

FEB 17 1922 E. S. Thomas of
Def't. Garcia Def't pleads not guilty.
Filed in open Court, the Bail \$2500.
" Tobias Def't pleads not guilty.
Bail \$2500.
" Thompson Def't pleads not guilty.
Bail \$2500.

FEB 20 1922 Def't Garvey
Arraigned and Def't pleads not guilty.
Bail \$2500.
19, the Defendant

MAR - 6 1922 Files demurrer.
MAR 20 1922 Demurrer
arraigned and indict. read Def't plead Guilty
Overruled. Mack
No opinion 19, the Defendant

MAR 22 1922 Def't pleads not guilty.
called on Recognizance and

MAY 18 1923 Indictments No 31/37
appearing same and 33-688. Ordered
consolidated. Trial begun
J. W. Mack of
19, the Defendant

MAY 21 1923 Trial Continued Mack of
MAY 22 1923 " " " " "
MAY 23 1923 " " " " "
MAY 24 1923 " " " " "
MAY 25 1923 " " " " "
MAY 26 1923 " " " " "
MAY 27 1923 " " " " "
MAY 28 1923 " " " " "
MAY 29 1923 " " " " "
MAY 30 1923 " " " " "
MAY 31 1923 " " " " "
JUN - 1 1923 " " " " "
JUN - 4 1923 " " " " "

See Back.

31
37

Form No. 235.

U. S. DISTRICT Court.

THE UNITED STATES OF AMERICA

vs.

MARCUS GARVEY, ELIE GARCIA ,
ORLANDO M. THOMPSON and
GEORGE TOBIAS

~~7-6-380~~

INDICTMENT.

Using the mails in further-
ance of a scheme to defraud
and conspiring so to do.

~~XXXXXX~~ \$ 215 and 37.

WILLIAM HAYWARD
U. S. Attorney.

A TRUE BILL.

Ernest S. Frink
Foreman.

DISTRICT COURT
FILED
FEB 15 1923

JUN - 5 1923 Trial Continued - J. W. Mack of
JUN - 6 1923 " " " " "
JUN - 7 1923 " " " " "
JUN - 8 1923 " " " " "
JUN - 9 1923 " " " " "
JUN 11 1923 " " " " "
JUN 12 1923 " " " " "
JUN 13 1923 " " " " "
JUN 14 1923 " " " " "
JUN 15 1923 " " " " "
JUN 18 1923 " " " " "
Concluded " " " " "

Verdict - Def't Marcus Garvey Guilty on
Count 3 of 2nd Indictment C 33-688
- Def't - Elie Garcia - Not Guilty
- Def't - George Tobias - Not Guilty
- Def't - Orlando M. Thompson - Not Guilty

Def't - Garvey remanded pending
sentence. J. W. Mack of

See Indictment
C 33-688 Sentence adj. to June 21st 1923
June 21-1923 Def't Garvey sentenced to
Five years U. S. Penitentiary, Atlanta Ga.
and to pay a fine of One Thousand
Dollars. J. W. Mack of Def't remanded
and city of prosecution pending appeal - AP See Indictment No 33-688

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF NEW YORK.

Southern District of New York, ss: The grand jurors for the United States of America duly empaneled and sworn in the District Court of the United States for that district, upon their oaths present:

That at all times from June 27, 1919, to the time of the filing of this indictment, the Black Star Line, Inc., was a corporation organized and existing under and by virtue of the laws of the State of Delaware with an office in the City of New York and Borough of Manhattan, that the capital stock of said corporation at the beginning was \$500,000 divided into 100,000 shares of the par value of \$5 each and that on December 22, 1919, the capital stock of said corporation was increased to \$10,000,000 divided into 2,000,000 shares of the par value of \$5 each;

That on, to wit, the dates specified in the last paragraphs of the counts of this indictment, at the Southern District of New York and within the jurisdiction of this Court, ^{and} MARCUS GARVEY, ELIE GARCIA, GEORGE TOBIAS, / ORLANDO M. THOMPSON, named as defendants herein and hereinafter referred to as the defendants, had theretofore devised a scheme and artifice to defraud Louis Schench, J. Simon Scott, T. S. Smith, Mrs. R. Stewart and Addie Still, and divers other persons whose names are to the grand jurors unknown (a class of persons residing within the United States and not susceptible by reason of their great number and lack of information on the part of the grand jurors of being named herein, but comprising any and all persons whom the defendants could induce to purchase stock of the Black Star Line, Inc., said persons being hereinafter referred to as the victims) of their money and

property in and by inducing by fraudulent representations, pretenses and promises and by deceptive artifices and devices said victims to part with their money and property in the purchase of shares of the capital stock of the said Black Star Line Inc.; said scheme and artifice being more particularly set forth as follows;

It was intended by said defendants as a part of said scheme and artifice that one or more ships should be secured, and an excursion boat should be purchased; that said ships and said excursion boat should be operated by said corporation and that, in substance, it should be falsely and fraudulently represented, pretended and promised, in literature circulated by mail and direct by representatives of said corporation, that the operations of said ships and said excursion boat were the visible evidence of the prosperity and success of said corporation; when, in truth and in fact, said ships and said excursion boat, as said defendants then and there well knew, were and at all times would be, operated at a loss,^{it} being the intent and purpose of said defendants in so representing, pretending and promising that said victims should be deceived into believing that the stock of the said corporation was and would be worth the price at which it was being sold and offered for sale;

