

My dear Moot.

The examination to which I referred has taken a new turn. It began with me - the exhibits - records of the old matter and cold, etc., brought in the effects of my old wound. It was agreed that if I was unable to attend at the time agreed upon, I should the case should be continued until a convenient time if I notified them of inability. I did not notify them of inability, being sick in bed and having only been out within a day or two. Instead of continuing as agreed, they entered a default. Then I refused to go at all unless they expressly waived the default. I did not think they could get a judgment as for contempt on that state of facts. I guess they did not either.

This morning they served an order to appear on Mrs. Sawyer for examination of third person indebted to ~~Refuse~~ Judgment debtor at Jamestown on Sat. at 10.30. Luckily I am just able to get out. Now I want to ask a few questions of practice -

Of course, what they are after is to get hold of her copyright interest in my works. I contend that they can't do it because ~~that~~

- 1 - There is no property in ideas and when I give her my ideas they are hers; she copyrights them under the law and I have nothing to do with them.

- 2 - For five years I have been actually un-
able to prepare a manuscript any
publisher would accept. She has put
her work, her brains and her skill into
my work and made it valuable. She
is, therefore, in serious fact the owner of
~~my~~ the work she has copyrighted.
- 3 - She copyrights a title, before a word is
written and takes all the risk. You
know something what that is.
- 4 - I owe her from \$20,000 to \$55,000, de-
pending upon a question of liability, and
has a judgment obtained confessed, and
docketed, before this of \$17,000, or more
against me.
- 5 - This indebtedness resulted
 - 1 - From lands owned in U.C. by her
bought chiefly with money from her
father, but ~~never~~ title never in
my name at all and I got them
in debt. This was sold and the money
~~invested~~ used advanced to me in
business.
 - 2 - The proceeds of two mortgages on her
place in Maryville \$10,000.
 - 3 - A contingent liability as guarantor
of my notes.

Of course, I want to carry these questions
up if they are ever held against us. As it
involves a Federal statute (the Copyright
Law), I think it can be carried a good way.
But I don't want to make any mistakes and
don't want it tried on a stare-reference. Let
them take their bill in equity or its equivalent
and not an ex parte ~~method~~ method.
As you know I am not as familiar
with New York procedure as if I had
been practiced in it for twenty years;
but I have this notion, to wit: That one
cannot try title to property in an ex parte
proceeding and that consequently, under
this proceeding when a party denies ^{having} ~~any~~
any property of the judgment = debtor, or any
indebtedness to him the judgment = creditor =
one has no right to go any farther.

If this be so, then the party has a right
to refuse — in this proceeding — to answer any
question about any alleged property of mine,
giving as a reason that she has none and
is not indebted to me.

Of course, if she was summoned under the other section as a witness, she could be asked about my affairs; as for instance the value of what she has received from me — if it was property that is. I don't think it was and if it was it had no appreciable value.

But as a third person, I think the code practice elsewhere and probably here, has been that if the third party claims the property, it ends the examination and the creditor is put to his bill in equity or its equivalent.

Let me know how this is. If I can right cite me some authorities. If I am wrong, tell me what to do. I have been able to walk around a little for a couple of days and hope to be able to go down on Saturday morning. Yours truly.