SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

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IN RE:

IDAHO COPPER CORPORATION

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STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

KEYES WINTER, being first duly sworn, deposes and says

I am a Deputy Attorney General of the State of New York having been duly appointed and qualified as such in January 1, 1925. Since that date I have been in charge of the investigation and prosecution of practices in the sale of securities in the State of New York by the Attorney General pursuant to Article 23-a of the General Business Law known as the Martin Act.

For some time past upon numerous complaints of citizens of the State of New York and the public, under this act I have undertaken an investigation of the practices in the sale of securities of one George Graham Rice, The Wall Street Iconoclast Inc. and Rose McKernan, its secretary; Frank Silva, Rice's Brother-in-law; and also of the Columbia Emerald Development Corporation, and Edmund J. McNamara one of the partners of Lewisohn Brothers.

It appears from my investigation, and I am informed and believe, that the said George Graham Rice during the last year has published and is now publishing from

30 West 57th Street and also an address in West 19th Street a periodical called the Wall Street Iconoclast which purports to publish fair and honest descriptions of securities and market operation, and to give fair and unprejudiced advice to its subscribers about investments. This paper is represented to be issued to paid subscribers and in part to advise investors about certain well known securities listed on the New York Stock Exchange such as United States Steel and General Motors and others. The greater part of its matter, however, relates to three mining stocks, the Idaho Copper Corporation; General Mines and Columbia Emerald Development Corporation.

I have been informed and believe that the stock of these three corporations is entirely controlled by George Graham Rice and his associates, although this fact is completely and absolutely concealed from the subscribers and readers of this paper. Rice, in the said Wall Street Iconoclast, has been representing to the public and is now so representing that the mines owned by these three corporations are of enormous value and are largely developed and contain large amounts of ore which has been and will be sold at large profits which will accrue to the stockholders of these three corporations. The said paper also represents, and is now so representing, that there is a great public demand for the stock of these corporations and there are large transactions in the same on the Boston Curb Market and that the market price for the same produced solely by this demand and the intrinsic value of the stock is increasing and will double and triple in a short period, and at the same time it publishes quotations of the transactions in the stock on the Boston Curb Market showing sales of large blocks of the stock at daily increasing prices. At the same time said Rice has been and is now employing a large number of professional stock salesmen, known as “dynamiters,” who are telephoning and telegraphing to the public

from the State of New York and making exaggerated statements about earnings of the companies and about the said market fluctuations in the prices of this stock, advising the public to sell Liberty Bonds and seasoned securities and to invest their offerings in these mining stocks, and that as a result of this a large number of the gullible public, consisting largely of small wage earners have purchased large blocks of these three stocks placing their orders with brokers recommended by Rice who buy same upon the Boston Curb Market at the prices established there.

I have also been informed and believe that the stock of these three corporations is substantially worthless, having neither any intrinsic value or any actual market value; that the mining properties owned by these three corporations are undeveloped and can only be developed by the expenditure of large sums of money and that the mines are all inaccessible and are remote from railroads and transportation, and that the cost of transporting the ore, if there is any recovered, to the mills and to the market is so large that these mines cannot be operated at a profit, and that furthermore in the case of the properties of the Idaho Copper Corporation in Idaho there has been no production for over twenty years, but that the several successive owners operating the same have failed financially and that the mines were acquired by the Idaho Copper Corporation for something less than $5000.

I am also informed and believe that the capital stock of these three corporations is largely owned by George Graham Rice and his associates which fact is entirely concealed from the public leaving them with the impression and belief that the stock bought by them on the Boston Curb is stock of the public, and that the prices fixed on the Boston Curb is due to the public speculation in these shares. In fact, however, the

transactions in these stocks on the Boston Curb, as I am informed and believe, are for the most part fictitious or "wash" sales between brokers in the employ of George Graham Rice and his associates in which there is no actual transfer of any ownership of the stock, but in which the prices are all arranged in advance so as to increase day by day and give the impression of a rising market due to large public demand. One of these brokers, William J. Jarvis, recommended by Rice to the public as a reliable broker through whom to buy these stocks, has been enjoined by this Court from the sale of securities in the State of New York because of his fraudulent practices.

