize my office. It's right there for them to wait; it's right at the door.

CHIEF JUSTICE TERRELL: Counsel can make arrangements to do that.

MR. HOPKINS: If the Court please, we would like to introduce in evidence at this time the original file in the case of C. E. Harvey, Jr. vs. Eugene R. Jones, Jr., bearing Clerk Number 179924 - - - that is, the Clerk of Dade County, Florida.

Is there any objection to that, so we might mark it?

MR. HUNT: None whatever.

SECRETARY DAVIS: That will be Number 14.

(Whereupon, said file was received and filed in evidence as House Managers' Exhibit Number 14)

Thereupon,

SEYMOUR D. KEITH,

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HOPKINS:

Q Will you give us your name, please sir?

A Seymour D. Keith.

Q Mr. Keith, where do you live, and what is your occupation?

A I live at 4433 Toledo, Coral Gables, Florida.

I am an attorney; my office is at 1323 duPont Building, in Miami.

Q Did you represent Mr. Eugene Robert Jones, Jr., in the case of C. E. Harvey, Jr. vs. Jones, et al?

A Yes, I did.

Q What was the type of case, please?

A It was an action filed by Mr. Harvey for a receivership for specific performance of an employment contract, and for an accounting.

Q Will you give us the exact style? Do you have a duplicate there, so that you can do that - - - as filed?

A Shall I look at this here?

Q Would you like to have the original?

A I think it might be better.

The exact style of the case was C. E. Harvey, Jr., vs. Eugene Robert Jones, Jr. and Eleanor Duncan.

Q Was your client given notice of this application for receivership?

A No sir.

Q Does the file reflect when that complaint was filed?

A The complaint bears a legend scrawled across its face in longhand:

"Before me, 23 May 1955, 6:30 p.m. George Holt, Circuit Judge"

Q When were you brought into the case, if you recall?

A I received a phone call from Mrs. Duncan on May 23, the very day that this order was entered, about 8:30 p.m. I happened to be working in my office at the time.

I was more or less brought in the case by Mrs. Duncan, who told me that there was a member there with a receivership order, and after having her read the order to me over the phone, I suggested that she should not question a direct order of the Circuit Court. I told her I would see what could be done in the morning; there was certainly nothing to be done that night, and which she did, and that's when I was brought officially into the case.

Q Mr. Keith, I believe you testified that the memorandum on the corner of the file indicates that it was before Judge Holt about 6:30 or 6:45 on the afternoon of May 23. When was this actually filed in the Clerk's office?

A The complaint appears from the stamp - - - from the stamped legend, that it was filed on May 25, at 11 a.m.

Q Did you go into court and file any motion in regard to this matter?

A Yes, I did. Just as soon as I had copies of these pleadings delivered to me, I immediately filed before the court a motion to dismiss the complaint, and a motion to dissolve the appointment of the receiver.

Q Incidentally, at this stage will you explain to the Court the system used there in distributing cases among the different judges?

A Well, the distribution of the cases of the various judges is a procedure whereby, through some chance selection, cases are assigned to judges in order, but commencing with a judge of a division whose letter is unknown to anyone, and it's selected at the end of the day's business.

In other words, all cases, for example, that would be filed today, as I understand it, would be simply held in the file, and then, at night, or the next morning, the Clerk of the court would assign cases - - - would assign divisions to each of those cases.

It's impossible to tell, therefore, which division any case that an attorney files will fall into. I think the method was designed to prevent attorneys from getting cases to fall into any particular division.

Q Now, when that case was filed in the Circuit Court, what division did it fall in?

A The case fell into Division D, Judge Carroll's division.

Q All right, will you go ahead and tell us whether or not you filed pleadings in that case, which had been handled by Judge Holt during the evening?

A Yes, as I pointed out, as soon as the receivership went into effect, I immediately sought a hearing before the judge for the purpose of getting rid of this receivership. The first appointment that I could get was for Thursday, May 26.

I immediately filed in the case a motion to dismiss, and a motion to dissolve the order appointing the receiver. Technically, the second motion should be called "motion to dissolve temporary injunction and to discharge receiver."

Both of these motions were filed immediately, and they were called up before the court for hearing on Thursday, May 26.

Q Did you have a hearing on those motions?

A Yes, we had a hearing on the motions that lasted for a considerable period of time.

Q Who heard those motions?

A The motions were heard by Judge Holt.

Q Will you give us the results of that hearing?

A Yes. The first matter that was urged by me before the Court was the fact that the complaint was fatally defective, in that this was an action brought for the appointment of a receiver for a corporation called "Emalf, Incorporated," and yet the corporation was not joined as a party defendant to the case.

In other words, I urged before the Court that he could not, and had no jurisdiction, to appoint a receiver for a corporation who was not even joined as a party defendant to the case. The judge overruled my motion.

The secondary motion was to dissolve the temporary injunction and discharge the receiver, which required the taking of extensive testimony, which was done.

Q Incidentally, does the file reflect when your client was served with process, or do you recall?

A I don't recall offhand, as to when he was served with process, Mr. Hopkins.

Of course, by my filing the motions in the case, I submitted the individual parties Defendant, that is, Jones and Duncan, to the jurisdiction of the Court.

Q Did your client have notice of the application for receiver?

A No, he - - - there was no notice given. The appointment of receiver in this case was without notice.

Q What was the next action taken in the case then, please?

A Well, let me say that after the taking of testimony in the case before the Judge, why, we waited a couple of days, and then an order was entered by the Court.

Will you bear with me just one second while I find it, please?

As I stated, the hearing was held before the Court on May 26, a Thursday. On the following day, an opinion and order was entered by Judge Holt.

This opinion and order, in effect, overruled the motion filed by me for the purpose of dissolving the receivership. If I may, can I refer to the order and quote specific parts of it?

Q Please do, if you will. Tell the Court what was done?

A All right, sir.

Well, this order, first of all, as is typical of most orders, makes a finding of fact by the Court, and the Court found that the Plaintiff, Harvey, owned one-sixth of the stock, and the Defendants, between them, five-sixths of the stock.

Thereafter, the order provides that the "Plaintiff in this action as minority stockholder claims mismanagement of the business to his detriment and lasting injury. Rather than comment on his specific claims, the Court will omit such and decide which and so state those which are sustained."

There is then a finding by the Court - - - I don't think it's

necessary to go into all those findings by the Court here, but I think - - -

MR. HUNT: I think that if the witness is going to read any part of it, Mr. Hopkins, he ought to read it all, don't you?

MR. HOPKINS: We have no objection; just trying to save time.

MR. HUNT: Very well.

MR. HOPKINS: Do you insist on him reading the whole?

MR. HUNT: We'll have to get back to it if it's not now.

MR. HOPKINS: Well, let's proceed this way, if you will, and then go back to it.

Go ahead, if you will.

THE WITNESS: Well, I'm not quite sure I understand the result of the discussion here.

BY MR. HOPKINS:

Q Go ahead and read it now.

A (Reading): "Gambling in the restaurant, which placed the liquor license in jeopardy. This has been proven although it is sought to be brushed off by testimony that it was a 'ball game pool' and quite insignificant and as such was only a 'little gambling,' although one payoff amounted to \$120. Little or not it violated the law and subjected the business to revocation of its liquor license. It reminds the Court of a similar situation when the Defendant in a case pleaded that she was only a 'little pregnant.'"

Q That's of Judge Holt's - - -

A That is Paragraph 1 of this order. There is then a series of findings, the payment to Mrs. Duncan of \$150 a week for managerial services is an utter waste of corporate funds; then a finding that "other items insignificant in themselves standing alone, such as poor food, lack of food, sorry service," and so forth, were affecting the business of the corporation.

Q Mr. Keith, excuse me right here.

I notice this receiver was appointed at night. Was there any bond required before the receiver went out and took this man's business over?

A No, no bond was required of the Plaintiff. In fact, I overlooked mentioning that at the hearing before the Court, I urged that the Plaintiff should be required, as is the usual case, to post a Plaintiff indemnity bond to compensate or indemnify the Defendants from any harm they might suffer by reason of the wrongful appointment of a receiver.

There was no ruling made by the Court on that matter.

Q Did you ever go before any other Judge to seek an order in this case?

A Well, yes, after this particular order was entered, we sought to get the order superseded by placing a supersedeas bond; and so, we went up to the Court House with the motion in hand to present to Judge Holt, requesting that he allow us to post a supersedeas bond, a supersedeas on the receiver. Judge Holt was not there at the time. Accordingly, we went to see Judge Carroll, since the case was in Division D, and asked him to grant the supersedeas.

However, Judge Carroll refused to do so; he wouldn't even hear it, since he felt that since Judge Holt had heard the case, and particularly, in view of a legend scrawled across the face of the file that the matter should go to Judge Holt's alternate, Judge Wiseheart - - - there is a legend across the face of the file which reads:

"27 May 1955" - - - it's a little difficult to read this; it's in the handwriting of the Judge:

"Having heard testimony for over four hours on motion to dissolve and being of the opinion that sufficient testimony was adduced to decide this case on its merits and believing that to require the Judge of the Division in which the case fell to go over the same ground would be unfair to him and a waste of time not only to him but to the litigants, witnesses and attorneys, it is ordered that this cause is assigned to Division A.

"(s) Judge Holt."

Q In effect, then, Judge Holt ordered that assigned to his own division, is that correct?

A Yes.

Q All right, what was the next action, please?

A You mean after the order on the motion to dissolve the receivership?

Q Correct.

A After the judge ruled against me on the motion to dismiss and to dissolve the receiver, as we indicated, we went before the Court with the motion for supersedeas, a supersedeas bond which stays the proceeding, and took it into Judge Wiseheart's office, as the alternate to Judge Holt, and Judge Wiseheart denied the motion; whereupon, we immediately filed a motion before the Supreme Court, requesting that the Supreme Court supersede or direct the issuance of a supersedeas, in effect, reverse the order which had denied the request to supersede.

Q Did the Supreme Court act on that?

A Yes. The hearing was held before the Supreme Court on June 6, and the Supreme Court ruled on June 8, and on June 8, the Supreme Court ordered that the receiver be superseded upon the posting of a \$20,000 supersedeas bond.

Q Did you then offer to post a supersedeas bond?

A Yes, following receipt of the Supreme Court's order, we took the necessary steps to post the bond.

The Supreme Court order specifies, as is usual, that the conditions of the bond were to be fixed by the lower court. So, the first thing we did was go back to Judge Holt with the mandate of the Supreme Court, and ask him to fix the terms and conditions of the supersedeas bond.

This was done, and an order entered by the Judge, fixing the terms and conditions of the bond.

After the terms and conditions of the bond were fixed, why, we made the necessary arrangements for the bond, procured the bond, and then came before the Court again, for the purpose of having the bond approved.

Q Did Judge Holt enter an order approving the bond?

A Yes, the Court entered an order approving the bond - - - I'm trying to find the date here. I think it best to read the order directly.

The request for the Court to approve the supersedeas bond was presented to the Court on June 15, 1955.

On that day the Court entered its order, approving the bond, suspending the receiver, and it then provides that "The receiver be and he hereby is granted a receiver's fee in the sum of \$2200 for his services rendered in this cause, and he is hereby authorized to pay the same to himself out of the funds now in his hands from the operation of said business prior to the operation of said supersedeas."

That order was entered on June 15, 1955.

