

Lewis, Moot & Lewis,
Attorneys and Counselors,
Buffalo, N.Y.
GEORGE L. LEWIS. ADELBERT MOOT.
L. L. LEWIS, JR.

April 5, 1890.

My dear Judge:-

Yours of to-day just received. I have carefully examined the enclosed affidavit drawn for Mrs. Tourgee. It is in good taste and form.

I did not receive your letter enclosing the summons in the Blair case, which you refer to as having gone in the trap, nor, have I seen anything of "Pactolus Prime." Our post-office is beautiful; for this is not the first loss we have had from our mails.

We will appear for you in the Blair action, at the proper time, get a copy of the complaint, and give you time enough to answer. I will either come to see you, or arrange to have you come to see us, and we will make an answer that will suffice, in due time.

Your wife is not required to appear in person, and I advise her not to appear in person, on the ground that she might thereby confer jurisdiction on the court, the jurisdiction of which she has questioned, and still questions.

I would add to her affidavit these words:- Said deponent states the facts as aforesaid under protest, out of respect for the Court, to show that she had, and has, no intent to disregard the order of the Court; and deponent here and now objects, as she has hitherto objected, to the jurisdiction of this Court, to require deponent to appear and answer, or show cause, and she appears by

rights in this matter.."

I do and have so advised Mrs. Tourgee, and she can incorporate the statement in the form indicated, or that in substance, in her affidavit, and I think it advisable that she should do so for reasons that will occur to you.

I would not make a brief for Barlow and Butts, nor refer them to the authorities, except perhaps to quote from the decision of the Court of Appeals in 65 N.Y. ⁵⁸⁴, without, however, giving them the book, title of the case, or page. If they were men, I should take a different course, but, as it is, they may imagine that this language was used in a case precisely similar.

Have some attorney appear specially before Butts and object that the Court has no jurisdiction over the subject matter, or the person of Mrs. Tourgee. If Butts makes any order that we object to, then we will appeal from it. If they seek to do anything rash, let me know at once and we will see whether a Supreme Court judge will not restrain a proceeding resting upon an affidavit made on information and belief until it can be decided on appeal.

If necessary, the people of this state may as well know now as at any other time whether a special county judge, on an affidavit made by an attorney on information and belief, but disclosing no facts, can summarily order any one before him without further process, to answer as to his business.

Let me know if the inquisition still exists in another

counsel specially for the purpose of making such objection, and does not consent to voluntarily appear, to give the Court jurisdiction of her person, or of the subject matter herein;

And deponent states that she was advised by Mr. Adelbert Moot, a counselor at law of the Supreme Court, residing at 358 Elmwood Avenue, in the City of Buffalo, and having his office at No. 14 Court St., Buffalo, N. Y., ^{specially consulted in this matter with} after fully and fairly stating the facts in this matter to him, that Honorable George R. Butts, Special County Judge, had no jurisdiction of the subject matter, or of the person of deponent in this proceeding, and had no power or jurisdiction to grant the order of February 24th, 1890, and advised deponent to disregard said order; and said Adelbert Moot, as counsel for deponent, after examining the order to show cause herein, granted April 3d, 1890, by the Hon. George R. Butts, Special County Judge, and the papers thereto annexed, served upon deponent, together with the full and fair statement of all the facts herein, further advised deponent that the said George R. Butts has no jurisdiction of the ~~said~~ subject matter, or the person of deponent, and had no power or jurisdiction to grant said order of April 3d, 1890; and has no power or jurisdiction in the matter aforesaid; and said Adelbert Moot informed deponent that he based such advice on a careful examination of decided cases in this State, including decisions of the Court of Appeals, such examination having been made by him for the purpose of advising deponent with respect to her

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name and form in this state.

Hastily yours,

To

Hon. A. W. Tourgee,

Mayville, N. Y.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013