

TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )  
 )  
 vs. )  
 )  
 GRACE FORTESCUE, THOMAS H. )  
 MASSIE, EDWARD J. LORD and )  
 ALBERT O. JONES, )  
 )  
 Defendants. )

---

MOTION TO QUASH INDICTMENT

NOTICE OF MOTION

and

AFFIDAVIT OF MONTGOMERY E. WINN

THOMPSON & WINN  
 500 Inter-Island Bldg., Honolulu  
 Attorneys for Defendants.

**FILED**  
 At 10:25 A.M.  
 JAN 27 1932  
*Charles H. Kura*  
 CLERK

Receipt of a copy  
 of the foregoing is hereby  
 acknowledged this 27th day  
 of January, 1932.

*Frederick W. ...*  
 Deputy City & County Attorney  
*per med.*

TERRITORY OF HAWAII, )

vs. )

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES, )

Defendants. )

MOTION TO QUASH INDICTMENT

Now come GRACE FORTESCUE, THOMAS H. MASSIE, EDWARD J. LORD and ALBERT O. JONES, by their attorneys, Thompson & Winn, and move this Honorable Court to quash the indictment presented against the above named defendants in the above entitled cause and matter and in support of said motion assigns the following reasons:

FIRST: Because the Honorable A. M. Cristy, Second Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, on Friday, the 22nd day of January, 1932, did arbitrarily and without justification of law refuse to accept the report of the Territorial Grand Jury that it, the said Grand Jury, had returned a no bill against each of the four above named defendants on the bills charging said defendants with first degree murder in connection with the alleged kidnapping and killing of one Joseph Kahahawai presented by the attorney for the City and County of Honolulu, Territory of Hawaii, to said Grand Jury.

SECOND: Because by so refusing to accept said report the Honorable A. M. Cristy usurped the time honored function of the Grand Jury as the sole and exclusive judge of the facts presented before it and as the sole and

exclusive judge of whether or not sufficient facts had been presented to it to warrant the finding of a true bill against said defendants or any of them and by his actions and instructions given to said Grand Jury he, the Honorable A. M. Cristy, in effect instructed the members thereof that unless they found a true bill against said defendants that their action in refusing so to do would result in "anarchy in this community," and that the members of the Grand Jury who refused to vote for a true bill would be responsible for such state of anarchy and in this connection the Honorable A. M. Cristy made the following statement to the Grand Jury: "Are you willing to take the responsibilities for that situation? You know our racial structure", the reasonable interpretation thereof being that unless the members of the Grand Jury found a true bill against the defendants that a state of anarchy would prevail in the community because of the prevailing racial feeling and structure in the community and that the members of the Grand Jury would be responsible for such state of anarchy.

THIRD: Because on Friday, the 22nd day of January, 1932, and after the Grand Jury had been deliberating for approximately two hours, the Honorable A. M. Cristy was formally notified by Harry A. Franson, foreman of said Grand Jury, and by one other Grand Juror that a no bill had been returned by said Grand Jury as to each and all of the above named defendants but that despite this fact the Honorable A. M. Cristy thereupon refused to accept said report and without authority and justification of law had the Grand Jury seated and proceeded in a lengthy charge to again specifically charge the Grand Jury with reference to the criminal character of the alleged acts of the four

above named defendants, and upon the following to-wit, "Do I understand you are not accepting this report" being propounded by one E. E. Bodge, a member of said Grand Jury, to the Honorable A. M. Cristy, that he, the Honorable A. M. Cristy, in reply thereto did say: "The court refuses to accept any further report until the Grand Jury deliberates further upon matters of serious import to the Territory. After Tuesday I will tak to you. I will ask you to seriously deliberate upon it until you return for your deliberations at 10 o'clock on Tuesday next." That the fair meaning and interpretation of said remarks by the said Honorable A. M. Cristy were that in the opinion of the Honorable A. M. Cristy, members of the Grand Jury were not justified in returning a no bill against each and every one of said defendants, and that because in the opinion of the Honorable A. M. Cristy the Grand Jurors were not so justified in returning said no bill as aforesaid, that he would refuse to accept a no bill as returned and would compel the members of the Grand Jury to deliberate until such a time as they should return a bill in accordance with the views held by the said Honorable A. M. Cristy; that in so instructing the Grand Jury the Honorable A. M. Cristy failed to distinguish the respective duties of a judge who by law is charged with instructing the members of the Grand Jury on the law, and the duties of the Grand Jury as the sole and exclusive judge of the facts presented to it.