Q And Judge Holt ordered the receiver pay \$2200 as a condition to your posting bond, is that correct?

A Well, that's the summary of what the order provides.

Q What did you do then?

A Well, following the entry of this order, we again went to the Supreme Court - - - and incidentally, when I say "we," the firm of Sibley & Davis was in the case at this time, and actually handled the argument in the Supreme Court.

A motion was filed to review the order of the lower court with respect to the supersedeas bond. Specifically, the motion was filed for the purpose of reviewing that part of the Court's order as having drafted upon the supersedeas bond the condition that the receiver first pay himself a \$2200 fee.

This was set down for hearing before the Supreme Court, and actually heard before the Supreme Court on June 6 - - - excuse me, I'm wrong about that date; let me correct that, please.

The motion to the Supreme Court to review and modify the Court's order on the supersedeas was filed on July 21.

Q What did the Supreme Court rule on that one?

A On July 28, the Supreme Court entered its mandate where, in effect, it sustained our motion objecting to the payment of the receiver's fee. I think it best to quote directly from the Supreme Court order of July 28. It reads:

"We think the objection to payment of the receiver's fee is well taken. The requirement works an undue hardship on petitioners, and then, the validity of the receiver's appointment is in litigation. The matter of his payment should be left open until the question of his appointment is settled and it is determined who will be required to pay the receiver," citing several cases. Going on with the quotation:

"The motion of petitioners to review and modify the supersedeas order is granted, and that part of the said order requiring payment of receiver's fee in the sum of \$2200 is quashed."

Q Did you take it back to Judge Holt for that order?

A Yes. Following the entry of that order, I filed, on August 5, 1955, a motion for remittance of the receiver's fee, which urged that by reason of the Supreme Court order, the \$2200 already paid by the receiver, Mr. Kurlan, to himself, should be remitted.

That matter was heard before the Court on August 10.

Q Did Judge Holt then follow the opinion of the Supreme Court, carry out their mandate?

A No sir. Frankly, I thought that the hearing on the motion for remittance was to be a rather perfunctory hearing, in view of the fact that I was in possession of the Supreme Court mandate.

However, when we got to the hearing, why, the Court refused to order the remittance of the receiver's fee.

Q What action was then taken?

A Before - - - may I elaborate on this point - - -

Q Go right ahead.

A - - - in connection with that order? Because I felt very strongly at the time about one thing that occurred in the case.

At the time of the hearing before the Court on August 10, on my motion to require the receiver to remit the \$2200 which he had received, I argued, very briefly, in fact, that the Supreme Court had quashed the order, and therefore, there was no alternative for the Circuit Court, other than to comply and to direct the receiver to return the fee.

At the time of the hearing, the attorney for the receiver, a Mr. Lucius Cushman, argued that the fee did not have to be returned, because - - - and this gets somewhat into the validity here - - - because a supersedeas bond is not retroactive in operation, but only prospective in operation. In other words, it only affects that which happens after the posting of the bond, rather than undoing that which may have occurred before the posting of the bond. That was the gist of the argument for the receiver.

On the other hand, I argued, very strongly, in fact, that I was not in the least bit concerned with what the law was on the retroactivity or prospectivity of the supersedeas order; I was not relying on - - -

MR. HUNT: Mr. Chief Justice, wouldn't it be more appropriate for the witness to detail the happenings, instead of repeating his unilateral argument before the Court?

CHIEF JUSTICE TERRELL: I think that's what counsel asked him for, the details of it.

BY MR. HOPKINS:

Q Mr. Keith, you are stating what you had argued before - - -

MR. HUNT: Not what's in the file, but what he argued.

MR. HOPKINS: I think it's material.

MR. HUNT: I think it's - - - you think it's material? I'll withdraw the objection, then, if you want to hear it.

BY MR. HOPKINS:

Q Go ahead, Mr. Keith.

A Well, I pointed out very strongly to the Court that I wanted it clearly understood that I was not arguing any law on the retroactivity or prospectivity of the supersedeas bond; the only thing upon which I was relying for my motion to remit was the Supreme Court order, that and nothing else.

When the opinion and order came down, by the Supreme Court - - - by Judge Holt, it provides:

"Under these circumstances, this Court entered its order, dated June 15, 1955, recorded in Chancery Order Book 1189, at Page 197, authorizing said receiver to pay himself out of the funds in his hands, and it appears to the Court that he then and at that time did so, and hence, this motion for remittance of said sum, it being contended that the subsequent filing of the supersedeas bond requires such an order."

Now, that ruling by the Court was in - - - directly contrary to the position that I had taken. I did not make any such contention at all. My contention was that the Supreme Court mandate requires such an order, not the supersedeas bond.

Q In short, Mr. Keith, it would not require Mr. Kurlan to remit the \$2200, is that correct?

A That is correct, sir.

Q All right, what was the next action in the case?

A Well, the next action in the case was a ruling by the Supreme Court, which requires me to explain this:

Earlier in the case - - - in fact, a short time after the Court had made its ruling in refusing to dissolve the receivership, I had filed before the Supreme Court a petition for certiorari, which is a writ which brings the record before the Supreme Court so that it may review the case on its merits, so to speak. That petition had been filed back on June 10, which was some two months prior to the point of time that we're discussing right now.

Well, in early September, the Supreme Court granted certiorari; in other words, sustained our appeal, if I may use the word.

Q Excuse me. Was this a going business which was put into receivership?

A Sir?

Q Was this a going business which was put into receivership?

A Oh, yes, it was a going business, and a successful business.

Q Did it have any obligations outstanding that it could not pay?

A No sir.

Q Would you refer back to the order of May 27, please?

A I have it, sir.

Q Now, let me ask this question: Had anybody asked that the business be sold, or that the stock be sold?

A No, there was no such prayer by any party in this case.

Q Did Judge Holt, in his order, mention the sale of the stock?

A Yes, in the order, the Court ruled that after the receiver had satisfied himself as to the bona fides of the ownership of the stock, then - - - and now, I'm quoting from the order, Paragraph 4:

"On reporting on the true ownership of the stock of the corporation involved, the receiver shall, by proper order, be required to sell all of the outstanding stock of Emalf, Incorporated, to the best and highest bidder, for cash, at either private or public sale, or both, as the said receiver shall determine," and goes on to say to report the sale to the Court, and so forth.

Q I believe it's been testified that the receiver's fee was \$2200 for that three weeks.

How long have you been practicing law, Mr. Keith?

A I have been practicing for ten years.

Q And in your opinion, is that fee high?

A I would say that it was, yes sir, based upon the decisions of the Supreme Court.

Q Let's see, it went to the Supreme Court three times, correct?

A Yes.

Q In three weeks?

A You say in three weeks, sir?

Q Approximately three weeks' time?

A No, that wouldn't be correct. We went to the Supreme Court twice within the first two weeks. The last motion that went to the Supreme Court on the order of Judge Holt, paying the \$2200 fee to the receiver, did not get before the Supreme Court in August; that was about two months later.

Q As an attorney, can you see any conceivable reason for the receivership in this case?

A As an attorney, it was my feeling, and always has been, and it is today, that the receivership was absolutely uncalled for.

Q What was the cost of this receivership?

A If you will bear with me again, sir, just a second.

I'm not quite sure I understand your question. You said, "What was the cost of the receivership?" You mean just the receiver's fees, and so forth?

Q I wonder if you would mind telling us what your fee was in the case? What did it cost the man to defend this case?

A Well, I have no objection. My fee was \$2500.

I understood he paid - - - well, I would rather not say what he paid the other attorney. Perhaps he would not like to have that made public.

Q Did you have an attorney associated with you?

A Oh, yes, Mr. Sibley was associated, but I would prefer not to state what he was paid.

Q Do you have an itemized account there of other costs in the case?

A Yes, I do.

There is filed in the Court file to tax costs, and this motion sets forth in detail the various costs which we ask should be assessed against the Plaintiff in the case. They total \$4,453.07.

Q Mr. Keith, what interest did this Plaintiff, Harvey, have in this business?

A What did Mr. Harvey have in the business?

Q The man that asked for the receiver?

A He had a one-sixth stock ownership of the business.

Q Do you know, actually, how much money he had in it?

A As I understand, he had, after certain credits and debits were worked out at the beginning, it was \$350 in actual cash; and he also held a corporation note for \$5,000, but he actually had \$350 in cash.

Q Would you refer to the opinion and order of the Court, granting certiorari, for us, please?

Before we start on that, how much money did Jones have in the business, if you know?

A The testimony was that Jones had between \$69,000 and \$70,000 invested in the business.

Q And how much money did Duncan have in the business?

A Well, that included Jones and Duncan together.

Q I see. Do you have that order of the Supreme Court?

A Yes, I do.

Q Will you read that to the Court?

A You want me to read the entire order, sir?

Q If you will, please.

A This is the opinion on certiorari that you want?

Q Yes, correct.

A The opinion was filed September 16, 1955; the decision was rendered by Justice Terrell:

"May 23, 1955, Respondent, C. E. Harvey, Jr., filed a complaint against Petitioners in the Circuit Court of Dade County, in which he prayed for an accounting, specific performance, including an injunction, and receiver without notice.

"The complaint shows that Respondent owns one-sixth of the corporate stock of that certain restaurant, Emalf, Inc., a Florida corporation, engaged in business as the Flame. The Petition alleges that Respondent was aggrieved by Petitioners, the owners of five-sixths of the capital stock of said corporation, and that they had mismanaged the restaurant by (1), retaining and paying Petitioner, Eleanor Duncan, for managerial services, although she was incapable and inexperienced; and (2), incompetence, drinking, stealing and gambling upon the premises by employees; that because of such practices, the corporation has suffered losses, good will and profit, and has placed its liquor license in jeopardy.

"On consideration of the petition, the trial court, without notice to Petitioners, or the Flame, and without requiring an indemnity bond of Respondent, entered an order enjoining Petitioners from interfering with the operation of the restaurant, and appointed a receiver for its assets, the said corporation not having been joined as a party-Defendant to the cause.

"A motion to dismiss the complaint for want of indispensable party-Defendant, and a motion to dissolve the injunction and discharge the receiver after evidence was taken, were denied.

"The latter order provided, in substance, that Emalf, Inc. be made party-Defendant to the cause, and that unless the parties desire to plead further or take testimony, a final decree be entered on its merits; that the Defendants answer forthwith, and being done, the receiver satisfy himself of the bona fides of the stock ownership and sell the same at private or public sale, on court order.

"We are confronted with petition for certiorari to review (1), the order dated May 23, 1955, appointing a receiver to operate the Flame, said order having been entered upon the sworn complaint, and without notice; (2), that part of the order dated May 27, 1955, declining to dismiss the receiver, ordering Emalf, Inc. to be made party-Defendant, ordering the corporate stock to be sold at private or public sale, allowing Defendants to answer if the parties desire to plead further, and ordering the receiver to desist paying salary of \$150 per week to Eleanor Duncan, as daytime manager of the business, on refusal of the lower court to do so, this Court granted supersedeas pending prosecution of certiorari.

"Several questions are urged for determination, but all challenge the validity of that part of the decree alone appointing and thereafter refusing to discharge the receiver, granting injunction without bond, and ordering the corporate stock sold, amounting to a dissolution of the corporation.

"We have examined the record carefully, and find no basis for the appointment of the receiver, with directions to sell the corporate stock. At the outset, there does not appear to be sufficient prayer for that purpose; and if there were, the facts do not warrant the relief.