It was intended by said defendants as a further part of said scheme and artifice that it should be represented, pretended and promised that a steamship larger than any which they, the said defendants, had theretofore intended to secure and to be known as the "Phyllis Wheatley" should be taken over by the said corporation after inspection, and that such steamship should sail for Africa with passengers and freight; when, in truth and in fact, no such

steamship existed, it being the intent and purpose of said defendants in so representing, pretending and promising, to secure money and property from said victims for freight and passage to Africa and to deceive said victims into believing that the stock of said corporation was and would be worth the price at which it was being sold and offered for sale;

It was intended by said defendants as a further part of said scheme and artifice that a financial statement should be prepared and should be spread upon the minutes of said corporation, that said financial statement should be false and fraudulent in that it should be made to appear that said corporation had an organization expense of \$289,066.27 when, in truth and in fact, as said defendants then and there well knew, no such sum had been so spent; and in order that such statement should create a belief that a great corporation had been built up, and should be effective in stimulating stock sales and should deceive said victims and the public generally, it was intended further by said defendants that it, the said false and fraudulent financial statement, should be copied into and circulated by "The Negro World", a newspaper controlled by said defendants;

It was intended by said defendants as a further part of said scheme and artifice, to sell, offer for sale and cause to be sold and offered for sale to said victims shares of the capital stock of the said Black Star Line, Inc., and for the purpose of inducing the said victims to part with their money and property in the purchase of said stock so intended to be sold and offered for sale, the said defendants (in the remainder of this paragraph referred to as "we" or "our") in substance, intended falsely and fraudulently to represent, pretend and promise to said victims and each of them that the Black Star Line afforded a grand opportunity to every Negro to insure himself against misfortune; that

there would be a monster demonstration at Madison Square Garden October 30, 1919, to celebrate the launching of the Black Star Line steamship, S.S. "Frederick Douglass"; that the S.S. "Frederick Douglass", the first ship of the Black Star Line, had been launched on the 31st day of October, 1919, and made history for the Negro; that three ships were afloat and that we must float one every three months until we build up a great merchant marine, second to none; that amidst great difficulties we are able to bring into real existence a corporation that now holds a high place among the great business institutions of the day; that we have placed the Race 100 per cent among the great commercial institutions of the world; that we now have under our control three ships and we are making a desperate effort to acquire the greatest ship of all, and one that is to convey to Africa our workmen and materials for the building up of the great Republic of Liberia for the Race; that the Black Star Line S.S. Corporation has startled the world; that we are making special efforts to add ships of large tonnage to the ships now under and controlled by this concern; that the proceeds of the dollar drive will be used to donate our mother ship, all necessary equipment and make it specially and conveniently fitted for the African trade; that all our time, all our energy, all our ability, will be centered in building up of Africa as the greatest nation in the world; that between these three agencies, The African Redemption Fund, the Black Star Line S.S. Corporation and the loaning to the Universal Negro Improvement Association's Construction Loan, you ^(referring to the victims) will enable us to cement the finances of our race as to make it possible for us through this organization not only to build a nation, but to bind ourselves as one industrial power among the other races and nations of the world, and that whatever might have been the errors of the past, the present administration

of the Black Star Line is composed of trained business men and specialty service help, unquestionably equal to their responsible tasks;

And each of the aforesaid representations, pretenses and promises, as said defendants, and each of them then and there well knew, was and would be false and fraudulent, and the said defendants, in making them, intended thereby to deceive and defraud said victims by inducing them to part with their money and property in the purchase of said stock as aforesaid;

And it was a further part of said scheme and artifice that the said defendants should each appropriate and convert to his own use in the form or guise of salary, drawing account, expenses, commissions and profits, a part of the money and property which would be paid by said victims in the purchase of said stock of the said Black Star Line, Inc. as aforesaid; but the exact form or guise in which each said defendant intended thus to convert and appropriate to his own use such part of said money and property and the exact amount thereof that each said defendant intended thus to appropriate and convert, is to the grand jurors unknown;

And said defendants so having devised and intending to devise the aforesaid scheme and artifice, did, on the 21st day of December, 1920, at the Southern District of New York and within the jurisdiction of this Court, for the purpose of executing said scheme and artifice and attempting so to do, unlawfully, knowingly and wilfully place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City and County of New York, in the Southern District of New York, to be sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"Louis Schench,
1512 O, St. North
Washington, D.C.";

against the peace of the United States and their dignity

and contrary to the form of the statute of the United States in such case made and provided. (§ 215 U.S.C.C.)

SECOND COUNT.

And the grand jurors aforesaid on their oaths aforesaid do hereby reaffirm, reallege and reincorporate as if herein set forth in full all the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof;

And the grand jurors aforesaid do further present that on the 27th day of May, 1921, at the Southern District of New York and within the jurisdiction of this Court, the defendants so having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did unlawfully, knowingly and wilfully place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City and County of New York, in the Southern District of New York, in College Station thereof, to be sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"Mr. G. Simon Scott,
69 Greenwich Ave.,
Stamford, Conn.";

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§ 215 U.S.C.C.)

THIRD COUNT.

And the grand jurors aforesaid on their oaths aforesaid do hereby reaffirm, reallege and reincorporate as if herein set forth in full all the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof;

And the grand jurors aforesaid do further present that on the 21st day of December, 1920, at the Southern District of New York and within the jurisdiction of this Court, the defendants so having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did unlawfully, knowingly and wilfully place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City and County of New York, in the Southern District of New York, in College Station thereof, to be sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"T. S. Smith
726 N. Senate Ave.,
Indianapolis, Indiana.";

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§ 215 U.S.C.C.)

