

[July, 1976]

KB

ORIGINAL NOTICE

Form 110-S

Rules 48, 49 and 50, Rules of Civil Procedure

IN THE IOWA DISTRICT COURT

JOHNSON COUNTY, IOWA

JOHN KNOX, et al.,

Plaintiff

vs.

ORIGINAL NOTICE.

THE STATE OF IOWA, et al., and
MRS. MILDRED WILSLEF
511 East Washington Street
Iowa City, Iowa 52240 Defendant

#43292
3534073
3374916
202 Johnson Bldg.

TO THE ABOVE NAMED DEFENDANT OR DEFENDANTS:

You are hereby notified that a petition of the above named plaintiff in the above entitled action is now on file in the office of the Clerk of the above named Court, and copy of which petition is hereto attached and which petition ~~XXXXXXXXXXXXXXXXXXXX~~

FOR FULL PARTICULARS, SEE COPY OF PETITION ATTACHED HERETO

You are hereby notified and required to serve upon John T. Nolan plaintiff's attorney, whose address is 405 Iowa State Bank Bldg., Iowa City, Iowa 52240 an Appearance to the petition herewith served upon you within twenty (20) days after the service of this Original Notice upon you and within a reasonable time thereafter to file a duplicate with the undersigned Clerk of Court.

If you fail to so appear and defend, judgment by default will be rendered against you for the relief demanded in the Petition.

E. J. WOMBACHER

Clerk of the above Court

By: Robert E. Barnett
Deputy Clerk

[SEAL]

NOTE: Persons named as defendants are told to "appear." The word is not always understood. The required appearance may be made either by the defendant himself or for him by his attorney, and generally it is necessary to file a motion or pleading with the clerk to prevent a default. (Rule 87). The attorney who is expected to appear for the defendant should be promptly advised by defendant of the service of this notice.

IN THE DISTRICT COURT OF IOWA IN AND FOR JOHNSON COUNTY

JOHN KNOX, JAMES VAN ALLEN,)
MRS. ELIZABETH L. BUNGE,)
RAYMOND G. BUNGE, ANDRIA HAUER,)
ROBERT R. DYKSTRA, JOHN D.)
RUTHERFORD, all of Iowa City,)
Iowa,)

Plaintiffs,)

vs.)

THE STATE OF IOWA: ROBERT D.)
RAY, Governor, RICHARD TURNER,)
Attorney General, State Capitol,)
Des Moines, Iowa; THE STATE)
BOARD OF REGENTS, Grimes State)
Office Building, Des Moines,)
Iowa; MRS. H. RAND PETERSEN,)
Harlan, Iowa; RAY V. BAILEY,)
Milford, Iowa; DONALD H. SHAW,)
Davenport, Iowa; JOHN D.)
BALDRIDGE, Chariton, Iowa;)
MRS. ROBERT M. COLLISON,)
Oskaloosa, Iowa; STEVEN E.)
ZUMBACH, West Des Moines,)
Iowa; STANLEY R. BARBER,)
Wellman, Iowa; S. J. BROWNLEE,)
Emmetsburg, Iowa; HARRY G.)
SLIFE, Cedar Falls, Iowa;)
R. WAYNE RICHEY, Grimes State)
Office Building, Des Moines,)
Iowa; WILLARD BOYD, President,)
University of Iowa, Iowa City,)
Iowa; THE FIRST PRESBYTERIAN)
CHURCH of Iowa City, Iowa,)
and DR. RICHARD PETERSON,)
President; MRS. MILDRED)
WILSLEF, Vice President; DR.)
CARL WHITE, Clerk of Session,)
JACK L. ERWAS, Pastor, all of)
Iowa City, Iowa,)

Defendants.)

NO. _____

PETITION IN EQUITY

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DIVISION I - PLAINTIFFS vs STATE

Plaintiffs' status

Defendants' status

Acts of Defendants

Illegalities

(a) No basis

(b) Federal law

(c) Needless destruction

(d) Public trust:

(1) best interest

(2) prevent waste

(3) preserve resources

Irreparable loss

Defendants collaborating

No administrative remedies

Ad damnum

DIVISION II - PLAINTIFFS vs. PRESBYTERIAN CHURCH

Plaintiffs' status

Defendants' status

Acts of Defendants

Illegalities

(a) No basis

(b) Title 16

(c) Breach of fiduciary duties

(d) Contrary to conveyance

(e) Specific church constitution violations

(1) XXXII.12 violation

(2) Vandalism

5. Irreparable loss
 6. Defendants collaborating
 7. Municipal permit
 8. No administrative remedies
- Ad damnum

DIVISION III - PLAINTIFFS vs ALL DEFENDANTS

1. Incorporate by reference
2. Adrian Anderson status
3. Acts of Defendants

DIVISION IV - PLAINTIFFS vs ALL DEFENDANTS

1. Incorporate Divisions I, II, III by reference
2. Collaboration

DIVISION I

ILLEGAL CONDUCT - STATE DEFENDANTS

1. Plaintiffs are citizens or residents of the State of Iowa and as such are entitled to the due process and equal protection of laws and the rights and privileges inherent therein including those of life, liberty and the pursuit of happiness and enjoyment of historical environs and heritage for themselves and their progeny.

2. The Defendant State of Iowa and above persons named as officers thereof, Defendant members of the Board of Regents and Willard Boyd, President of the University of Iowa (hereinafter referred to as State Defendants) have acted and are acting in an official capacity at all times material hereto for the State of Iowa in a transaction as Contract purchaser or owner for the conveyance of certain real property legally described as follows:

Lots 7 and 8, Block 86, original Town of
Iowa City, Johnson County, Iowa

and the church building constructed and personal property located thereon sometimes known as the Old or Original First Presbyterian Church of Iowa City and said improvements on said location hereinafter referred to as "Old Brick".