"The Respondent owns only one-sixth of the corporate stock; the Petitioners own five-sixths. There is no showing whatsoever of fraud, double dealing or loss of corporate assets.

"It further appears from the record that the corporation was solvent and a going concern. In McAllister Hotel, Inc., vs. Schatzberg, Florida, 1949; 40 Southern 2d 201, this Court held that the power to appoint a receiver for a corporation should be exercised only where exigencies demand it and no other protection to applicant could be devised by the Court.

"He further held that a receiver pendente lite will not be appointed unless Defendant, or at least the primary offending Defendants are shown to be insolvent. Other points cited in the last cited case make it clear that when applied to the facts in the case at Bar, there was" - - - and I think this is a typographical error - - - it reads "sufficient" - - - I think it should be "insufficient showing for the appointment of the

receiver ordering sale of the assets and dissolution of the corporation. See also Deauville Corporation vs. Blount, 25 Southern 2d 812, where receiver was appointed and an order appointing him was quashed for reasons very similar to those shown in this case.

"It follows that certiorari is granted, and the judgment appointing the receiver, ordering the sale of the stock and assets of the corporation, is quashed on authority of the last cited cases.

"It is so ordered.

"Drew, Chief Justice; Sebring and Roberts concurring."

Q Did Kurlan ever pay back the \$2200 under that Supreme Court order?

A No, the receiver never paid back the \$2200. He kept the receiver's fee, and eventually the costs of the case were taxed against the Plaintiff, but the receiver kept the fee.

Q Were all the costs taxed against the Plaintiff?

A Not quite all, no sir.

Our motion to tax costs, which was filed before the lower court on November 23, itemized costs amounting to \$4,453.07. The order taxing costs was entered by the lower court, Judge Holt, on December 5, 1955, taxed against the Plaintiff, \$3,000.54 as costs, leaving a difference of approximately \$1400.

Q In short, was the Plaintiff required to pay Mr. Merritt that \$150 a week?

A In short, the costs which were not taxed against the Plaintiff, but were paid, ultimately, by the corporation, were the costs of Neil Merritt, Gene Mooers, and Phillip Guara, who were all, as I recall, assistants to the receiver.

These costs, between them, totaled approximately \$1300.

Q And those were the people that Kurlan brought in to help him, in addition to the help then on hand, is that correct?

A Yes, that's correct.

Q Mr. Keith, just to sort of summarize, now, this proceeding, of a receivership of about three weeks, cost Mr. Jones, in attorney's fees, \$2500 to you, correct?

A That is correct.

Q Mr. Sibley, who came to the Supreme Court, you do not know his fee, is that correct?

A I've been told what it is, but I don't know it; I've been told.

Q All right. Then, there was approximately \$1300 in additional help brought in by the receiver, is that correct?

A That is correct.

Well, I can state that Mr. Jones stated that the entire matter cost him approximately \$7500.

Q And that's the same receivership that the Supreme Court said was unnecessary?

A Yes sir.

MR. HOPKINS: You may inquire.

SENATOR DAVIS: Mr. Chief Justice, it is now 3:20.

I move that the Senate stand in informal recess for a period of ten minutes.

SENATOR RAWLS: Second the motion.

CHIEF JUSTICE TERRELL: Gentlemen, you've heard the motion and the second. All in favor of the motion, let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

Whereupon, a recess was taken from 3:20 o'clock, p.m. to 3:30 o'clock, p.m.

CHIEF JUSTICE TERRELL: Order in Court. Close the doors, Mr. Sergeant-at-Arms.

Unless there's objection from the Court, I declare a quorum present.

MR. HUNT: Is the Court ready to proceed?

CHIEF JUSTICE TERRELL: Ready. Order in Court, please.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Keith, I believe you testified that your first notice of this matter was during the early evening of May 23, 1955, when you were called by telephone?

A About 8:30 in the evening.

Q Do you know whether or not Judge Holt was the assigned emergency judge for that particular week? Did you check to see whether or not he was?

A I subsequently ascertained that he was.

Q He was?

A Yes sir.

Q Will you explain to the Senate what that means?

A Well, it's the practice in Dade County to appoint an emergency judge. I believe the judges alternate - - -

Q Each week, do they not?

A Each week, yes; and in the event any emergency matters come up, why, it is customary to take it to the emergency judge.

Q That's after court hours?

A Yes sir.

Q Or over - - - during week ends, when the court is closed?

A That is correct.

Q Now, I believe, in the order appointing the receiver, although bonded, the Plaintiff was not required by the court, and I'll ask you to state whether or not the court did require the posting of a \$5,000 bond on the part of the receiver?

A Yes, the court - - - well, let me just check that. I believe that is correct.

Q Go right ahead.

A In fact, I remember very clearly that it was later raised to \$20,000. I'm not sure what it was at the outset.

You have the order there, and I don't happen to have a copy in my file - - -

Q I thought perhaps your files were that complete.

A I have everything but that order, I think.

Q Would you accept the statement that the bond was \$5,000 under the order of appointment?

A Yes sir, I would.

Q And that it was increased to \$20,000 by the order of 31 May, 1955?

A Yes sir, I do. I distinctly remember the increase to \$20,000.

Q Do you have a copy of the order of 31 May, 1955 to which you can refer, or do you require the original?

A Is that the order the judge signed on the 27th of May, that was filed the 31st of May?

Q It may be. It's quite a lengthy order.

A Opinion and order?

Q Yes.

A I presume, Mr. Hunt, you are referring to the order that was signed on May 27, and filed May 31.

Q You referred to it awhile ago; that's correct. I'm speaking of the filing date.

A All right, sir.

Q Do you have it before you?

A Yes sir, I do.

Q Now, prior to that order, you had filed a motion to dismiss and a motion to dissolve, is that correct?

A That is correct.

Q Did you file those with the Clerk, or take them to the Judge?

A My memory on that is hazy; all of this happened very quickly, of course, and - - -

Q Will you check the file - - -

A Yes, I will.

Q - - - and see if it will refresh your recollection?

A Both the motion to dismiss and the motion to dissolve the temporary injunction, and to discharge the receiver, appear to have been filed on May 26, which was the same day that the hearing was heard. However, there does not appear any legend on here indicating they were filed before the Court. I believe they were probably then filed with the Clerk just prior to the hearing.

Q On what date was the hearing?

A On May 26, the same date that these motions were filed.

Q Had you previously applied to Judge Holt for a hearing for the purpose of considering your motions?

A Yes, I had.

Q He granted you that early hearing, did he?

A Yes. What occurred was that I had asked for an immediate hearing, and I was told that I could have a half hour, between 1:30 and 2:00 o'clock on Thursday.

Q You were told that by whom?

A I was told that by the Judge's secretary.

Q I'd appreciate it if you'd address yourself to the question.

A I'm sorry, sir. What was the question?

Q Did you apply to the Judge for the hearing?

A No, not directly. I applied to his secretary for the time.

Q Did she give you a time for the hearing?

A Yes, she did.

Q As of May 26, the very day you took down your motions, is that correct?

A I applied for the hearing prior to May 26.

Q When did you apply?

A I applied for the hearing, I believe, on May 24, the very day that I received the papers.

Q And you were given a hearing for the 26th?

A That is correct.

Q What time did the hearing begin?

A At 1:30 in the afternoon.

Q And what time did it end?

A I'm guessing, now, but I'd say between 5:00 and 5:30.

Q It was a lengthy hearing, wasn't it?

A Yes, it was.

Q Did Judge Holt hear both sides?

A Yes, he did.

Q At the conclusion of that hearing, you've referred to his order and read portions of it. Will you now read the entire order?

A Right from the start, sir?

Q Yes sir.

A Yes sir.

Q Including the "little pregnant" part that you referred to.

A All right, sir.

"Opinion and order," filed the 31st of May, 1955. "Holt, Justice.

"This came on to be heard on Defendants' motion to dissolve injunction and set aside appointment of receiver heretofore designated to operate the Flame restaurant, the subject matter of this litigation.

"Plaintiff owns sixteen and two-thirds shares and Defendants, between them, eighty-three and one-third shares of the corporation, Emalf, which owns all of the assets involved.

"While this is a corporate set up, the differences between the parties reflect practically the same situation, when partners disagree and regrettably necessitate the intervention of a court of equity.

"Testimony was taken before the Court for some four hours or more, covering almost every phase of the entire negotiation between the parties, and as provided hereinafter, as far as the Court is concerned, this could well be sufficient for final disposition of the case on its merits. Plaintiff organized the project, spearheaded its beginning, decorated the premises, became the first president of the company, was employed as manager thereof at \$600 per month for a period of six months (?), from February 7, 1955. This 'honeymoon' lasted until March 21, 1955, when, at a special meeting of the stockholders and directors, the majority of whom discharged Plaintiff from his position as manager, and as he claims, thereby breached and violated his contract of employment.

"Plaintiff in this action, as minority stockholder, claims mismanagement of the business to his detriment and lasting injury. Rather than comment on the specific claims, the Court will omit such, and decide which, and so state, those which are sustained:

"1. Gambling in the restaurant, which placed the liquor license in jeopardy. This has been proven, although it is sought to be brushed off by testimony that it was a 'ball game pool' and quite insignificant, and as such, was only 'a little gambling,' although one pay-off amounted to \$120. Little or not, it violated a law, and subjected the business to revocation of its liquor license. It reminds the Court of a similar situation, where the Defendant in a case pleaded that she was only 'a little pregnant.'

"2. The payment to Eleanor Duncan of \$150 per week for 'managerial services' is an utter waste of corporate funds. She had no experience whatsoever in this type of business, and as testified to by the expert in such matters, the receiver herein, the lack of proper control in the handling of food, cash and liquor clearly demonstrated her inability to properly operate a restaurant. Drinking by employees and suspicions of stealing on the part of some employees was also noted on and pointing to this inadequacy.

"3. Other items, insignificant in themselves, standing alone, such as poor food, lack of food, sorry service and other related conditions, when added together, considered as a whole, became quite impressive, especially in an eating business, the success of which depends almost entirely upon good will and word-by-mouth advertising of its good or bad reputation, as recounted by its customers.

"However, the Court sees little difference between the Plaintiff and the Defendants in their actions, since all indulged in the same practice of which the Plaintiff now complains, especially the gambling feature, but two wrongs do not make a right, and those charged with them and so proven must suffer the penalty therefor.

"Under the set up, either by Plaintiff or Defendants, it is difficult for the Court to foresee a proper operation of the business in this respect. The parties desire that a final decree be entered upon the merits. It is ordered:

"1. That Emalf, Incorporated be made a party-Defendant;

"2. That upon such being done (1) all three of the Defendants file their answer forthwith. Upon such being done, it is ordered:

"3. The receiver satisfy himself of the bona fides of the ownership of all the outstanding stock held in the name of the Plaintiff and the two individual Defendants;

"4. Upon the reporting on (3) the true ownership of the stock of the corporation involved, the receiver shall, by proper order, be required to sell all the outstanding stock of Emalf, Incorporated for the best and highest bid for cash, at either private or public sale, or both, as the said receiver shall determine, to realize the highest sum possible, and to report same to this Court for confirmation thereof, and that the proceeds therefrom, after deducting all legitimate expense therefrom, pay same to the respective stockholders, as their holdings may be, and thereafter transfer said stock of said parties to the purchaser or purchasers thereof.