FOURTH: That at or about the hour of 10 o'clock a.m. on Tuesday, the 26th day of January, 1932, the Honorable A. M. Cristy arbitrarily and without justification of law refused to permit one of the Grand Jurors, namely, E. E. Bodge, to continue to sit as a member of the Grand Jury and that the Honorable A. M. Cristy did in open court state

to the members of the Grand Jury that Mr. E. E. Bodge "might be subject to considerable criticism in occupying both positions" meaning thereby that said Grand Juror might be subjected to considerable criticism in sitting as a member of the Grand Jury and as a member of the Police Commission of the City and County of Honolulu to which commission said Grand Juror had recently been appointed. That in response to said remark the said E. E. Bodge advised the Honorable A. M. Cristy in open court as follows: "I would like the other members of this jury to understand that I am not trying to evade any duty. I am perfectly willing to serve on this jury. I am not claiming any exemption, but the judge has ruled it would be improper for me to serve on both of these bodies and I should like to say I did not know this appointment was going to be made. The first I knew of it was after the court adjourned on Friday. I was not conferred with at all, and when I conferred with the Governor later he said he had tried to get me but was unable to do so. I want it understood that I am not trying to evade any duty . . . I want to have it understood that I am perfectly willing to serve."

That subsection 3 and 4 of Section 2397 of the Revised Laws of Hawaii 1925 read as follows:

A person is exempted from liability to act as a juror if he is:

"3. A salaried judicial, civil or military officer of the United States or of the Territory;"

"4. A person holding a salaried county, city, town, municipal, township, district or precinct office;"

That said provisions give to a Grand Juror the right to claim a personal exemption if he is a "salaried" judicial, civil or military officer of the United States

or of the Territory of Hawaii, or a person holding a "salaried" county, city, town, municipal, township, district or precinct office, but that said provisions do not disqualify any Grand Juror from acting as such even though he is a salaried official unless he desires to claim said exemption. That the said E. E. Bodge was not entitled to claim said exemption inasmuch as he received no salary whatsoever as a member of the Police Commission and even in the event that he was entitled to receive a salary as a Police Commissioner the right to claim an exemption would be purely personal to him and could be waived if he so desired, and that the exemption could not be forced upon him by the court.

FIFTH: That on said occasion, to-wit at or about the hour of 10 o'clock a.m. on Tuesday, the 26th day of January, 1932, the Honorable A. M. Cristy again used coercive language to the Grand Jury, his remark, as hereinafter set forth, tending to cause the members of the Grand Jury to believe that unless they voted for a true bill against the above named defendants their failure so to do would be subversive of good government and that the government could not exist unless a true bill were rendered by the members of the Grand Jury. That the language used by the Honorable A. M. Cristy in part is as follows: "The jury room will be closed and you will proceed with your further deliberations. Before so doing may I ask you gentlemen, as representatives of the government and the community, to lay aside all race prejudice to rise above such trivial or personal matters and apply yourselves coolly and impartially to the question of whether this government shall exist and how it shall exist."

SIXTH: Because the Grand Jury, after the Honorable A. M. Cristy had delivered said charges, and being influenced and induced to indict these defendants by reason thereof, returned the indictment herein, which was not the voluntary act of the Grand Jury and that said indictment is therefore void.

SEVENTH: For other reasons to be assigned at the hearing.

This motion is based upon the files and records herein, the affidavit of Montgomery E. Winn hereto attached, and upon such other evidence as the court shall permit to be introduced at the hearing on this motion.

Dated, Honolulu, T. H., January 27, 1932.