FOURTH COUNT.

And the grand jurors aforesaid on their oaths aforesaid do hereby reaffirm, reallege and reincorporate as if herein set forth in full all the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof;

And the grand jurors aforesaid do further present that on the 21st day of December, 1920, at the Southern District of New York and within the jurisdiction of this Court, the defendants so having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did unlawfully, knowingly and wilfully place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City and County of New York, in the Southern District of New York, to be

sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"Mrs. R. Stewart,
2138 Master St.,
Phila., Pa.";

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§ 215 U.S.C.C.)

FIFTH COUNT.

And the grand jurors aforesaid on their oaths aforesaid do hereby reaffirm, reallege and reincorporate as if herein set forth in full all the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof;

And the grand jurors aforesaid do further present that on the 21st day of December, 1920, at the Southern District of New York and within the jurisdiction of this Court, the defendants so having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did unlawfully, knowingly and wilfully place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City and County of New York, in the Southern District of New York, to be sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"Annie Still,
2903 Annin St.,
Phila., Pa.";

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§ 215 U.S.C.C.)

SIXTH COUNT.

And the grand jurors aforesaid on their oaths aforesaid do hereby reaffirm, reallege and reincorporate as if herein set forth in full all the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof;

And the grand jurors aforesaid do further present that on the 24th day of May, 1921, at the Southern District of New York and within the jurisdiction of this Court, the defendants so having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did unlawfully, knowingly and wilfully place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City and County of New York, in the Southern District of New York, to be sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"Mr. Edgar Sayers,
55 Broad St.,
Georgetown,
Demerara, British Guiana.";

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§ 215 U.S.C.C.)

SEVENTH COUNT.

And the grand jurors aforesaid on their oaths aforesaid do hereby reaffirm, reallege and reincorporate as if herein set forth in full all the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof;

And the grand jurors aforesaid do further present that on the 25th day of May, 1921, at the Southern District of New York and within the jurisdiction of this Court, the defendants so having devised and intending to devise the aforesaid scheme and artifice and for the purpose of executing said scheme and artifice and attempting so to do, did unlawfully, knowingly and wilfully place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City and County of New York, in the Southern District of New York, in Grand Central Station thereof, to be sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"Mr. Fitz C. Herbert Parris,
Georgetown, Demerara,
B. Guiana.";

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§ 215 U.S.C.C.)

EIGHTH COUNT.

And the grand jurors aforesaid on their oaths aforesaid do hereby reaffirm, reallege and reincorporate as if herein set forth in full all the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof;

And the grand jurors aforesaid do further present that said defendants, MARCUS GARVEY, ELIE GARCIA, GEORGE TOBIAS, ORLANDO M. THOMPSON, continuously throughout the period of time from June 27, 1919, up to the date of the filing of this indictment, at the Borough of Manhattan, City, County, State and Southern District of New York and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly and feloniously conspire, combine, con-

federate and agree together and with divers other persons to said grand jurors unknown, to commit divers offenses against the United States, to wit, the divers offenses charged against the said defendants in the divers counts of this indictment preceding this count and made offenses by Section 215 of the Penal Laws of the United States; and that said defendants did thereafter do divers acts to effect the object of said unlawful and wilful conspiracy, to wit, not only the several acts of placing letters, circular letters, advertisements and publications in the Post Office of the United States in the City, County, State and Southern District of New York, aforesaid described in said several preceding counts, but numerous acts of preparing said letters, circular letters, advertisements and publications for mailing; of making the false and fraudulent representations, pretenses and promises in the first count of this indictment described and obtaining by means thereof the money and property of persons belonging to the class of persons in said first count mentioned as well as certain other overt acts now here specified; that is to say:

OVERT ACTS.

In furtherance of said conspiracy and to effect the object thereof, the defendants, MARCUS GARVEY, ELIE GARCIA, GEORGE TOBIAS, ORLANDO M. THOMPSON, in the Borough of Manhattan, City, County, State and Southern District of New York, did, on the 11th day of September, 1919, hold a meeting of the board of directors of the Black Star Line, Inc., at 120 West 138th Street, New York, New York;

And further to effect the object of said conspiracy and pursuant thereto, the defendants, MARCUS GARVEY, ELIE GARCIA, GEORGE TOBIAS, ORLANDO M. THOMPSON, in the

Borough of Manhattan, City, County, State and Southern District of New York, did, on the 22nd day of December, 1919, hold a meeting of the stockholders of the Black Star Line, Inc., at Liberty Hall, 120 West 138th Street, New York, New York;

And further to effect the object of said conspiracy and pursuant thereto, the defendants, MARCUS GARVEY, ELIE GARCIA, GEORGE TOBIAS, ORLANDO M. THOMPSON, in the Borough of Manhattan, City, County, State and Southern District of New York, did, on the 10th day of February, 1921, deposit and cause to be deposited in a Post Office of the United States, that is to say, the Post Office in the City of New York, in the College Station thereof, to be sent and delivered to the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope addressed to

"Mr. Charles Cornwall,
Port Simon P.O.
Costa Rica, Panama";

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided; (§ 215 U.S.C.C.).

And further to effect the object of said conspiracy and pursuant thereto, the defendants, MARCUS GARVEY, ELIE GARCIA, GEORGE TOBIAS, ORLANDO M. THOMPSON, in the Borough of Manhattan, City, County, State and Southern District of New York, did, on the 2nd day of June, 1921, place and cause to be placed in a Post Office of the United States, that is to say, the Post Office in the City of New York, in the Grand Central Station thereof, to be sent and delivered by the Post Office establishment of the United States to the addressee thereof, a certain letter enclosed in a post-paid envelope, addressed to

"Mr. David Fipps
Pt. Simon
Costa Rica, C.A.";

against the peace of the United States and their dignity

and contrary to the form of the statute of the United
States in such case made and provided. (§ 215 U.S.C.C.)