"In the event the parties hereto desire to plead further and take more testimony, and do not wish to dispose of this case now on the merits, it is ordered that the Defendants, Emalf, Incorporated, Eugene Robert Jones and Eleanor Duncan, are allowed ten days from date to file their answer to the bill of complaint, and thereafter the Court will set a special date for whatever testimony that they may desire to adduce for final disposition of this matter. It is further ordered:

"5. That Defendants' motion to dissolve the injunction and discharge the receiver is denied;

"6. That the receiver's bond be increased to \$20,000 at the same terms and conditions now in force;

"7. That the receiver place into practice all rules and regulations in the operation of the restaurant and cocktail lounge dictated by good and safe business operations and rigidly enforced therein;

"8. That the receiver forthwith cease and desist payment of \$150 per week to the Defendant Eleanor Duncan and entirely dispense with her services.

"DONE AND ORDERED at Miami, Florida, this 27th day of May, 1955"

Q Thank you, Mr. Keith.

Now, I understand that you immediately applied for a supersedeas order pending appeal from that order to the Supreme Court, is that correct?

A That is correct.

Q That application you made before Judge Wiseheart, the current senior judge of the Circuit, is that correct?

A Yes sir, in the absence of Judge Holt.

Q Yes. And did Judge Wiseheart hear your application?

A Very perfunctorily.

Q Did he entertain it and enter an order denying it?

A He entered an order denying it.

Q Did you then file an answer to the bill of complaint, to the complaint?

A The answer, as I recall, was filed on June 8.

Q The Supreme Court order that supersedeas be allowed

- - -

A That is correct.

Q - - - directed to Judge Wiseheart, was likewise filed June 8, was it not?

A No, it was filed June 9. The mandate was dated June 8 in the Supreme Court.

Q Very well.

Now, then, in lieu of going back before Judge Wiseheart on the supersedeas matter, Judge Holt being back in his office, you apparently took it before him. Was that on June 13?

A That is correct.

Q How lengthy is that supersedeas order that he entered on that date?

A On the 13th?

Q Yes.

A Just a minute, please.

It's about half a page.

Q Pardon?

A It's about half a page.

Q About half a page?

A Yes sir.

Q Would you read it, please?

A Yes sir.

"Supersedeas Order" filed for record June 16, 1955.

"Pursuant to the order of the Supreme Court of Florida entered herein on June 8, 1955, granting a supersedeas pending the disposition of the petition for writ of certiorari filed by the Defendants herein, and it appearing therefrom that this Court is required to allow a supersedeas, that bond therefor be in the sum of \$20,000, and that the payee and conditions of said bond and surety and due execution thereof to be approved by me, and counsel for the respective parties having appeared and opportunity afforded for all such counsel to be heard, and the Court being fully advised in the premises, it is thereupon

"ORDERED, ADJUDGED AND DECREED that the supersedeas bond shall be filed herein by the Defendants in the penal sum of \$20,000 with a good and sufficient surety company to be approved by the Clerk of this Court, condition to pay the Plaintiff all costs and damages, including a reasonable fee for services of his attorney in the appellate court (Lawson vs. County Board of Public Instruction, 154 Southern 170, 114 Florida 153) which remains the same by reason of the stay of these proceedings in the event the order appealed from shall be affirmed, or the petition for writ of certiorari denied."

Q And do I understand that you appealed from that order?

A No sir, I did not appeal from that order.

Q What was the next thing that happened in the case, Mr. Keith?

A The order, as I just described, set the conditions or terms of the bond.

The next thing that occurred, actually, was the mechanical job of getting the bond. Therefore, we made the arrangements for getting the bond; we appeared before Judge Holt again with the bond in hand, in order to have the Court approve the bond.

Q And what happened at that time?

A This was on the 15th day of June.

At that time the Court entered the order which bears date of the 15th day of June, 1955, and is recorded in Order Book 1189, Page 197. This was the order that I referred to in my direct examination as being the one that awarded the receiver the \$2200.

Q Yes. Now, when was your next appearance before Judge Holt?

A Are you getting me past the June 15 order?

Q Yes.

A May I please look at the file first?

Q That order, by the way, had the effect of relieving the receiver from further duties, did it not?

A The order of June 15?

Q Yes.

A Yes, that order had the effect of suspending the receiver, that's correct.

Q And did the receiver ever report before the Court, and did that order likewise approve the receiver's report?

A Yes, the receiver filed a report which was approved by the Court at that time.

Q Go ahead.

A Your next question to me, Mr. Hunt, asked me when we appeared before the Court again.

I see in the file a notice of hearing, wherein the - - - Mr. Joseph Hackney, attorney for the other side, set me down on

a notice for a hearing on a motion to produce certain documents. I just can't recall right now - - - I don't believe - - - let me correct that, I think I recall it.

We never did go before the Judge on that because we had no objection to the motion at all.

Q Very well.

A The next time I appeared before the Court, to answer your question, was on our motion to ask the Court to remit the receiver's fee, following the mandate of the Supreme Court, disapproving its allowance.

Q Was that motion filed August 5, 1955?

A That is correct.

Q And when was it set for hearing?

A The hearing on that motion actually was held on August 10, 1955.

I'd like to just comment that the Court file stated August 12. It happened to be incorrect. The hearing actually was held on the 10th.

Q Was that held before Judge Holt?

A It was.

Q Who was present?

A Myself, Mr. Kurlan, the receiver, Mr. Lucius Cushman, attorney for the receiver, Mr. Hackney and Mr. George Miller, attorneys for Mr. Harvey.

Q Pardon me?

A Mr. Hackney and Mr. Miller were attorneys for the Plaintiff, Harvey.

Q Was the motion heard by Judge Holt?

A Yes, the motion was heard.

Q Pro and con?

A Yes, it was heard pro and con.

Q And did he enter an order on the same day or the following day?

A He actually entered the order two days later, on the 12th. The hearing was on the 10th; the order was entered on the 12th.

Q And what was this order entered on the 12th? To deny the motion?

A His order amounted to a denial of the motion, yes sir.

Q Now, is there an order in there of October 18, 1955, wherein the Court granted a final decree in your favor, taxing costs against the Plaintiff?

A There is. The final decree in the case was entered on October 18, 1955.

Q What was filed on November 23, 1955, in the nature of a motion to set off a \$5,000 note to the Plaintiff?

A What was that filing date again, please?

Q 23 November.

I believe there are two motions there on the 23rd of November.

A That is correct, two motions were filed.

One was a motion to tax the costs of the case; that is, specifically to tax the - - -

Q Who filed that motion?

A The motion was filed by myself.

Q To tax the costs of the case against the Plaintiff?

A To tax the costs of the case against the Plaintiff, that is correct.

Q And what was the other motion?

A The other motion was in the nature of a supplementary

motion, which pointed out that the corporation was indebted to the Plaintiff, Harvey, on a promissory note for \$5,000, which was payable five years hence; and the motion requested that the cost judgment which would be entered in the cause be set off against that promissory note.

Q Well, the Court granted that motion, did it not?

A Yes, it did.

Q And the Court granted the other motion, did it not?

A In part, not entirely, it did.

Q Yes.

A We received certain allowances of cost.

Q Well, the supplemental motion anticipated that certain allowances would be charged against your client, didn't it?

A No sir, the supplemental motion did not anticipate such a thing.

Q What did it anticipate?

A The supplemental motion anticipated that all of the costs which we asked to be taxed against the Plaintiff in our motion to tax would be taxed against the Plaintiff.

Q And the Court entered an order apportioning costs of \$3,000.54 against the Plaintiff, which he permitted to be set off against the note, as you had requested?

A That is correct.

Q Were any further demands made on the receiver or the Plaintiff or anyone else, with respect to what you seem to consider to be a residue of costs that were taxed against your client?

A I wonder if you could read that question back, Mr. Reporter?

(Last question read)

BY MR. HUNT:

Q I mean, briefly, did you take an appeal from that decision, or did you - - -

A We did not - - -

Q - - - abide by - - -

A We did not take an appeal from the - - -

Q Did you sue the receiver on his bond for anything?

A No, we did not.

MR: HUNT: No further questions.

REDIRECT EXAMINATION

BY MR. HOPKINS:

Q Mr. Keith, was a Special Master appointed in this case?

A Yes sir, a Special Master, Mr. Joseph Perkins, was appointed as Special Master.

I might add that although he was appointed as Special Master, he never had an opportunity, and never did, in fact, operate as Master.

Q Mr. Keith, was any testimony taken by the Judge or anyone as to the reasonableness of the fee for the receiver?

A No sir.

Q The fee was set without any testimony whatsoever?

A That is correct.

MR. HOPKINS: No further questions.

If the Court please, we'd like to excuse this witness, if it is agreeable.

MR. HUNT: Are you through with this phase of the case?

MR. HOPKINS: No sir.

MR. HUNT: We cannot agree, Your Honor, until they com-

plete the phase, and then we'll be glad to stipulate with counsel, if we do not desire to recall the witness.

CHIEF JUSTICE TERRELL: The witness will remain here, subject to call.

(Witness excused)

MR. HOPKINS: Mr. Mooers, please, is the next witness.

Thereupon,

B. E. MOOERS,

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, please sir?

A B. E. Mooers, Brackley E. Mooers.

Q Mr. Mooers, did you go into the Flame Restaurant when Mr. Kurlan - - - I think they call him "Commander Kurlan" - - - when - - -

A Yes sir.

Q - - - he took over as receiver?

A Yes sir.

Q How long prior to your actually, physically walking into the Flame Restaurant, was it that Commander Kurlan called you and told you to stand by?

A I would say about, approximately, 5:00 o'clock that afternoon.

Q He notified you about 5:00 o'clock that afternoon that you would be called, and when did you actually go to the Flame Restaurant upon call by him?

A Well, we started, and we picked up one other chap that was working there, and we got there about 7:20 or 7:25.

Q That was in the evening, is that correct?

A That's right, that same evening, yes.

Q Was the restaurant operating at that time?

A Yes, it was.

Q As a matter of fact, Mr. Mooers, from the moment you took it over, was it doing a good business?

A I would say so, yes.

Q It was making money, in your opinion?

A I think so, yes.

Q Did Mr. Kurlan keep on the same dining room help and kitchen help and supervisory help that was at the restaurant when you all took it over?

A Yes.

Q In other words, the personnel that had been operating the restaurant prior to your taking over was still left there at the scene, is that right?

A That's right.

Q But in addition to the personnel that had previously been necessary to operate it, there were - - - who were the other people brought into the restaurant in the receivership?

A At that same night there was Neil Merritt, and on that particular night, he brought in a watchman, one of our own men, to carry over so that we would be on watch twenty-four hours - - - some one of our people would be there twenty-four hours.

That was eliminated, I think, the following night.

Q So, what salary were you receiving, Mr. Mooers?

A \$100 a week.

Q A hundred? Do you know what salary Mr. Merritt was receiving?

A No, I didn't know at the time.

Q Well, actually, you were just watching the supervisors, is that right?

A That's right.

MR. HUNT: Mr. Chief Justice, that's improper examination. We object to it.

MR. JOHNSON: He agreed that that's what the effect of - - -

MR. HUNT: Counsel is summing up every question, actually, "is that right?" He ought to be required, please sir, to reserve his jury argument until the final go-round.

CHIEF JUSTICE TERRELL: I think he has the right to bring out expenses. The objection is overruled.