GRACE FORTESCUE, THOMAS H. MASSIE,  
EDWARD J. LORD and ALBERT O. JONES,

Defendants

By THOMPSON & WINN  
Their Attorneys

*Montgomery E. Winn*  
Per Montgomery E. Winn

NOTICE OF MOTION

To JAMES F. GILLILAND, City and County Attorney for the City and County of Honolulu.

You are hereby notified that the foregoing motion will be heard at the hour of 1:30 o'clock p. m. on Friday, the 24 day of January, 1932, in the court room of the Honorable J. A. McCall in the Judiciary Building, Honolulu, City and County of Honolulu, Territory of Hawaii.

Dated, Honolulu, T. H., January 27, 1932.

THOMPSON & WINN  
Attorneys for Defendants

*Montgomery E. Winn*  
Per Montgomery E. Winn

TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )

vs. )

GRACE FORTESCUE, THOMAS E.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES, )

Defendants. )

AFFIDAVIT OF MONTGOMERY E. WINN

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU. )

ss.

MONTGOMERY E. WINN, being first duly sworn, deposes and says:

That he is a member of the firm of Thompson & Winn, attorneys for the defendants above named;

That at or about the hour of 1:30 o'clock p.m. on Thursday afternoon, the 21st day of January, 1932, the Territorial Grand Jury duly convened in the court room of the Honorable A. M. Cristy, Second Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii; that the Grand Jury at said time and place was composed of twenty-one jurors whose names are as follows, to-wit:

Harry A. Franson	Abner Townsley Longley
James L. Holt	Walter C. Love
Peter A. Anderson	Marmion M. Magoon
Edward Ellis Bodge	Robert McCorrison
Rudolph Bukeley	David Namahoe
John Llewellyn Cliff	Abel S. Nascimento
Rudolph M. Duncan	Frank C. Palmer
Enffah Chung	James A. Rath, Jr.
Vincent Fernandez	Ralph Collier Vincent Scott
Warren C. Laird	Ralph Curtis Turner
	Arthur E. Well



That Harry A. Franson was the duly appointed foreman of said Grand Jury and James L. Holt duly appointed Secretary of said Grand Jury; that shortly after said Grand Jury convened Mr. Griffith Wight, Deputy City and County Attorney of the City and County of Honolulu, Territory of Hawaii, called numerous witnesses before said Grand Jury and your affiant is informed and believes that said witnesses testified as to facts surrounding the alleged kidnapping and alleged killing of Joseph Kahahawai on Friday, the 8th day of January, 1932.

That at or about the hour of 4:35 o'clock p.m. on said day, the Grand Jury was adjourned until the hour of 10:00 o'clock a.m. on the following day, to-wit, at the hour of 10:00 o'clock a.m. on Friday, the 22nd day of January, 1932.

That at or about the hour of 10:15 o'clock a.m. on Friday, the 22nd day of January, 1932, said Grand Jury resumed its investigation of the alleged kidnapping and killing of said Joseph Kahahawai and that additional witnesses were called before said Grand Jury and your affiant is informed and believes that said witnesses testified before said Grand Jury in connection with the alleged kidnapping and alleged killing of the said Joseph Kahahawai.

That at or about the hour of 12:00 o'clock noon on Friday, the 22nd day of January, 1932, Mr. Griffith Wight, the Deputy City and County Attorney announced to said Grand Jury that he had completed the testimony and that he thereupon presented to the Grand Jury for its consideration an indictment charging Grace Fortescue, Thomas E. Massie, Edward J. Lord and Albert O. Jones with first degree murder and also an indictment charging Grace

Bortescue, Thomas W. Wasse, Edward J. Lord and Albert  
Jones with kidnaping.

That said Grand Jury then recessed for lunch and at the hour of 1:30 o'clock p.m. on said day returned to the court room of the Honorable A. M. Cristy, Second Judge as aforesaid, to deliberate and vote upon whether or not any of said defendants should be indicted.