William Hayward
United States Attorney

31-37

United States

v.

Marcus Garvey
Elie Garcia and
George Tobias.

~~7-12-6-22~~

Demure

COPY RECEIVED

MAR 6 1922

W. Hayward
U. S. ATTORNEY.

William C. Matthews

James B. McBlendon

56 West 135th St

New York

N.Y.



UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK.

NEW YORK, NEW YORK.

UNITED STATES

Vs.

MARCUS GARVEY,
ELIE GARCIA, and
GEORGE TOBIAS

DEMURRER.

-----000-----

Now come the Defendants, Marcus Garvey, Elie Garcia and Georga Tobias, by their attorneys, William C. Matthews and James B. McLendon, and say that the indictments herein and the matters and things therein set forth, are, as therein set forth and alleged, not sufficient in law to compel them to answer thereto, and they therefore demur to said indictment, as a whole, and demur to each and every of the eight (8) separate counts thereof, severally, without specifically repeating their objections to each of said counts, by special and separate reference thereto, on the following grounds and for the following reasons:

(I)

That the indictment does not, nor does any count charge or aver any offense against the United States.

(II)

That each and every count is insufficient, in that they do not, nor does any of them, aver the facts constituting a scheme to defraud.

Page 2.

(III)

That each and every count thereof is insufficient for repugnancy, uncertainty, ambiguity and evasiveness.

(IV)

That each and every count is insufficient for want of distinct and adequate specifications of the particulars wherein the several representations, called in the count "false representations" were false.

(V)

That the said indictment and each and every count thereof is duplicitious and is not specific enough, is repugnant and too vague, indefinite, ambiguous and uncertain to charge any facts sufficient in law to constitute any crime or offense, or to fully inform the defendants of the charge against them, or to make the same clear to the common understanding.

(VI)

That in the 2nd, 3rd, 4th, 5th, 6th and 7th counts of the indictment the defendants are asked to supply the facts from some other count namely, the first count, upon which the Government relies and to which the defendants are asked to make answer. The indictment is thereby robbed of the clearness and preciseness to which the defendants are entitled and which the rules of criminal procedure require.

(VII)

That the said indictment, in the eighth count thereof, does not set forth with the definiteness, certainty and preciseness required by the rules of criminal procedure any well-defined conspiracy or illegal confederation against the United States for which the defendants may be legally held to answer.

(VIII)

That in the eighth count of the indictment too great a burden is placed upon the defendants, in that they are asked to supply all of the facts from some other portion of the indictment, namely, the first count upon which the Government relies and to which the defendants are asked to make answer. The eighth count is therefore vague and indefinite and of itself too uncertain to charge any facts sufficient in law to constitute any crime or offense against the United States or to fully inform the defendants of the charge against them, or to make the same clear to the common understanding.

(IX)

That the said indictment, in the eighth count thereof, does not set forth clearly and distinctly what overt acts are chargeable to each defendant, nor does it set forth what acts upon which the Government intends to rely.

Now comes William C. Matthews and James B. McLendon, attorneys for the above-named defendants, and say that they believe there is good ground for said demurrer and the same is not intended for delay.

William C. Matthews

James B. McLendon

Sir : Please to take notice that the within is a true copy of a duly made and entered in the within entitled and filed in the office of the

Clerk of on the day of 192

Dated 192

Yours, &c.

Attorney for

Office and Post Office Address

Borough of City of New York

To Esq ..

Attorney for

Sir : Please to take notice that an order of which the within is a true copy will be presented for settlement and entry herein, to Mr. Justice

at of this Court at

..... in the City of New York

..... day of 192

at 10 o'clock in the forenoon.

Dated 9

Yours, &c.,

Attorney for

Office and Post Office Address

Borough of City of New York

To Esq ..

Attorney for

Index No. C 31-37 Year

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N. Y.

UNITED STATES,

31
37.

Plaintiff

OKH against

MARCUS GARVEY, ELIE GARCIA,
GEORGE TOBIAS & ORLANDO M.
THOMPSON,

Defendant

P E T I T I O N

to

HONORABLE JULIAN W. MACK

C. W. McDOUGALD,

Attorney for Petitioner

Office and Post Office Address

206 Broadway

Borough of Manhattan City of New York

To Esq ..

Attorney for

Due and timely service of a copy of the within is hereby admitted.

Dated 192

Attorney for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N. Y.

.....X
UNITED STATES :
-against- :
MARCUS GARVEY, ELIE GARCIA, GEORGE :
TOBIAS and ORLANDO M. THOMPSON, :
Defendants :
.....X

I, CORNELIUS W. McDOUGALD, attorney of record for one of the defendants and the petitioner herein, do hereby certify that the defendant, MARCUS GARVEY, has fully stated to me the facts contained in his Moving Affidavit herein to disqualify HONORABLE JULIAN W. MACK as Trial Judge in the above-entitled case; and after reading the affidavit of Marcus Garvey, and after having considered the facts therein contained, I do hereby certify, as his counsel of record, that such affidavit and application are made in good faith.

Dated, New York, May 15, 1923.