BY MR. JOHNSON:

Q So then there were brought in, as I understand your testimony, you and Mr. Merritt, who were both paid salaries, and also Mr. Kurlan, who received a fee, all in addition to the personnel that had previously been sufficient to operate the restaurant, is that correct, sir?

A That's right.

Q Did the receivership increase the business, or increase the profits, as far as you could tell in the brief period you were there?

A I wouldn't know.

Q Then, from a business standpoint, there was no need to have the receivership, is that right, Mr. Mooers?

A No, I wouldn't know that.

Q Well, was the business good when you got there?

A Very good.

Q Did the business increase when you were there?

A No, it stayed about the same.

Q Was Mr. Kurlan there during all the time that the business was being operated?

A No.

Q Actually, what was Mr. Kurlan's duty there?

A Well, of course, I was there mainly in the evening, and he would call up and check with us, and come in very often to see what was happening, or see that we were carrying on our duties.

Q Well, actually, Mr. Mooers - - - let me ask you this: Did Mr. Kurlan have any actual supervisory duties, other than to watch you and Mr. Merritt?

A Well, of course, we carried out his orders before we went - - - or rather, when he left us there, he told us our duties; we carried them out, and we would report to him, either by phone or when he'd come in, as to what was going on.

If there was anything unusual, we would, of course, call him. We knew where to get him at all times.

Q Do you know if Mr. Kurlan was receiver for any other business during the same time that he was receiver for the Flame Restaurant?

THE WITNESS: I don't recall. It could have been, but I don't recall any.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: Several of the members of the Senate desire to confer with the Chief Justice. They've asked me to make a motion for a five-minute recess, and I so move, that we take a five-minute recess.

CHIEF JUSTICE TERRELL: You've heard the motion. All in favor, let it be known by saying "aye." Opposed, "no."

The "ayes" have it; the motion is adopted.

Whereupon, a recess was taken from 4:05 p.m. until 4:15 p.m.

CHIEF JUSTICE TERRELL: Order in Court. Unless there is objection the Chair will declare a quorum present and dispense with calling of the roll.

You can proceed with the witness if counsel has finished, Mr. Hunt.

MR. HUNT: Has counsel surrendered this witness, if the Court please?

MR. JOHNSON: No sir.

Mr. Chief Justice, may we proceed?

CHIEF JUSTICE TERRELL: Yes.

BY MR. JOHNSON:

Q Mr. Mooers, how much time do you actually think Mr. Kurlan spent at the restaurant? I'm not talking about telephonic communications, but actual time that he spent at the restaurant?

A Well, most of my time was spent there in the evenings, and not too much of his time was spent there at night. He was out there possibly, shall I say, every other night, or something like that, but not too much time in the evenings.

Q Can you say whether or not, when he would come by there, he would stay all night, or what?

A Well, he'd come by, and he'd stay an hour or an hour and a half, or something like that, chat about what was going on.

Q Did he have other duties at this time? That's my question.

A Oh, I would imagine so, yes. I think he was still at the bank.

Q Beg pardon?

A He was still at the bank, as far as I know. He was a bank officer.

Q And do you know whether he was the receiver for the Salem Inn during the same period of time he was receiver for the Flame Restaurant?

A No, I don't think so. I don't think that was the same time.

Q To your knowledge, was he receiver anywhere else during any of the time that he was at the Flame Restaurant, as far as you know?

A As far as I know, no.

Q Mr. Mooers, who is Mr. Kurlan? Could you - - - one of the Senators has indicated he would like to know who Mr. Kurlan is.

A Well, he was - - - as far as I know, he was treasurer of a small bank over on the Beach, and a Commander in the reserve of the Navy; that's about all I know about him.

Q Do you know how often he was appointed to these various receiverships?

A Two or three times I have known of him being there, because I worked for him.

Q Do you recall what receiverships he was appointed to during the time you worked for him?

A Yes, Belmont Park, Oceanic Villas, the Flame, and the Tahiti.

Q All right.

A I believe that's all I can recall right now.

Q Do you recall, during the time he was receiver at the Flame Restaurant, him being appointed to be receiver for the St. Lucie River Company?

A I knew nothing about that.

Q You knew nothing about that?

A No sir.

Q What date did you go into the Flame Restaurant to help Mr. Kurlan?

A Well, I wouldn't know the exact date. It was sometime early in May, first part of May, possibly sixth, seventh, eighth, somewhere right along in there; the actual date, I don't know.

Q Mr. Mooers, you've had a great deal of business experience, have you not?

A Some.

Q It's been testified here that Mr. Kurlan received a fee of \$2200 for this receivership that lasted approximately twenty-one days, approximately \$100 a day. Would you, in hiring a man to manage a restaurant full time, even, would you pay him that much money to manage a restaurant such as the Flame?

MR. HUNT: Mr. Chief Justice, that question is positively irrelevant and immaterial and improper.

CHIEF JUSTICE TERRELL: Objection sustained.

BY MR. JOHNSON:

Q During the time that Mr. Kurlan was the receiver for the Flame Restaurant, could you tell the Senate, with any degree of accuracy, the actual number of hours he would spend each day at the Flame, if he spent any particular time there?

A No, I couldn't, because my daytime duties were only about, shall I say, seven or eight days. The first two or three days he was there quite a little bit, but when we got straightened out, and between Merritt and myself, we got ourselves adjusted to the various hours, and I took the night shift because Merritt was taking care of the books and the finances, and so forth.

My hours were probably from 6:00 till whatever time they happened to close up, which would be anywhere from 1:00 to 3:00 o'clock.

Q As far as the actual operation of the business - - - and this is my understanding of your testimony - - - the services which you and Mr. Merritt and Mr. Kurlan rendered were unnecessary, as far as the actual operation of the business was concerned?

A What was that again?

Q You testified, as I understand, that you kept on the same staff that had been operating the business prior to the taking over by the receiver. So then, so far as the actual operation of the business goes, there was no necessity for you, Mr. Merritt and Mr. Kurlan to be there. Is that your testimony?

MR. HUNT: Mr. Chief Justice, that calls for a conclusion of this witness that he's not capable of answering, and we object.

CHIEF JUSTICE TERRELL: Objection sustained.

BY MR. JOHNSON:

Q Did you go out of the Flame Restaurant at the same time Mr. Kurlan did?

A Left the Flame?

Q Yes.

A Yes sir.

Q That was approximately after a period of twenty-one days, is that right?

A Right about that, yes.

MR. JOHNSON: Respondent may inquire.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Mooers, I'll ask you to state to the Senate whether or not, in your best business judgment, the twenty-one-day operation of the receivership of the Flame Restaurant was a careful and efficient and business-like operation?

A Yes sir, it certainly was.

MR. HUNT: No further questions.

MR. JOHNSON: That's all we have. Come down.

We have no further questions. We would like to excuse him, if you have no further need for him, Judge Hunt.

MR. HUNT: No objection.

MR. JOHNSON: All right, sir, you may be excused.

(Witness excused)

CHIEF JUSTICE TERRELL: All right, the next witness.

MR. JOHNSON: The next witness will be Mr. Rice. Just a minute.

Thereupon,

RICHARD H. RICE, Jr.,

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. HOPKINS:

Q Will you give us your name, please?

A Richard H. Rice, Jr.

Q You live in Miami, Florida?

A Yes sir.

Q And what position do you hold?

A I am a Deputy Clerk in the Circuit Court, under Mr. E. B. Leatherman.

Q Are you familiar with the system of assignment of Judges to the different cases in that Circuit?

A Very well, sir. I haven't been directly connected with it in the last ten years, but I am still attached to the office, in a branch office.

Q Will you explain to the Court here the system used, just how they are assigned?

MR. HUNT: Mr. Chief Justice, I believe the best evidence of the rules of practice of the Circuit Court of the Eleventh Circuit are those set forth in the rules of practice adopted by all the Judges, and we tender this to counsel for use in evidence, if he wishes.

I believe it's better and higher evidence than the recollection of the Deputy Clerk about some of the facts.

MR. HOPKINS: We thank you very much, but we prefer to let the witness go ahead and give his testimony.

MR. HUNT: Well, I'll object to it as not being the best evidence. The rules of the Court, promulgated by the Court are the best evidence.

CHIEF JUSTICE TERRELL: If the witness can testify that the assignments are in accordance with the rules, I don't see any objection as to why he shouldn't testify.

BY MR. HOPKINS:

Q Under the rules, Mr. Rice, does a litigant know which Judge his case will go before at the time the case is filed?

A No sir.

Q I hand you a file, C. E. Harvey, Jr., vs. Eugene R. Jones, and ask you whether or not that file came before the Clerk's office?

A Yes sir, this suit was filed in the Clerk's office on May 25, 1955.

Q Will you tell us what division it was assigned to?

A As per the system in the Clerk's office, it was assigned to Division D, which at that time was Judge Carroll.

Q Will you look on the front and see whether or not there is an order transferring it from Division D to Division A, Judge Holt's Division, on the flap of the file?

A On the outside of the file?

Q Yes, right.

A This order says, "This cause assigned to Division A"

Q Who signed that order?

A It looks like "George E. Holt, Circuit Judge."

Q He was the senior judge then?

A He was the senior judge at that time, yes sir.

MR. HOPKINS: You may inquire.

MR. HUNT: No questions.

MR. HOPKINS: We would like, if the Court please, to discharge this witness.

MR. HUNT: No objection.

(Witness excused)

MR. HOPKINS: We would like to make the inquiry as to whether or not all witnesses may be released who have been used up to this time.

MR. HUNT: Not at all, unless counsel is through - - - and I want Mr. Rice to stay, too, until I can examine another file.

Unless counsel is ready to announce that he's through with some of the phases that we have touched on, I cannot agree to excuse a witness other than those we have excused.

MR. HOPKINS: I may announce at this time that we have no more testimony on that phase of the case.

MR. HUNT: On which phase?

MR. HOPKINS: The phase that we just covered, the Flame Restaurant receivership matter.

MR. HUNT: Well, Mr. Mooers has been excused.

MR. HOPKINS: Yes sir.

MR. HUNT: Are you speaking of the attorney?

MR. HOPKINS: All the witnesses who testified today, we would like to excuse from further attendance.

MR. HUNT: Your Honor, I would like for Mr. Keith to remain under subpoena.

MR. HOPKINS: Do we understand that all witnesses who have testified, except Mr. Keith, are released; you don't want to have them here any longer?

MR. HUNT: No, you do not understand that. I think that's something that we'll have to go through when you're ready to announce that you've concluded these phases of your case.

MR. HOPKINS: Well, we have concluded this phase at this time, Judge.

MR. HUNT: What? The Flame?

MR. HOPKINS: Yes sir.

MR. HUNT: What do you mean by "at this time"?

MR. HOPKINS: Unless we hit it inferentially, in some other phase, we have completed that count.

MR. HUNT: Will the Court give us a few minutes to confer here?

MR. HOPKINS: If the Court please, during these few seconds, I wonder if counsel for the Respondent is ready to furnish the Managers with a list of witnesses?

Pursuant to stipulation yesterday, we furnished a list of witnesses to counsel, and we were to get a list, I believe, this afternoon, of their witnesses.

MR. HUNT: We have it to give to you just as soon as we can make a final alteration in it.

We are willing that all the witnesses used in the Flame Restaurant phase of the case may be excused, with the exception of the Deputy Clerk, and within ten minutes we'll know whether we require him.