That at or about the hour of 3:00 o'clock p.m. on said day the Grand Jury requested the Honorable A. M. Cristy to instruct it upon certain matters of law pertaining to the requested indictments and that thereupon the Honorable A. M. Cristy did enter the Grand Jury room and instructed the Grand Jury, as requested, and after having done so, retired to his chambers in the Judiciary Building.

That your affiant is informed and believes and therefore avers the fact to be that between the hour of 3:00 and 3:30 o'clock p.m., and subsequent to the Honorable A. M. Cristy having instructed the Grand Jury, members of the Grand Jury voted on the bills presented to them and your affiant is willing and offers to prove by the testimony of the Honorable A. M. Cristy and by the minutes of the Secretary of said Grand Jury and by the affidavits of the Grand Jurors that at or about the hour of 3:30 o'clock p.m. on said day, Harry A. Franson, foreman of said Grand Jury, left the Grand Jury room and went into the chambers of the Honorable A. M. Cristy, and that he, the said Harry A. Franson, did thereupon announce to the Honorable A. M. Cristy that the Grand Jury had deliberated for several hours and after the deliberation had voted as to whether or not a true bill should be returned against any of the defendants on any of the charges presented and that the result of said vote was that a no bill should be

returned as to each and every one of the defendants on each and every one of the bills presented; that while said Harry A. Franson was in the chambers of the Honorable A. M. Cristy, one of the members of the Grand Jury, at the request of the other members of the Grand Jury, went into the chambers of the Honorable A. M. Cristy and in the presence of the Honorable A. M. Cristy and Harry A. Franson requested the foreman to return to the Grand Jury room, and that said Grand Juror likewise informed the Honorable A. M. Cristy that a no bill had been returned against each and every one of the said defendants and that thereupon the Honorable A. M. Cristy informed both the foreman of the Grand Jury and the other Grand Juror referred to that he would refuse to accept a no bill and that in order to prevent a no bill being returned he intended to adjourn the Grand Jury until the hour of 10:00 o'clock a.m. on Tuesday, the 26th day of January, 1932.

That thereupon the Honorable A. M. Cristy returned to the Grand Jury room and reiterated his remarks to the effect that he would refuse to accept a report from the Grand Jury and that the Grand Jury had been adjourned until the hour of 10:00 o'clock a.m. on Tuesday, the 26th day of January, 1932, and that upon said occasion the Honorable A. M. Cristy used the following language, to-wit:

"If a crime has been committed and the identity of the criminals known- that is criminals in the sense of the technical provisions of the Law, and the Grand Jury for reasons refused under their oath to present an indictment therefor, I present to you the question of anarchy in this community. Are you willing to take the responsibilities for that situation? You know our racial structure. Whether that is involved in any particular case and in the particular case before you is for your consideration, and not mine. But, really, gentlemen, it is a very serious situation which I want you not to act hastily on, and to reflect upon. If there is any juror who cannot conscientiously carry out his

oath of office, he should resign immediately from the Grand Jury. We are embarking upon a very necessary tour of duty. It is one that I do not relish any more than you do. I will ask the Grand Jury to stand adjourned until Tuesday morning at 10 o'clock and return for further consideration upon the matters presented before you. You are excused until Tuesday morning at 10 o'clock. There are the usual restrictions as to the secrecy of your proceedings."

"Juror Bodge: Do I understand you are not accepting this report?"

"The Court: There has been nothing presented to me. The court refuses to accept any further report until the Grand Jury deliberates further upon matters of serious import to the Territory. After Tuesday I will talk to you. I will ask you to seriously deliberate upon it until you return for your deliberations at 10 o'clock on Tuesday next."

That at or about the hour of 10:00 o'clock a.m. on Tuesday, the 26th day of January, 1932, and subsequent to the refusal of the Honorable A. M. Cristy to accept the no bill voted by the Grand Jury, and subsequent to the inquiry propounded by the said Grand Juror E. E. Bodge to the Honorable A. M. Cristy inquiring as to whether or not the Honorable A. M. Cristy intended to accept the no bill voted by the Grand Jury, the Honorable A. M. Cristy refused to permit said Grand Juror E. E. Bodge to continue to serve on said Grand Jury despite the fact that the said Grand Juror expressly stated to the Honorable A. M. Cristy in open court that he was "perfectly willing to serve" and that he was "not claiming any exemption".