I am informed and believe that Rice through his brother-in-law, Silva, had a contract with Idaho Copper Corporation for a large block of the stock of this Corporation at a relatively low price; that through that contract the supply of that stock was tied up in escrow to prevent its appearance on the market; that the petitioner, Charlock, was a party to that contract, and also that Walter K. Yorston was a party to it; that the stock was controlled through Silva's contract by Rice, and during several months all the sales of such stock, exclusive of washed or fictitious sales, were sales of stock controlled by Rice under the Silva contract at inflated prices far in excess of any actual market or intrinsic value, and that only a small part, if any, of the price of the stock was paid into the treasury of the Corporation; that Rice is an ex-convict, having heretofore been convicted of forgery, bucketing and grand larceny, and sentenced to serve several terms on these convictions.

The subpoena that was issued by the Attorney General and served upon the petitioner in this matter, Miles Charlock, directs the petitioner to appear before the Attorney General and to be examined with regard to the practices of Idaho Copper

Corporation and Walter K. Yorston in the sale of securities in or from the State of New York.

The inquiry proposed by the examination of Miles Charlock, and specified in the subpoena, is not a roving expedition, but is specifically limited by the subpoena to an examination of the petitioner, Charlock, only in respect of the practices of Idaho Copper Corporation and Walter K. Yorston in the sale of securities in or from this State.

In the affidavit of Miles Charlock, verified August 5, 1926, and which supports his motion to quash the subpoena, there is constant mention of a subpoena issued by the Attorney General and served upon one Edmund J. MacNamara and various proceedings thereunder. With the said affidavit of Charlock are attached various exhibits relating to the MacNamara subpoena and the proceedings thereunder. The said subpoena served on MacNamara and proceedings thereunder have no connection with or relation to the subpoena which the petitioner Charlock seeks to set aside herein, beyond the facts that the subpoena to MacNamara and the subpoena to Charlock were both issued by the Attorney General in connection with the investigation of the alleged fraudulent practices on the part of George Graham Rice and his brother-in-law, Silva, and that in the case of each subpoena the constitutionality of Section 352 of the General Business Law has been attacked on the same grounds by the same attorneys. The petitioner's exhibits relating to the MacNamara matter, and the allegations and assertions contained in those exhibits are wholly irrelevant to this motion.

The Martin Act, Article 23-a of the General Business Law, was enacted in 1921. Funds were appropriated in 1923 for its administration. Since April of 1923 the law has been vigorously administered by Attorney General Sherman and by the present

Attorney General Albert Ottinger. It is universally recognized as a wise and beneficent statute. Under it the Attorney General and his deputies have no judicial powers or any power to decide or adjudicate any questions of fact, nor have any such powers ever been usurped. The Martin Act differs in that respect from the "Blue Sky" laws of the other states, particularly those of South Dakota, Michigan and Ohio, upheld by the Supreme Court of the United States, in that the statutes of these states empower the Securities Commissioners to adjudicate the issue of fraud and to order a suspension or a grant of a license upon the adjudication. Under the New York statute, this honorable Court is the only body empowered to adjudicate or make any orders or judgments affecting any rights or properties of the citizens of this State. In practice the Attorney General confines his functions under the Statute to obtaining evidence by summoning witness before him and taking their deposition under oath. Where the subject of any inquiry confesses to a fraudulent practice and agrees to discontinue, nevertheless suit is filed in this Court and the defendants stipulation is made a part of such proceedings. Where the proposed defendant contests the issue of fraud or refuses a stipulation, then suit is filed in this Court in equity under Section 353 of the Martin Act and the evidence procured in the examination of the Attorney General is there presented. No authority for any other procedure has ever been found by this office in the Martin Act.

In the few instances, where recalcitrant witnesses have refused to answer questions or produce documents under subpoena, the refusal is noted on the record by the hearing stenographer and an information is filed with a magistrate setting forth the service of the subpoena, the appearance or non-appearance of the witness and the proceedings on the hearing. If the magistrate considers the information sufficient, then a

warrant is issued for the witnesses arrest. The proceedure from then on differs in no respect from the proceedings in Magistrates Courts upon informations of the commissions of any other statutory misdemeanors. In the few instances where such arrests have been made a full hearing has been given the witness and he has been held for trial before Special Session.

In no instance where a witness has refused to obey a subpoena issued under the Martin Act has the Attorney General or any of his deputies undertaken to determine that a misdemeanor has or has not been committed, but has invariably acted by informing the Court of the facts and left the determination or adjudication of the issue to the Court.

SWORN TO BEFORE ME THIS

8th DAY OF SEPTEMBER, 1926. _____

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