MR. HOPKINS: And that would include Mr. Keith, then, would it not?

MR. HUNT: Yes.

MR. HOPKINS: All right.

MR. HUNT: Mr. Hopkins, do you have the Eleventh Circuit file of the Typographical Union vs. Miami Herald? Has it been received?

MR. HOPKINS: As far as I know, we do not have it.

MR. HUNT: Secretary Davis, do you have that Typographical vs. Miami Herald file?

SECRETARY DAVIS: Yes.

MR. HUNT: You do have it?

SECRETARY DAVIS: I've sent for it. It will be here in just a moment.

MR. HUNT: Well, it is here in Tallahassee?

SECRETARY DAVIS: I can't say until I can check on it. We'll check on it.

MR. HUNT: Will you let me know?

SECRETARY DAVIS: Yes sir.

MR. HUNT: We'd like to retain Mr. Keith until we can examine the file - - - Mr. Rice - - - I beg your pardon.

CHIEF JUSTICE TERRELL: Mr. Rice?

The Sergeant-at-Arms will notify Mr. Rice.

MR. HOPKINS: I'd like to call Mr. Weesner as the next witness.

MR. JOHNSON: I'd like to announce to the Court at this time that this witness will testify concerning the matters contained in the Bill of Particulars, under 1 (a) 7.

Thereupon,

R. PAUL WEESNER,

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name, please sir?

A My name is R. Paul Weesner, W-e-e-s-n-e-r.

Q What is your business?

SENATOR KNIGHT: We can't hear the witness.

MR. JOHNSON: Will you repeat that again, please?

THE WITNESS: My name is Weesner, W-e-e-s-n-e-r, with the initials R. Paul.

BY MR. JOHNSON:

Q Mr. Weesner, were you the owner of the Hotel Riviera de Haiti, at Port-au-Prince, Haiti, during the year 1953?

A Yes sir.

Q When did you become owner of the Riviera de Haiti?

A Sometime in February, 1953.

MR. HUNT: Mr. Chief Justice, for the record at this time, the Defendant wishes to reserve objection to the introduction of any evidence having to do with any act or any proceeding or any fact occurring prior to the current term of the Respondent, for which he is on trial, and we would like for the Court to give us an opportunity, at the close of the testimony, to present law upon that point.

CHIEF JUSTICE TERRELL: Do you have any - - -

BY MR. JOHNSON:

Q Who was - - -

MR. BEASLEY: Mr. Chief Justice, if he just reserves that at this time, why, we have no argument on it, but at the proper time, we will.

CHIEF JUSTICE TERRELL: Well, that will be the order, Mr. Beasley, that the reservation will be granted. Mr. Hunt will have the opportunity to make his argument against each transaction which occurred prior to January, 1955; that's the period on coverage.

MR. BEASLEY: All right, sir.

BY MR. JOHNSON:

Q Mr. Weesner, who was your attorney in connection with your acquiring ownership of the Hotel Riviera de Haiti?

A Mr. J. A. Perkins, of the firm of Marchant & Perkins.

Q Was that Mr. Joseph Perkins?

A That's correct.

Q Mr. Weesner, on June 1, 1953, was there a suit brought against you by the Eagle Star Insurance Company, involving the ownership of approximately \$81,000?

A The suit was brought in 1953, but I am not aware of the date.

Q Was it on or about June 1, as far as you recall?

A I don't recall the date at all.

Q Who was your attorney in that suit, in which you were sued by the Eagle Star Insurance Company?

A Mr. Jephtha Marchant.

Q Was that of the firm of Marchant & Perkins?

A That's correct.

Q Didn't Mr. Perkins also handle some matters in connection with that too?

A He might have worked in connection with his partner, Mr. Marchant, but Mr. Marchant handled the case, as far as I know.

Q If the pleadings showed that Mr. Perkins had signed most of the pleadings, you would not dispute that, would you? You would rely on the record, wouldn't you?

A Yes sir, I would.

Q After that suit had been filed, did you learn what Division of the Circuit Court that suit was filed in?

A No, I didn't know until the time of trial.

Q Did you subsequently find out what Division of the Circuit Court of Dade County that suit was filed in?

A I did on the date of trial.

Q Who was the Judge that heard the case?

A Judge George E. Holt.

Q After that suit was filed, did Mr. Perkins request you to do anything for him in respect to the purchasing of tickets, airplane tickets, from Miami to Haiti?

A I don't know whether it was before or after the suit was filed, but Mr. Perkins did request that I purchase tickets to Haiti, yes sir.

Q Who did he ask you to purchase tickets for?

A For himself and his wife and a party of four others; that was the original request; and later, he identified the persons as Judge and Mrs. Holt, Judge and Mrs. Crawford, and himself and his wife.

Q Well, did you have to have those names, the names of the other members of the party prior to the purchasing of the tickets?

A Yes sir; that's when I learned who the persons in the party were, as I needed them, in other words, to obtain the tickets.

Q What was the purpose of purchasing the tickets in Haiti rather than purchasing them in Miami?

A The purpose was to avoid payment of the Federal transportation tax of fifteen per cent.

Q Were the tickets purchased for the party of Mr. Perkins and his wife, Judge Holt and his wife, and Judge Crawford and his wife, at your request?

A Yes, they were.

Q One of your employees handle those details?

A Yes sir, one of the hotel employees in Haiti.

Q Did you give any instructions to the Manager and the other employees at the Hotel Riviera de Haiti, concerning the treatment which the party that included Judge Holt was to receive when they went to the Hotel Riviera de Haiti?

A Yes sir, at some point, in some manner I do not recall, why - - - I recall, however, giving - - - identifying the members of this particular party, and requesting that they be given V.I.P. treatment.

Q Just what do you mean by that, Mr. Weesner?

A It's the customary practice of the Riviera Hotel, and I think it's the common practice among all hotels, particularly, resort hotels, to give special treatment to persons of distinction and public office, and important people, and they are given that particular welcome upon their arrival at the hotel, and ordinarily, the Manager or assistant Manager is assigned to see that their comfort is taken care of, and their pleasure.

Q Did you have the Manager personally greet Judge Holt and Judge Crawford and Mr. Perkins?

A I don't know. I wasn't there, but I assume my instructions were followed.

Q Do you know when the trip was made during which time they stayed at the Hotel Riviera de Haiti?

A It was sometime in August, 1953.

Q Was your suit at that time pending before Judge Holt in the Circuit Court of Dade County, Florida?

A I don't know when it was assigned, or how it was assigned, but it was pending.

Q It was pending, is that correct?

A Yes sir.

Q Was the hotel bill paid at the time the party was in Haiti?

A I subsequently learned that part of it was paid, the bar bill was paid, but the bill for room and meals was not paid at the time that the parties were there.

Q Were there any other extras charged to the hotel, such as taxi fares, automobile hire, or side trips, dry cleaning, laundry?

A I'm under the impression that there were extra charges for - - - that had been added to the bill for services that were rendered by sightseeing and taxi fares, things of that nature.

Q Well, when was the bill paid, if it was paid?

A The bill was paid sometime after the party returned to Florida.

The trip was rather extensive, as I understand. Haiti was only one of the spots on their itinerary. I'm not sure when the party returned to Miami, but the payment was subsequent to the return to Miami.

Q Let me ask you this question specifically, Mr. Weesner:

Did any money actually change hands between Mr. Perkins and you or your hotel in respect to the hotel bill for he and the party?

A As I say, the - - - I assume it was cash or check that was transferred at the time of departure for part of the bill - - -

Q No, I'm referring to - - - did Mr. Perkins ever pay you any sum of money for the hotel bill for he and his party, including Mr. and Mrs. Perkins and Judge and Mrs. Holt and Judge and Mrs. Crawford?

A He - - - it was paid by set-off, yes sir.

Q By that answer, do you mean that no money ever changed hands between Mr. Perkins and the hotel?

A That is correct, in cash. It was transferred.

Q When did this set-off that you described occur, Mr. Weesner?

A It was sometime after the visit to the hotel. Mr. Perkins being my attorney, and I owed certain sums of money to him, and after I received the bill for his party from Haiti, I asked Mr. Perkins to arrange a settlement.

Q What did he tell you at that time?

A The first time I contacted him, he told me that he hadn't received payment from Judge Crawford and Judge Holt for their share, and he would attend to it, and we would get together at some later date.

Q Now, at the time he told you that Judge Holt and Judge Crawford had not reimbursed him, how long after the trip did that conversation take place?

A I don't remember exactly. It was in 1953, but I can only guess that it was approximately thirty days to six weeks afterward.

Q Your best guess is thirty days to six weeks?

A Yes sir.

Q Did you have to contact him again for payment of the hotel bill which his party incurred?

A Yes sir, I did, and he told me he had received the payment, but that he thought it was time we got together in a settlement of our legal account, and we made an arrangement to go over this matter, and he made settlement at that time.

Q Mr. Weesner, I understand that you are an attorney also, in addition to being a hotel owner and in your other businesses?

A I'm a member of the Bar of the District of Columbia, yes sir.

Q Legal fees are somewhat elastic; is that your usual - - - do you agree with that?

A I have found that they are, yes sir.

Q At the time the hotel bill was incurred, had Mr. Perkins set his legal fees for the work he had been doing for you?

A Well, in one case he had; in other cases that were pending, he hadn't.

Q So, this set-off that you described, after it occurred, he was setting off legal fees that you determined subsequent to the trip, against the debt he owed you for the accommodations of the trip, is that true?

A Yes, that would be approximately correct.

Q Was there anything to keep him from raising his legal fees sufficient to cover the accommodations furnished at the hotel?

A No, I don't know that there would be any, except for the fact that the fee that I believe we were discussing particularly at the time was a fixed fee that I had agreed to, which went back to February of '53, when the purchase and settlement of the hotel was made, and - - -

Q But in addition to the - - -

MR. HUNT: Let the witness finish his answer.

BY MR. JOHNSON:

Q Go ahead. Have you finished?

A Yes.

Q In addition to that fixed fee, though, I understand there were other fees that had not been definitely set, is that true?

A That is correct.

Q So, in the final analysis, there was no money, or - - - either cash or check, paid you by Mr. Perkins for the accommodations, it was the set-off that you described?

A That is correct, yes sir.

Q And concerning whether he was reimbursed by the other parties, the only knowledge you have is what he told you, is that true?

A He told me he received their share; that's all I know.

Q Now, how much was that bill for the accommodations at the Hotel Riviera de Haiti, Mr. Weesner?

A As I recall, it was in the neighborhood of \$400; that was the balance due.

MR. JOHNSON: You may inquire, sir.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Weesner, how much did you owe the firm of Marchant & Perkins at the time of that trip, for prior professional representation?

A I don't know exactly; it was a sizable amount, probably several thousand dollars.

Q That's considerably - - - it was considerably more than \$400, wasn't it?

A Oh, yes.

Q And were you present in Court when Judge Holt acted on the case to which counsel has made reference?

A Yes sir, I was.

Q Do you know what the order of the Court was?

A Yes, I'm - - -

Q Will you explain very briefly the set-off situation you had in that case?

MR. JOHNSON: Now, if the Court please, I think the records, perhaps, would better speak these facts than the litigant himself.

MR. HUNT: If Your Honor please, I've been thinking that all day, but I've been overruled, and I think this witness can explain his own case in just a few minutes, if he's permitted to do it.