That on said occasion the Honorable A. M. Cristy used language in part as follows:

"The jury room will be closed and you will proceed with your further deliberations. Before so doing may I ask you gentlemen, as representatives of the government and the community, to lay aside all race prejudice, to rise above such trivial or personal

matters and apply yourselves coolly and impattially  
to the question of whether this government shall  
exist and how it shall exist.

Further affiant sayeth nought.

Monaghan S. Wain

Subscribed and sworn to before me  
this 27th day of January, 1932.

R. Loguchi  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

C. No. 11891

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )  
vs. )  
GRACE FORTESCUE, THOMAS H. )  
MASSIE, EDWARD J. LORD and )  
ALBERT O. JONES, )  
Defendants. )

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ADDITIONAL GROUNDS IN SUPPORT OF MOTION TO  
QUASH INDICTMENT.

*Due service, by copy of the within*

*is hereby admitted.*

*Barry J. Welch per J.S.P.*  
*Attorneys for Territory of Hawaii.*  
*Honolulu, Hawaii.*

*EW-28 1932*

**FILED**  
*4:37 P.M.*  
JAN 1 1932

*J. M. Sheppard*  
Clerk.

THOMPSON & WINN  
500 Inter-Island Bldg., Honolulu  
Attorneys for Defendants.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )

vs. )

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES, )

Defendants. )

---

ADDITIONAL GROUNDS IN SUPPORT OF MOTION TO  
QUASH INDICTMENT

Now come GRACE FORTESCUE, THOMAS H. MASSIE, EDWARD J. LORD and ALBERT O. JONES by their attorneys, Thompson & Binn, and in support of the motion to quash the indictment heretofore filed herein and as further reasons for the granting of said motion add thereto the following grounds:

EIGHTH: Because on Tuesday, the 26th day of January, 1932, at or about the hour of 11:45 a.m. the Grand Jury did vote a no bill on the charge of first degree murder presented against said defendants, on the charge of the second degree murder presented against said defendants and on the charge of kidnapping presented against said defendants. That thereupon the members of the Grand Jury did instruct Harry A. Franson, duly appointed foreman of said Grand Jury, to notify the Honorable A. M. Cristy that the Grand Jury was ready to report to him and that it had voted a no bill on all of the charges presented to the Grand Jury. That thereupon the Honorable A. M. Cristy was summoned from his chambers and went into the Grand Jury room. That after he had taken his seat the said Harry A. Franson, against the instructions of the Grand Jury, stated to the Honorable

A. M. Cristy in substance that the Grand Jury had nothing to report. That thereupon at least one of the members of the Grand Jury said in substance to the Honorable A. M. Cristy that the Grand Jury was ready to report and had instructed the foreman accordingly. That thereupon, the Honorable A. M. Cristy said in substance that he refused to accept said report and that the Grand Jury was adjourned until two o'clock p.m.

NINTH: That the Grand Jury after being adjourned by the Honorable A. M. Cristy again convened at two o'clock p.m. and thereupon another vote was taken and again a no bill was returned on each and every one of the three charges against the said defendants. That the foreman of the Grand Jury was again instructed by the members of the said Grand Jury to advise the Honorable A. M. Cristy that the Grand Jury had again rendered a no bill but that the said foreman in substance said to said Grand Juror that they had read the editorial in the Honolulu Star-Bulletin and that it said it was the duty of the Grand Jury to return a true bill. That thereupon the said foreman refused to report to the Honorable A. M. Cristy as he had been ordered to do. That thereupon several of the Grand Jurors demanded that a vote be taken upon whether or not the City and County Attorney's Office should be requested to prepare and submit to said Grand Jury a bill charging the defendants with manslaughter and also to vote on the question as to whether or not an indictment should be rendered against said defendants charging them with manslaughter. That thereupon said Harry A. Francon refused to permit a vote to be taken stating that



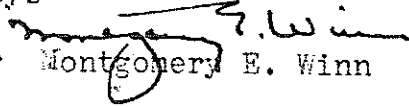
they could vote only upon the indictments already presented to said Grand Jury and that it was the duty of the Grand Jury to bring in a true bill against the defendants on at least one of the three charges presented.