Cornelius W. McDougald
CORNELIUS W. McDOUGALD,
Attorney of Record for MARCUS
GARVEY, the Applicant and Defendant herein,
Office & P. O. Address,
206 Broadway,
Borough of Manhattan,
City of New York.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N. Y.

.....X
UNITED STATES :
-against- : N O T I C E
: of
MARCUS GARVEY, ELIE GARCIA, GEORGE : M O T I O N
TOBIAS and ORLANDO M. THOMPSON,
Defendants

..... X

S I R :

PLEASE TAKE NOTICE, that a motion will be made in Room 235 of the above-entitled Court on the 16th day of May, 1923, at 10 A. M., or as soon thereafter as counsel can be heard, for the disqualification of HONORABLE JULIAN W. MACK to sit as Trial Judge in the above-entitled case.

Yours, &c,

CORNELIUS W. McDOUGALD,
Attorney for Defendant,
MARCUS GARVEY,
Office & P. O. Address,
206 Broadway,
Borough of Manhattan,
City of New York.

To:

HONORABLE WILLIAM HAYWOOD,
U. S. Attorney,
P. O. Building,
New York City.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF N. Y.

.....X

UNITED STATES :

-against- :

MARCUS GARVEY, ELIE GARCIA, GEORGE TO- :
BIAS and ORLANDO M. THOMPSON,

Defendants

:
.....X

THE PETITION OF MARCUS GARVEY TO
HONORABLE JULIAN W. MACK RESPECT-
FULLY REQUESTING HIS RETIREMENT
AS TRIAL JUDGE IN THE ABOVE EN-
TITLED CASE.

STATE OF NEW YORK)
:ss.
CITY AND COUNTY OF NEW YORK)

MARCUS GARVEY, being duly sworn, deposes and
says: That he is one of the defendants in the above-en-
titled case, which is an indictment found by the Grand Jury
of the Federal Court in and for the Southern District of
New York, charging a violation of Section 215 U. S. C. C.,
set for trial May 16, 1923, with Honorable Julian W. Mack
designated as Trial Judge.

Petitioner verily believes that Your Honor
is disqualified from sitting in the trial of the above
case because of Your Honor's membership in and affiliation
with the National Association for the Advancement of Colored
People, which, through its responsible officials, has openly
and viciously attacked not only the work of the petitioner
in his several business ventures, but which has attacked
him personally, and has only recently, to wit: on or about
January 15, 1923, addressed a communication to the Attorney
General of the United States concerning petitioner, an
exact copy of which follows:

2305 Seventh Avenue,
New York City, Jan. 15, 1923.

Hon. Harry M. Daugherty, United States Attorney-General, Department of Justice, Washington, D. C.

Dear Sir:

(1) As the chief law enforcement officer of the nation, we wish to call your attention to a heretofore unconsidered menace to harmonious race relationships. There are in our midst certain Negro criminals and potential murderers, both foreign and American born,

3

who are moved and actuated by intense hatred against the white race. These undesirables continually proclaim that all white people are enemies to the Negro. They have become so fanatical that they have threatened and attempted the death of their opponents, actually assassinating in one instance.

(2) The movement known as the Universal Negro Improvement Association has done much to stimulate the violent temper of this dangerous element. Its president and moving spirit is one Marcus Garvey, an unscrupulous demagogue, who has ceaselessly and assiduously sought to spread among Negroes distrust and hatred of all white people.

(3) The official organ of the U. N. I. A., The Negro World, of which Marcus Garvey is managing editor, sedulously and continually seeks to arouse ill-feeling between the races. Evidence has also been presented of an apparent alliance of Garvey with the Ku Klux Klan.

(4) An erroneous conception held by many is that Negroes try to cloak and hide criminals. The truth is that the great majority of Negroes are bitterly opposed to all criminals, and especially to those of their own race, because they know that such criminals will cause increased discrimination against themselves.

(5) The U. N. I. A. is composed chiefly of the most primitive and ignorant element of West Indian and American Negroes. The so-called respectable element of the movement are largely ministers without churches, physicians without patients, lawyers without clients and publishers without readers, who are usually in search of "easy money." In short, this organization is composed in the main of Negro sharks and ignorant Negro fanatics.

(6) This organization and its fundamental laws encourage violence. In its Constitution there is an article prohibiting office holding by a convicted criminal, EXCEPT SUCH CRIME IS COMMITTED IN THE INTEREST OF THE U. N. I. A. Marcus Garvey is intolerant of free speech when it is exercised in criticism of him and his movement, his followers seeking to prevent such by threats and violence. Striking proof of the truth of this assertion is found in the following cases:

(7) In 1920 Garvey's supporters rushed into a tent where a religious meeting was being conducted by Rev. A. Clayton Powell in New York City and sought to do bodily violence to Dr. Charles S. Morris, the speaker of the evening—who they had heard was to make an address against Garveyism—and were prevented only by action of the police. Shortly afterward members of the Baltimore branch of the U. N. I. A. attempted bodily injury to W. Asbbie Hawkins, one of the most distinguished colored attorneys in America, when he criticized Garvey in a speech. During the same period

an anti-Garvey meeting held by Cyril Briggs, then editor of a monthly magazine—the Crusader—in Rush Memorial Church, New York City, on a Sunday evening, was broken up by Garveyites turning out the lights.

(8) Several weeks ago the Garvey division in Philadelphia caused such a disturbance in the Salem Baptist Church, where Attorney J. Austin Norris, a graduate of Yale University, and the Rev. J. W. Eason were speaking against Garvey, that the police disbanded the meeting to prevent a riot of bloodshed. Reports state the street in front of the church was blocked by Garveyites, who insulted and knocked down pedestrians who were on their way to the meeting.