MR. JOHNSON: We will offer the record of the entire Circuit Court file in evidence at this time.

MR. HUNT: I thank counsel kindly, but I'd prefer to have this witness answer the question, if the Court doesn't mind.

CHIEF JUSTICE TERRELL: The witness may answer the question.

THE WITNESS: I owned an aircraft which I had insured through - - - for \$100,000 with the Eagle Star Insurance Company. The aircraft crashed, and I made claim for the insurance and I was paid immediately, or within two weeks after the crash, the amount that the salvage was sold for, which left a balance due me of approximately \$81,000.

After the proof of loss was made and executed by myself, I believe about two months later after the crash, the insurance company notified me in New York that they were ready to make payment, but felt that I should come up there and bring my attorney because there had been one investigator that brought up the question of the question of title, as regarded the owner of the aircraft.

I went to New York with my attorney, Mr. Marchant, and they showed me a cashier's check in the amount due, of approximately \$81,000, but told me that they were embarrassed by the question of title in the record, and asked me to execute a promissory note in like amount, so that in case something ever came up in the future, whereby they would have to make payment to someone other than myself, they would be protected.

I agreed to this procedure, accepted the \$81,000, and gave my note.

Some time later, the Eagle Star Company brought an action against me to foreclose - - - to - - - a suit on the note. It was my impression at the time that it was being done to clear the records in the case.

The case came up in due course. I presented evidence, through my attorneys, of my title direct from the United States Government, properly authenticated by the Civil Aeronautics Administration, and I recall there was no evidence introduced contrary to that, and the judgment was awarded to the Defendant, which was myself. That's the way I understand.

BY MR. HUNT:

Q Was the decree of the Court in the exact amount of the note; that is to say, was it a perfect set-off on your part, and was that the decree of the Court?

A As I recall, it was.

Q Was that appealed to the Supreme Court?

A It was.

Q Was it affirmed by the Supreme Court?

A It was affirmed by the Supreme Court.

Q And I believe you've stated no evidence was offered by your opponent before Judge Holt?

A That is correct.

Q Can you state whether or not any so-called V.I.P. treatment was accorded Mr. Perkins and his party at your hotel which you - - - customarily would not have been accorded to anyone else in their position?

A No, I can't testify to that because I wasn't there, and I know nothing of what treatment was rendered.

As I said before, testified before, that I recall requesting that they be given the usual special treatment that is given all - - -

Q What does that consist of?

A Oh, if they have them available in the garden, flowers are placed in their room prior to arrival; the manager is supposed to come out when they register, and shake hands with them and welcome them and inform them that he's at their service; that's the main nature of the special treatment. It happens every day, almost every day that a resort hotel has some notable of some sort. We've had members of this Senate body in our hotel, and whenever we know it in advance, they are earmarked for the special welcome treatment.

Q That doesn't mean, does it, Mr. Weesner, that they get their rooms free or their food free?

A No sir, it does not.

Q And it doesn't mean that in this case, does it?

A No sir.

MR. HUNT: No further questions.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Weesner, now, you have summed up very briefly the essence of your suit. Isn't it also true that the suit, in essence, involved the fact that \$81,000 was turned over to you by the insurance company subject to your having an insurable interest, subject to your having title to the plane? Is that, in essence, what the suit was about?

A I don't know exactly how the insurance policy reads, but I believe it requires, under - - - the policy requires you have an insurable interest. I don't think it's necessary that I have title.

Q Well, wasn't that their contention, though, that the interest must be an insurable interest? They gave you the \$81,000 subject to that being proven.

A That's my general understanding, yes sir.

Q Isn't it true also that there was a Federal Court suit

pending at that time, in which one of the issues before the Federal Court was the question of title to this particular aircraft?

A That is correct, yes sir.

Q Isn't it true also that the Federal Court, by its decision, determined that the title was not in you, but in someone else?

A That is the general effect of the decision as I understand it, yes. It's now on appeal in the United States Court of Appeals.

Q It's now on appeal, but that was the lower court's ruling, though, is that correct?

A Yes sir.

MR. JOHNSON: That's all the questions we have.

MR. HUNT: No questions.

MR. JOHNSON: We have no objection to excusing this witness if counsel has no objection.

MR. HUNT: Very well.

(Witness excused)

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I understand that the state has not finished this phase of the case. However, the next witness will take about a half hour on the stand, and since it's just ten minutes to adjourning time, I move that we do now adjourn.

(The motion was seconded from the floor)

CHIEF JUSTICE TERRELL: Gentlemen, you've heard the motion. All in favor of the motion let it be known by saying "aye." Opposed, "no."

The "noes" have it. Call your next witness.

MR. HUNT: Mr. Chief Justice, I would like the record to show that I have complied with the stipulation to furnish my witness list.

CHIEF JUSTICE TERRELL: All right.

Whereupon, a short recess was taken.

CHIEF JUSTICE TERRELL: Order in Court. Without objection the Chair will declare a quorum present and dispense with the roll call.

MR. JOHNSON: Is the Court ready to proceed?

CHIEF JUSTICE TERRELL: Yes sir.

Thereupon,

JOSEPH A. PERKINS,

a witness called and duly sworn for and in behalf of the House Managers, was interrogated and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Will you state your name and profession, please sir?

A Joseph A. Perkins, attorney at law.

Q How long have you practiced law, Mr. Perkins?

A Ten years.

Q Where do you practice?

A Miami, Florida.

Q How long have you practiced - - - been a practicing attorney in Dade County, Florida?

A Ten years.

Q Are you in association with any other attorney down there, Mr. Perkins?

A Yes, with Jephtha P. Marchant.

Q Is that a partnership?

A It is now, yes.

Q Have you been associated with him during your entire practice of law?

A That's correct.

Q Mr. Perkins, I'd like for you to examine the file of the Eagle Star Insurance Company vs. R. Paul Weesner and Resort Air Lines, Inc., and state whether this is the same suit in which you or your firm was involved during the years '53 and '54?

A It is.

Q Will you please state when the suit was filed?

A Suit was filed on June 1, 1953.

Q When was the first pleading filed by your firm?

A The first pleading was filed on June 22 of 1953.

Q Who signed that pleading of the answer and the counterclaim filed by you in behalf of R. Paul Weesner?

A I signed it.

Q What Division of the Court did this particular suit fall in, Mr. Perkins?

A Division A.

Q Is that Judge Holt's Division?

A That's Judge Holt's Division.

Q Now, subsequent to the filing of this suit, and the filing of the counterclaim by you, on behalf of your client, R. Paul Weesner, did you request Mr. Weesner to purchase any tickets for you and a party to go to the Hotel Riviera de Haiti in Haiti?

A I did.

Q Who was in your party, Mr. Perkins?

A Judge Holt and Mrs. Holt, Judge Crawford and Mrs. Crawford, my wife and I.

Q What was the purpose of purchasing the tickets in Haiti, rather than in Miami?

A To save the transportation tax.

Q Did Mr. Weesner, your client, take care of the purchasing of the tickets for you all?

A He did.

Q When did the trip commence?

A It commenced on August 4, 1953.

Q How long was it before you returned to Miami?

A Ten or eleven days; about two weeks.

Q In addition to going to Port-au-Prince, Haiti, and staying at the Riviera de Haiti Hotel, where else did you go on the trip, Mr. Perkins?

A Went to San Juan, Puerto Rico, and St. Thomas, Virgin Islands.

Q During the time that you were on this trip, was this suit still pending in Judge Holt's Division?

A Yes, it was.

Q You indicated that the trip began on August 4, and you returned ten or eleven - - - eleven or twelve days later, is that your testimony?

A That's right. I don't know - - - recall the exact date, but it was about that time.

Q That would be around the middle of August, 1953?

A Yes, about the middle; I believe, on a Sunday, I think, Saturday or Sunday.

Q Now, on what date was the first order entered in this cause by Judge Holt? I show you the file.

A An order was entered on September 21, 1953.

Q That was a little over a month after you had returned from the trip, is that correct?

A That's right.

Q Before what Judge was this suit subsequently tried?

A Before Judge Holt.

Q What connection did R. Paul Weesner, your client, in his litigation before Judge Holt, have with the Hotel Riviera de Haiti, in which he stayed in Port-au-Prince, Haiti?

A He owned the hotel.

Q Did he also have an interest, prior to that time, in Resort Air Lines?

A At one time he did, yes sir.

Q Was there any discussion between you all concerning Mr. Weesner's airline flying you to Haiti?

A Well, there was a discussion, I think - - - I'm not sure - - - about Resort flying us, but Mr. Weesner didn't own any interest, I don't believe, in Resort after January or February of that year, 1953.

Q Did he have any interest in any other airline at that time?

A Oh, yes, he had an interest in All American, Riddle and maybe one or two more; All American, Riddle, and I believe Consolidated Air Transport, I think, - - - I'm not sure, but his brother operated that one.

Q At the trial of the cause before Judge Holt, was that a jury trial, or a trial before the Judge, who sits as a Judge and jury?

A That was a suit in equity, before the Judge.

Q In other words, for the benefit of those in the Court who do not practice law, in equity the Judge hears the facts and determines the law and the facts, is that correct, sir?

A That's right. I don't think that there were any facts in this case, though. I don't think there was any dispute about the facts.

Q But the Judge has the final say-so in every respect in that case - - -

A That's correct.

Q - - - as distinguished from a Court of law?

A That's correct, sir.

Q What was the result of the litigation in this case?

A Well, the result of the litigation was that the foreclosure of the mortgage was granted, but it was offset by the suit by Mr. Weesner on the insurance policy, as I recall. One offset the other.

Q Is this a fair statement to say, that the result of the litigation before Judge Holt was that your client kept this \$81,000 which the insurance company said he should repay to them?

A Well, that's one way to put it, but I don't think that's a fair statement. By the same token, he collected on - - - you might say that he collected on his insurance policy, and it paid the mortgage, in effect.

It depends upon how you want to say it.

Q Depends on what side of the fence you're on, is that right?

A I suppose that's right.

Q Now, Mr. Perkins, did any money, either cash or by check, actually change hands between you and Mr. Weesner, or any agent or employee of his hotel, in order to pay for the accommodations of the hotel that your party used while you were in Haiti?

A Well, some, yes. There was a bill, a cocktail and bar bill that was paid.

Q You paid the bar bill?

A That's right. That bill was offered separately, and at the time we were there, the hotel bill was not paid, as such, if that's what you're talking about.

Q Do you recall the approximate amount of the hotel bill?

A I think it was \$390, which included everybody - - - including all the charges - - - I am pretty sure that is correct - - - for six people.

Q But that hotel bill was not paid, or any set-off of any kind made until when?

A Well, Judge Holt and Judge Crawford gave me the money for it, but actually, it was straightened out in December of 1953, of that year.

Q In what manner was it straightened out?

A Mr. Weesner owed me some money, and I had collected the money, and we offset it, adjusted it, in connection with some fees.

Q In other words, you reduced the size of the bill you rendered to him by the amount of the accommodations that your party had used at the hotel, is that correct?

A That's right, because I had already collected the money, that's correct.

MR. JOHNSON: Counsel for the Respondent may inquire.

CHIEF JUSTICE TERRELL: Before Mr. Hunt - - - Senator Johns, of the Fifteenth, sends up this question:

"Who was counsel for the Plaintiff insurance company in the case against Weesner? Is he subpoenaed for this proceeding?"