Dated, Honolulu, T. H., January 28, 1932.

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES,

Defendants

By THOMPSON & WINN  
Their Attorneys

  
Per Montgomery E. Winn

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )

vs. )

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES, )

Defendants. )

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MOTION AND AFFIDAVIT OF  
MONTGOMERY E. WINN

FILED  
at 3:50 P.M.

JAN 28 1932

*A. A. Sherwood*  
Clerk.

THOMPSON & WINN  
500 Inter-Island Bldg., Honolulu  
Attorneys for Defendants.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )  
 )  
 vs. )  
 )  
 GRACE FORTESCUE, THOMAS H. )  
 MASSIE, EDWARD J. LORD and )  
 ALBERT O. JONES, )  
 )  
 Defendants. )

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M O T I O N

Now come GRACE FORTESCUE, THOMAS H. MASSIE, EDWARD J. LORD and ALBERT O. JONES, defendants, by their attorneys, Thompson & Winn, and move this Honorable Court that they be admitted to bail pending the trial of the above entitled cause and matter.

This motion is based upon the records and files herein and upon the affidavit of Montgomery E. Winn hereto attached.

Dated, Honolulu, T. H., January 28<sup>th</sup>, 1932.

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES,

Defendants

By THOMPSON & WINN  
Their Attorneys

  
Per Montgomery E. Winn

TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )  
 vs. )  
 GRACE FORTESCUE, THOMAS H. )  
 MASSIE, EDWARD J. LORD and )  
 ALBERT G. JONES, )  
 Defendants. )

---

AFFIDAVIT OF MONTGOMERY E. WINN

TERRITORY OF HAWAII, )  
 ) ss.  
 CITY AND COUNTY OF HONOLULU. )

MONTGOMERY E. WINN, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendants in the above entitled cause and matter;

That the defendants are at the present time incarcerated;

That your affiant is informed and believes and therefore avers the fact to be that Edward J. Lord has no property, real or personal, or any assets whatsoever, or any income from any source other than his monthly pay from the United States Navy of Forty Dollars (\$40.00) a month, and that he is unable to provide bail in a sum greater than Two Thousand Dollars and this only through the possible assistance of friends;

That your affiant is informed and believes and therefore avers the fact to be that Albert G. Jones has no property, real or personal, or any assets whatsoever, or any income from any source other than his monthly pay from the United States Navy of Seventy-five Dollars (\$75.00) a month, and that he is unable to provide bail in a sum greater than Two Thousand Dollars and this only through the possible assistance of friends;

That your affiant is informed and believes and therefore avers the fact to be that Thomas H. Massie has no property, real or personal, or any assets whatsoever, or any income from any source other than his monthly pay from the United States Navy of Two Hundred Forty Dollars (\$240.00) a month, and that he is unable to provide bail in a sum greater than Two Thousand Dollars and this only through the possible assistance of friends;


That your affiant is informed and believes and therefore avers the fact to be that the defendant Grace Fortescue has no property, real or personal, or any assets whatsoever, or any income from any source other than an income of approximately Five Thousand Dollars (\$5,000.00) a year, and that she is unable to provide bail in a sum greater than Five Thousand Dollars, and this only through the possible assistance of friends;

That your affiant is informed and believes and therefore avers the fact to be that Major Granville Fortescue, husband of Grace Fortescue, has no property, real or personal, or any assets whatsoever, or any income from any source other than an income of approximately Two Thousand Dollars (\$2,000.00) a year as a retired officer of the United States Army.

Further affiant sayeth not.



Subscribed and sworn to before me  
this 28th day of January A. D. 1932.