(9) In Los Angeles, Cal., Mr. Noah D. Thompson, a distinguished colored citizen of that city, employed in the editorial department of the Los Angeles Daily Express, reporting adversely on the Garvey movement as a result of his visit to the annual convention, was attacked by members of Garvey's Los Angeles division, who, it is alleged, had been incited to violence by Garvey himself, and only through the help of a large number of police officers was Thompson saved from bodily harm.

(10) A few months ago, when some persons in the Cleveland, Ohio, Division of the U. N. I. A. asked Dr. LeRoy Bundy, Garvey's chief assistant, for an accounting of funds a veritable riot took place, led, according to the Pittsburg American, by Bundy himself.

(11) In Pittsburgh, Pa., on October 23 last, after seeking to disturb a meeting conducted by Chandler Owen, editor of the Messenger Magazine, Garveyites who had lurked around the corner in a body rushed on the street car after the meeting, seeking to assault him, but were prevented by the intervention of the police.

(12) When William Pickens, who had co-operated in the expose of the Garvey frauds, was to deliver an address in Toronto, Canada, Garveyites met him on the steps of the church, with hands threateningly in their hip pockets, trying to intimidate him, lest he should further expose the movement.

(13) In Chicago, after seeking to break up an anti-Garvey meeting, a Garvey supporter shot a policeman who sought to prevent him from attacking the speaker as he left the building.

(14) In New York last August during a series of meetings conducted by the Friends of Negro Freedom to expose Garvey's schemes and methods, the speakers were threatened with death. Scores of Garveyites came into the meetings with the avowed intention of breaking them up. This they were prevented from doing by the stern determination on the part of the leaders, the activities of the New York police and the great mass of West Indians and Americans, who clearly showed that they would not permit any cowardly ruffians to break up their meetings.

(15) In fact, Marcus Garvey has created an organization which in its fundamental law condemns and invites to crime. This is evidenced by section 3 of Article V of the Constitution of the U. N. I. A., under the caption, "Court Reception at Home." It reads: "No one shall be received by the Potentate and his Consort who has been convicted of felony, EXCEPT SUCH CRIME OR FELONY WAS COMMITTED IN THE INTEREST OF THE UNIVERSAL NEGRO IMPROVEMENT ASSOCIATION AND THE AFRICAN COMMUNITIES LEAGUE."

(16) Further proof of this is found in the public utterances of William Sherrill one of the chief officials in the organization and Garvey's envoy to the League of Nations Assembly at Geneva. Speaking at the Goldfield Theatre in Baltimore, Md., on August 18, 1922, he is quoted as saying: "BLACK FOLK AS WELL AS WHITE WHO TAMPER WITH THE U. N. I. A. ARE GOING TO DIE." Galley Three

(17) What appears to be an attempt to carry out this threat is seen in the assault and slashing with a razor of one S. T. Saxon by Garveyites in Cincinnati, Ohio, when he spoke against the movement there last October.

(18) On January 1, this year, just after having made an address in New Orleans, the Rev. J. W. Eason, former "American Leader" of the Garvey movement, who had fallen out with Garvey and was to be the chief witness against him in the Federal Government's case, was waylaid and assassinated, it is reported in the press, by the Garveyites. Rev. Eason identified two of the men as Frederick Dyer, 42, a longshoreman, and William Shakespeare, 29, a painter. Both of them are prominent members of the U. N. I. A. in New Orleans, one wearing a badge as chief of police and the other as chief of the Fire Department of the "African Republic." Dr. Eason's dying words, identifying the men whom he knew from long acquaintance in the movement, were:

(19) "I had been speaking at Bethany and was on my way home when three men rushed out at me from an alley. I saw their faces and (pointing at Dyer and Shakespeare) I am positive that these two men here are two of the three."

(20) The vicious inclination of these Garvey members is seen in their comments in an interview:

(20) (The N. Y. Amsterdam News reports): "Both Dyer and Shakespeare have denied the attack, but declared they were glad of it, as they said Eason richly deserved what he got. 'Eason,' said one of them, 'was a sorehead. The association made him what he was. When he was expelled because of misconduct he went up and down the country preaching against Marcus Garvey, who is doing great good for our race. Someone who evidently thought it was time to stop his lies took a chack at him. I don't blame the one that

did it. Eason richly deserved what he got.' "

(22) Eason says he knew the men who shot him were directed to do so. In so much, however, as the assassination of Mr. Eason removes a Federal witness, we suggest that the Federal Government probe into the facts and ascertain whether Eason was assassinated as the result of an interstate conspiracy emanating from New York. It is significant that the U. N. I. A. has advertised in its organ, The Negro World, the raising of a defense fund for those indicted for the murder, seemingly in accordance with its constitution.

(23) Not only has this movement created friction between Negroes and whites, but it has also increased the hostility between American and West Indian Negroes.

(24) Further, Garvey has built up an organization which has victimized hords of ignorant and unsuspecting Negroes, the nature of which is clearly stated by Judge Jacob Panken of the New York Municipal Court, before whom Garvey's civil suit for fraud was tried: Judge Panken says: "It seems to me that you have been preying upon the guillibility of your own people, having kept no proper accounts of the money received for investments, being an organization of high finance in which the officers received outrageously high salaries and were permitted to have exorbitant expense accounts for pleasure jaunts throughout the country. I advise those 'dups' who have contributed to these organizations to go into court and ask for the appointment of a receiver."