Mr. Perkins, would you answer that?

THE WITNESS: The attorney for the Plaintiff was Arthur Clark, from Miami, and I - - - he's here. I've seen him here.

CHIEF JUSTICE TERRELL: Proceed, Mr. Hunt.

MR. JOHNSON: I have no further questions.

MR. HUNT: Are you ready, Your Honor, to continue?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: I didn't know. The wind is shut off and I didn't know whether you wanted to go ahead or not.

CHIEF JUSTICE TERRELL: Go ahead.

CROSS EXAMINATION

BY MR. HUNT:

Q Mr. Perkins, will you recur to the time this trip was arranged, and state to the Senate how it came about?

A Well, this trip came about as the result of Judge Crawford, who is a personal friend of mine and I were planning a vacation in Haiti sometime in March or April, or the spring of the year, and at that time, the idea began to grow until it included innumerable people, including Judge Holt, Judge Wiseheart, and there were, besides, their wives, and a man by the name of Walsh, Mr. Marchant, my partner, but in the final analysis, it simply boiled down to the three couples; for various reasons, the others couldn't go.

Q Do you recall the approximate date of the purchase of the airplane tickets?

A No, I don't, but it must have been a month, or roughly a month, before we left; I would say, four or five or six weeks.

Q How were those tickets physically dispatched, or handled, from the foreign source to Miami?

A I don't know exactly how they were handled. I know that they were sent up here, by mail, I suppose.

Q To whom?

A To Mr. Weesner, or his office, I'm sure, and were delivered to me, and I took them over and gave them to Judge Crawford.

Q To Judge Crawford?

A That's correct. They were later exchanged for tickets, and some more money was paid in order to take in some further places.

Q Now, these tickets were on Pan American, is that correct?

A That's correct.

Q Had nothing to do with Mr. Weesner's airline?

A No, no, not a thing.

Q And were you reimbursed or paid preliminarily by Judge Crawford and Judge Holt for their allocated portions of those tickets?

A Those tickets were paid for before we left here.

Q By each of them?

A By each one, that's correct.

Q Now, state to the Senate, after you arrived at the hotel and went around to various places, just where you went, and how the costs of the operation was apportioned?

A Well, you - - -

Q Where did you go, and who paid the bill?

A Well, we went to Cap Haitien, and we went to San Juan, we went to St. Thomas, in the Virgin Islands, and everybody paid the bill; everybody paid his share. Money passed right and left daily. Someone would buy this meal, and someone else would buy the other, and I think everybody has testified to what actually happened, simply that every day we'd try to adjust.

Q And do you know of any failure on Judge Holt's part to pay his full share of every charge properly chargeable to himself and Mrs. Holt on that trip?

A No, I do not. As I repeat, everybody paid his own way. I don't know, somebody may have paid \$5 more than the other one once or twice, but it came out about even.

Q Mr. Perkins, you were present at the final hearing of the suit against Mr. Weesner, and on Mr. Weesner's part against the other people before Judge Holt, were you?

A I was.

Q Was Mr. Marchant there, or do you know?

A He conducted the hearing at the trial of the case.

Q He conducted the trial?

A He did.

Q At the conclusion of the presentation, did the opposition present any testimony whatever?

A As I recall it, it offered no testimony at all, of any kind.

Q Well, does the record disclose it? Can you establish it from the record?

A I'm certain that they didn't without even looking at the record.

Q Well, I want to establish that one way or the other. However, they did take an appeal, is that correct?

A They took an appeal, and it was affirmed, per curiam, by the Supreme Court.

Q By a per curiam decision?

A Yes sir.

MR. HUNT: No further questions.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Perkins, I think you stated that Judge Holt repaid the money to you, the bill you incurred by reason of the hotel accommodations for the party?

A He paid me down there. We divided it up down there.

Q Is there any evidence of that payment, by reason of a check or any other memorandum that you can corroborate that with?

A Well, we all had cash. There were no checks; everybody had cash money.

As a matter of fact, I cashed a check myself the day before, and I testified about it. I believe you have the check; at least, it was turned over to you.

Q Well, is it your statement, then, that they reimbursed you in cash, and then you put off, for some five months prior to paying or accounting with the hotel for your business?

A Yes, that's right; that's not unusual in connection with a trip of that sort; at least, there wasn't with me and my client.

Q Was the bill actually even established at the hotel when you left, which - - -

A No.

Q - - - bill included all - - -

A As I have stated before, it was not. It was estimated, because there were certain charges which had not come in.

Q You had a side trip, did you not?

A That's right, that's correct.

Q You had laundry, cleaning, taxicabs?

A There was no laundry, cleaning, except mine; there were taxicabs, but we knew what they were.

Q Were the meals also to be added in?

A No, this - - - the meals - - - this was the American plan, an American plan hotel, and their charge was \$20 per day per couple.

Q Well, is it your statement, do I understand you to say that you just had Judge Holt and Judge Crawford estimate what their share of the bill was, when the bill was not yet rendered?

A Yes. I had a talk with the manager about it down there. He said he would send it up here.

Q I don't think I followed you. Did you state that you had been paid an estimated bill prior to the bill being rendered?

A That is correct.

Q Well, when the bill was actually rendered, did you make an adjustment with them, and give them back any sums they had due them?

A There wasn't anything to adjust, because I think we came within a dollar of being actually correct on it.

Q In other words, your estimate was right down to the last dollar, is that your statement?

A Yes, we knew what the hotel rooms were; we knew what the trip over to Port-au-Prince was; we knew exactly what the taxis were. We didn't know the exact amount of - - - I didn't know what the amount of the laundry that I had was, dry cleaning, but I think we came pretty close to hitting it right on the head, and we were prepared to pay it, whatever it was.

Q Well, Mr. Perkins, you testified before the Board of Governors of the Florida Bar on June 8, 1956, did you not, sir?

A That's right.

Q At that time, did you not tell the - - -

MR. HUNT: Mr. Chief Justice, I think counsel knows full well that testimony taken before the Board of Governors of the Florida Bar is wholly inadmissible, and we object to it.

MR. JOHNSON: We don't agree with that. This constitutes - - -

MR. HUNT: And it constitutes - - -

CHIEF JUSTICE TERRELL: What was the testimony?

MR. HUNT: He wants to question the witness about testi-

mony he gave in confidence, before the Board of Governors of the Florida Bar.

CHIEF JUSTICE TERRELL: I don't think that's competent, Mr. Johnson.

MR. JOHNSON: The purpose of this, if the Court please, is to show that - - -

MR. HUNT: I object to counsel stating the purpose.

MR. JOHNSON: Well, I've got a right to - - -

MR. HUNT: It's just another low way of getting before the Court what he wants to establish.

MR. JOHNSON: I'd like to be heard, if I may.

MR. HUNT: I'm sure you may, but the Court has stated he didn't think it was proper.

MR. JOHNSON: May I be heard on this, if the Court please?

CHIEF JUSTICE TERRELL: Yes sir.

MR. JOHNSON: The purpose of asking the question is to determine if this witness is giving conflicting statements concerning the matters under which he is now under examination, and I think we have a right to inquire into those matters. If he has testified previously under oath before any other group that's authorized to administer an oath, I think it's pertinent to question him concerning his answers.

CHIEF JUSTICE TERRELL: Have you anything more, Mr. Hunt?

MR. HUNT: If Your Honor please, under the integrated rules of the Florida Bar, the hearings of the Board of Governors and of the Grievance Committees of the Florida Bar are entirely in confidence, and every member of the Bar of this State is assured of that by virtue of the integration order of the Supreme Court, and to permit a left handed, back-door entree to bring out into public any testimony so given would violate the secrecy, oath and understanding and the order to which I refer.

MR. BEASLEY: Mr. Chief Justice, and Members of the Court:

In connection with that, I think Judge Hunt's wrong about his theory on that, because testimony offered to a Grand Jury is also supposed to be in secret, and not be divulged except by order of the Court, and this is for the purpose of showing that the witness made statements under oath on another occasion, and at this time, now, makes a different statement.

CHIEF JUSTICE TERRELL: Well, was this testimony that you are talking about, that was taken before the Board of Governors of the Bar, was that a secret session, or was it a closed session, evidence that was taken for that purpose?

MR. JOHNSON: Mr. Chief Justice, of course, I was not there, but - - -

MR. HUNT: I was.

MR. JOHNSON: Mr. Hunt was there, and it was taken before the Board of Governors, and I think Mr. Lazonby, the - - - presided, is that correct, Judge Hunt?

MR. HUNT: Correct.

MR. JOHNSON: He's the president of the Florida Bar Association. They were taking testimony in reference to the - - - relative to the Florida Bar investigation of Circuit Court Judge George E. Holt, and subsequent thereto, the Supreme Court ruled that the Florida Bar had no right to inquire of his conduct, said it was up to the Senate to inquire, and I think it's certainly proper to question him concerning any of his activities at that time, or any other civic leader.

CHIEF JUSTICE TERRELL: Do you have the evidence?

MR. JOHNSON: I beg your pardon?

CHIEF JUSTICE TERRELL: Do you have the evidence?

MR. JOHNSON: We have it available, yes sir.

CHIEF JUSTICE TERRELL: I would like to see it, please,

and I'll reserve any answer on this objection until tomorrow morning.

MR. HUNT: I may state to the Chief Justice that the witness has indicated that he would like to answer the question, but I still think the Court should consider it from the standpoint of the Bar, and ruling be deferred until tomorrow morning; that's satisfactory to us.

CHIEF JUSTICE TERRELL: That will be the order.

MR. HUNT: Mr. Chief Justice, we will withdraw our objection if the witness, on his own accord, desires to answer the question.

CHIEF JUSTICE TERRELL: All right.

Senator Davis here has a motion he wants to make.

SENATOR DAVIS: Mr. Chief Justice, I have a request for an order which I can make under the rules.

It's with reference to process, and it's under Rule 24, adopted by this body.

It provides, the rule provides, that all process be served by the Sergeant-at-Arms unless otherwise ordered by this body.

The Sergeant-at-Arms has quite a number of witness subpoenas to be served, and it's going to be necessary for him to attend the trial of the cause, and under the order that we are requesting, it will authorize the sheriff of the county in which the witness resides to make service of process.

I'll ask the Secretary of the Senate to read the order, and then I'll ask the Senate to grant that permission.

SECRETARY DAVIS: (Reading) "Ordered, that the precept and direction for the service of all further witness subpoenas issued by the Senate be addressed to the sheriff of the county in which the witness resides, directing and ordering said sheriff to serve same."

Reading of the order.

SENATOR DAVIS: Mr. Chief Justice, I move that the order be granted.

SENATOR SHANDS: Second the motion.

CHIEF JUSTICE TERRELL: You've heard the motion and the second. All in favor of returning the order, let it be known by saying "aye." Opposed, "no."

The "ayes" have it, and the motion is adopted.

SENATOR DAVIS: Mr. Chief Justice, I move that we do now adjourn.

CHIEF JUSTICE TERRELL: You've heard the motion, gentlemen. All in favor of adjourning let it be known by saying "aye." Opposed, "no."

The "ayes" have it. The Senate stands adjourned.

Whereupon, the Senate, sitting as a Court of Impeachment, adjourned at 5:17 o'clock P. M., until 9:30 o'clock A. M., Wednesday, July 24, 1957.