  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )

vs. )

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES, )

Defendants. )

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MOTION AND AFFIDAVIT

**FILED**  
At 1:20 o'clock P.M.

MAR 9 1932  
*L. K. Steward*  
Clerk

THOMPSON & WINN  
500 Inter-Island Bldg., Honolulu  
Attorneys for Defendants.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )

vs. )

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES, )

Defendants. )

---

M O T I O N

Come now the defendants GRACE FORTESCUE, THOMAS H. MASSIE, EDWARD J. LORD and ALBERT O. JONES, by their attorneys, THOMPSON & WINN, and move that the trial of said defendants in the above entitled cause and matter be continued and postponed to Monday, the 11th day of April, 1932.

This motion is based upon the record, file and proceedings herein and upon the affidavits of Frank E. Thompson and Montgomery E. Winn hereto attached.

Dated, Honolulu, T. H., March 2, 1932.

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES,  
Defendants

By THOMPSON & WINN  
Their Attorneys

*Montgomery E. Winn*  
Per Montgomery E. Winn

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
TERRITORY OF HAWAII.

TERRITORY OF HAWAII, )

vs. )

GRACE FORTESCUE, THOMAS H.  
MASSIE, EDWARD J. LORD and  
ALBERT O. JONES, )

Defendants. )

---

A F F I D A V I T

TERRITORY OF HAWAII, )

CITY AND COUNTY OF HONOLULU. )

ss.

FRANK E. THOMPSON and MONTGOMERY E. WINN, being  
duly sworn, depose and say:

That they are attorneys for the defendants  
Grace Fortescue, Thomas H. Massie, Edward J. Lord and  
Albert O. Jones in the above entitled cause and matter.

That for a period of approximately six weeks  
last past one Julien Ripley, a resident of New York City,  
New York, and a brother-in-law of the defendant Grace  
Fortescue, has been negotiating with Clarence S. Darrow,  
attorney and counselor at law, residing in Chicago,  
Illinois, endeavoring to retain the said Clarence S.  
Darrow as counsel to represent the said defendants on  
the trial in the above entitled cause and matter; that  
approximately one week ago said Clarence S. Darrow  
notified the said Julien Ripley that he would accept the  
employment providing his physician believes that he,  
the said Clarence S. Darrow, could make the trip to  
Honolulu and participate in said trial without suffering  
any ill results; that on Tuesday, March 1st, 1932, said  
Clarence S. Darrow accepted employment as counsel for the



four defendants, and on Wednesday, March 2nd, 1932, the affiants for the first time received definite notice that said Clarence S. Darrow had been retained to represent said defendants; that said notice and information was contained in a cable from Julien Ripley to the defendant Grace Fortescue, which cable read as follows:

"Doctor approves stop Darrow arrives March twentyfourth desires at least ten days there after before trial"

The affiants further aver that said Clarence S. Darrow has been definitely retained to represent said defendants at said trial; that the said Clarence S. Darrow is not familiar with the facts of the case other than the facts or information he could have secured through newspaper reports; that in order to properly prepare the case for trial said Clarence S. Darrow should have at least seventeen days after his arrival in Honolulu on the 24th day of March, 1932.

Frank E. Thompson

For Montgomery E. Winn

Subscribed and sworn to before me  
this 2nd day of March, 1932.

Dr. Marumaki  
Notary Public, First Judicial  
Circuit, Territory of Hawaii.

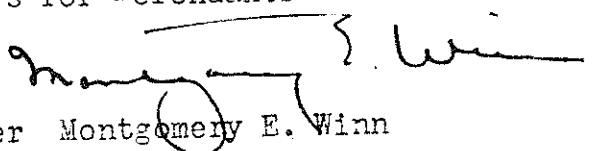
NOTICE

To JOHN C. KELLEY, Public Prosecutor:

The foregoing motion will be heard at the hour  
of 9.15 o'clock A M. on Saturday, the 5 day  
of March, 1932, before the Honorable A. M. Cristy.

Dated, Honolulu, T. H., March 2nd, 1932.

THOMPSON & WINN  
Attorneys for Defendants

  
Per Montgomery E. Winn