(25) For the above reasons we advocate that the Attorney-General use his full influence completely to disband and extirpate this vicious movement, and that he vigorously and speedily push the governments case against Marcus Garvey for using the mails to defraud. This should be done in the interest of justice; even as a matter of pratical expediency.

(26) The government should note that the Garvey followers are for the most part voteless—being either largely unnaturalized or refraining from voting because Garvey teaches that they are citizens of an African republic. He has greatly exaggerated the actual membership of his organization, which is conservatively estimated to be much less than 20,000 in all countries, including the United States and Africa, the West Indies, Central and South America. (The analysis of Garvey's membership has been made by W. A. Domingo, a highly intelligent West Indian from Jamaica, Garvey's home, in "The Crusader" magazine, New York City; also by Dr. W. E. B. Du Bois, a well known social statistician, in "The Century Magazine," February, 1922, New York City.) On the other hand, hosts of citizen voters, native born and naturalized, both white and colored, earnestly desire the vigorous prosecution of this case.

(27) Again the notorious Ku Klux Klan, an organization of white racial and religious bigots, has aroused much adverse senti-

ment—many people demanding its dissolution as the Reconstruction Klan was dissolved. The Garvey organization, known as the U. N. I. A., is just as objectionable and even more dangerous, inasmuch as it naturally attracts an even lower type of cranks, crooks and racial bigots, among whom suggestibility to violent crime is much greater.

(28) Moreover, since its basic law—the very constitution of the U. N. I. A.—the organization condones and encourages crime, its future meetings should be carefully watched by officers of the law and infractions promptly and severely punished.

Galley Four

(29) We desire the Department of Justice to understand that those who draft this document, as well as the tens of thousands who will indorse it in all parts of the country, are by no means impressed by the widely circulated reports which allege certain colored politicians have been trying to use their influence to get the indictment against Garvey quashed. The signers of this appeal represent no particular political, religious or nationalistic faction. They have no personal ends or partisan interests to serve. Nor are they moved by any personal bias against Marcus Garvey. They sound this tocsin only because they foresee the gathering storm of race prejudice and sense the imminent menace of this insidious movement, which, cancerlike, is gnawing at the very vitals of peace and safety—of civic harmony and inter-racial concord:

The signers of this letter are:

HARRY H. PACE, 2289 Seventh avenue, New York City.

ROBERT S. ABBOTT, 3435 Indiana avenue, Chicago, Ill.

JOHN E. NAIL, 145 West 135th Street, New York City.

DR. JULIA P. COLEMAN, 118 West 130th Street, New York City.

WILLIAM PICKENS, 70 Fifth avenue, New York City.

CHANDLER OWEN, 2305 Seventh avenue, New York City.

ROBERT W. BAGNALL, 70 Fifth avenue, New York City.

GEORGE W. HARRIS, 135 West 135th Street, New York City.

Harry H. Pace is president of the Pace Phonograph Corporation.

Robert S. Abbott is editor and publisher of the "Chicago Defender."

John E. Nail is president of Nail and Parker, Inc., real estate.

Julia P. Coleman is president of the Hair-Vim Chemical Co., Inc.

William Pickens is field secretary of the National Association for the Advancement of Colored People.

Chandler Owen is co-editor of "The Messenger" and co-executive secretary of the Friends of Negro Freedom.

Robert W. Bagnall is director of branches of the National Association for the Advancement of Colored People.

George W. Harris is a member of the Board of Aldermen of New York City and editor of the "New York News."

It will be noticed that this petition addressed directly to the Attorney General makes specific reference to the charge upon which the defendant is to be brought to trial, and that the bitter feeling against petitioner throughout is so evident that comment is unnecessary.

Petitioner does wish, however, to call attention of Your Honor to the name of William Pickens, one of the signers of the petition, who describes himself as Field Secretary of the N. A. A. C. P., which is one of the most responsible offices. This man was formerly dean of a colored school, and is paid a high salary by the N. A. A. C. P.

Attention is also called to Robert W. Bagnall, another signer of the petition, who is a Director of Branches of the N. A. A. C. P., a responsible position, a high salaried officer, and who, before coming to the N. A. A. C. P., was a clergyman.

Harry H. Pace, another signer of the petition, is also a Director of the N. A. A. C. P.

John E. Nail, another signer of the petition, is also a Director of the N. A. A. C. P., and brother-in-law of James Weldon Johnson, the Executive Secretary of the N. A. A. C. P.

The Crisis, a monthly magazine, the official organ of the N. A. A. C. P., is an open opponent of the petitioner and his work, in which have frequently appeared articles written by W. E. B. DuBois, Editor-in Chief of the Crisis and Director of Research in the N. A. A. C. P., criticising him adversely and condemning his work.

The attention of Your Honor is called to an article appearing in the January, 1921, Crisis, in which W. E. B. DuBois deals with the Black Star Line, the corporation out of whose business transactions the indictment in part grew,

upon which the defendant is to be brought to trial before Your Honor, an excerpt from which follows:

"When it comes to Mr. Garvey's industrial and commercial enterprises there is more ground for doubt and misgiving than in the matter of his character. First of all, his enterprises are incorporated in Delaware, where the corporation laws are loose and where no financial statements are required. So far as I can find, and I have searched with care, Mr. Garvey has never published a complete statement of the income and expenditures of the Negro Improvement Association or of the Black Star Line or of any of his enterprises, which really revealed his financial situation. A courteous letter of inquiry sent to him July 22, 1920, asking for such financial data as he was willing for the public to know, remains to this day unacknowledged and unanswered."

In an article appearing in the December, 1920, Crisis, W. E. B. DuBois, referring to the petitioner, says: "He has very serious defects of temperament and training: he is dictatorial, domineering, inordinately vain and very suspicious."

The N. A. A. C. P. and its officers were not content to attack your petitioner in their official organ, but during the month of July, 1922, and the month of August, 1922, during a month's session of the Annual Convention of the Universal Negro Improvement Association, of which petitioner is the president and organizer, public meetings, advertised in the press and by the distribution of circulars, were held each Sunday afternoon, at which the said William Pickens and the said Robert W. Bagnall spoke, presided or took prominent parts; and at which the slogan was: "Garvey must go, and he's going."

Your Honor, who is chosen to preside at the said trial of the petitioner, is a member of and contributor to the N. A. A. C. P. aforesaid; a reader of and subscriber to the Crisis aforesaid. Petitioner respectfully submits that in his honest belief, Your Honor would be unconsciously swayed to the side of the Government against this pe-

petitioner in this trial, for, as a reader of the Crisis, it is fair to assume that Your Honor has read the bitter and unfavorable criticisms of the petitioner and his work, the very issues of which will come before Your Honor in this trial. Petitioner feels deeply grieved that he should be tried before Your Honor as presiding Judge, who has given financial support to the N. A. A. C. P., and thus indirectly assisted them in paying their officers to attack, hold up to ridicule and undertake to destroy this petitioner and his work; and who, by subscribing to the Crisis, assisted in the circulation of matter adverse to petitioner and his work; all of which involved the very issues which will be tried in this case.

The said W. E. B. DuBois, the said William Pickens and the said Robert W. Bagnall are to this very day holding their said positions with the N. A. A. C. P., and the attacks referred to are known to the N. A. A. C. P., and if the N. A. A. C. P. did not approve of the said attacks upon this defendant and his work, by its direction the said W. E. B. DuBois, the said William Pickens and the said Robert W. Bagnall would have been requested to discontinue these attacks.

In truth, it seems unconscionable to petitioner that a member of the N. A. A. C. P. should have any voice in a trial, either as a judge or a jury, in which petitioner's honor, his liberty are at stake. It is just as unseemly to petitioner for a member of the N. A. A. C. P. to sit as a trial judge when petitioner is seeking a fair and impartial trial, as it would be for a member of the Universal Negro Improvement Association or the Black Star Line to sit as a trial judge when W. E. B. DuBois or some member of the N. A. A. C. P. would be tried on a similar

offense, in which the life of their work, their honor and liberty were at stake.

In any question in which the facts or the law balanced evenly between the organizations representing petitioner's work, to which Your Honor does not belong, lend his influence or assist in any way, and the N. A. A. C. P., petitioner feels that Your Honor might unconsciously lean to the other side. Petitioner is forced to this conclusion because it is reasonable to assume that if Your Honor did not approve of the work of the N. A. A. C. P. that Your Honor's support, influence and affiliation would be discontinued.

The petitioner is of the opinion that when Your Honor was designated, if designated, by the Judge making assignment, the said Judge was not fully advised of all the facts and circumstances; and if Your Honor were chosen at the instance of the United States Attorney, he was aware at the time of his suggestion, or request, that Your Honor sit as trial Judge in this case of Your Honor's affiliation with the N. A. A. C. P.

It might be of interest to Your Honor to know that on May 7th, when this case was called for trial, Moorefield Storey, a Boston attorney, and one of the highest officials of the N. A. A. C. P., was seen in the United States Attorney's office in and for this district. May not the petitioner respectfully inquire of Your Honor, if it should be that Your Honor were charged with a similar offense, would Your Honor in these circumstances wish to be brought to trial before a judge identified, as Your Honor is, with the subject matter of this case?

Petitioner knows of no instance in which a single word of opposition has come from a member of the N. A. A.

C. P. of its bitter attacks against defendant and his work. All of the members of the N. A. A. C. P. have apparently not only acquiesced in, but approved of the course pursued by it. As Your Honor is a member of the N. A. A. C. P., petitioner must assume that Your Honor knew of these attacks.

Petitioner further submits that he can find no basis for these attacks, except that the N. A. A. C. P., which seeks to be recognized as the dominant organization of the Negro race, and W. E. B. DuBois, one of its organizers and moving spirits, who aspires to be recognized as a leader of the Negro race, are envious of the institutions of which the petitioner was organizer, and of the petitioner because he and his institutions are recognized as a worldwide force among Negroes, alongside of which the N. A. A. C. P. and W. E. B. DuBois sink into insignificance.

Petitioner believes that the N. A. A. C. P. in its attacks upon him is actuated by cruel, corrupt and sinister motives.

Petitioner is not seeking to impute to Your Honor any intention to do him an injustice, but if an injustice is in point of fact done, the intention is not material. Petitioner is not seeking to choose a judge to try his case, but feels that a judge should sit who would not be a supporter to petitioner as a defendant, nor to any institution or influence which would assist the prosecution against him.

Petitioner respectfully submits that in his honest belief Your Honor is disqualified, both in law and in propriety from sitting as trial Judge in the above-entitled

case. This application was not made 10 days prior to the term because petitioner did not know who was designated as Judge.

WHEREFORE, petitioner prays that Your Honor will retire as the trial Judge in this case.

Maven Garvey

Sworn to and subscribed

before me this 14th day

of May, 1923.

W. Kenton Plummer
Notary Public
New York County Clerk's No. 290
New York County Register's No. 4276.
Commission expires March 30th 1924.