3. The aforesaid State Defendants are acting and co-operating with the Church Defendants (identified in DIVISION II *infra*) in a manner calculated to cause or bring about the permanent and complete demolition of Old Brick beyond preservation, salvage or repair.

4. That the conduct of the aforesaid State Defendants in the aforesaid demolition is not authorized by law and is illegal in the following particulars:

5. That said illegal conduct will cause the irreparable loss to the Plaintiffs in the demolition of Old Brick if not enjoined.

6. That all Defendants are presently collaborating to bring about the aforesaid demolition within the near future unless previously enjoined.

7. Plaintiffs have no adequate remedy at law, and have exhausted all known administrative and other remedies.

WHEREFORE Plaintiffs pray that the Defendants be enjoined forthwith from the demolition of Old Brick by temporary injunction after fixing a reasonable bond and that said matter be assigned for hearing and that said injunction be made permanent.

DIVISION II

1. The Plaintiffs John Knox, James A. Van Allen are members in good standing in the Defendant First Presbyterian Church.

2. That the Defendant First Presbyterian Church is an Iowa corporation, that the Defendant Session acts and operates as the Board of Directors thereof, and that the president of said corporation is Dr. Richard Peterson, the Vice President is Miss Mildred Wilslef, the Clerk thereof is Dr. Carl White and the Pastor is Dr. Jack L. Serwas, all of whom are acting in an official capacity for the Defendant corporation at all times material hereto in a transaction for the conveyance of certain property as set forth in DIVISION I, all of said Defendants hereinafter referred to as Church Defendants.

3. That the aforesaid Church Defendants are acting and cooperating with the State of Iowa identified in DIVISION I

8. That the Plaintiffs have no adequate remedy at law and have exhausted all known administrative and other remedies.

WHEREFORE Plaintiffs pray that the Church Defendants be forthwith enjoined from the demolition of Old Brick by temporary injunction after fixing reasonable bond forthwith, and that said matter be assigned for timely hearing and that said injunction be made permanent.

DIVISION III

COME NOW the above named Plaintiffs and for cause of action against all the above named Defendants and state as follows:

1. Plaintiffs incorporate the allegations of DIVISIONS I and II as though fully set out herein.

2. That Adrian Anderson is an officially designated State Officer for Historic Preservation of the State Office for Historic Preservation of the State Historical Department of Iowa and legally charged with the duty and responsibility of preservation of Old Brick as an officially designated Historic Site or Landmark and legally required to preserve the same.

3. That the aforesaid Defendants are acting and cooperating with each other in such a manner as to countermand the aforesaid legally designated responsibility to preserve Old Brick as one of the official Historic Sites of historic worth and heritage within the State of Iowa.

WHEREFORE Plaintiffs pray that said Defendants be enjoined from further conduct in frustration and countermanding of

hereof in such a manner as to cause or bring about the permanent and complete demolition of Old Brick beyond preservation, salvage or repair.

4. That the conduct of the aforesaid Church Defendants in the aforesaid demolition is illegal in the following particulars:

A. In that said demolition is without rational basis or reasonable cause or support and as such is arbitrary and capricious, and in violation of the law of the corporation as set forth in the governing corporation Constitution Laws and By-laws, as the product of an act beyond the authority of the aforesaid corporate law and regulations, and is ultra vires and in bad faith in relation to the official capacity of said corporation and corporate officers thereof and the due process guaranteed to said Plaintiffs within and by said corporation Articles, Laws and By-laws.

B. In that said demolition will cause the violation of the national policy for preservation of heritage historic sites and historical landmarks, in violation of Title 16 U.S.C. §461 and 470.

C. In that said demolition is a breach of the fiduciary duty of the officers of the aforesaid corporation to act with loyalty and the best interests of the stockholders and constituency and members thereof and to conduct themselves in such a manner as to prevent waste of corporate assets and resources.

D. In that said conduct is contrary to the executed conveyance of Old Brick and organ contained therein made

by the aforesaid Church Defendants to the purchaser thereof - namely friends of Old Brick, Incorporated, and as such is an illegal act and contrary to, inconsistent with and unauthorized by the laws and regulations of the corporation, and the laws of the State of Iowa.

E. That the above named Church Defendants are acting in violation of the official Constitution Laws and By-laws of the organization and specifically XXXII 12 thereof and others in the following particulars:

- (1) in violation of Chapter XXXII 12 in attempting to assign or transfer land without the written permission of the Presbytery, after adequate opportunity for notice and hearing prior to the giving of said permission.
- (2) in attempting an authorization of the destruction and demolition of a previous church building in violation of the Constitution Laws and By-laws of the aforesaid Defendant corporation, which acts constitute vandalism as the unauthorized destruction of a work of architecture.

5. That said illegal and unauthorized conduct will cause the irreparable loss to the Plaintiffs in the demolition of Old Brick and may subject these Plaintiffs to liability for breach of Contract if not enjoined.

6. Plaintiffs are reliably informed that all Defendants named herein are collaborating to bring about the aforesaid demolition within the near future unless previously enjoined.

7. That the Municipal Code of the City of Iowa City requires a permit pursuant to Chapter 9.10.15 of the Municipal Code and that Defendants may be illegally contemplating or may be proceeding to demolition prior to the acquisition of said permit.

8. That the Plaintiffs have no adequate remedy at law and have exhausted all known administrative and other remedies.

WHEREFORE Plaintiffs pray that the Church Defendants be forthwith enjoined from the demolition of Old Brick by temporary injunction after fixing reasonable bond forthwith, and that said matter be assigned for timely hearing and that said injunction be made permanent.

DIVISION III

COME NOW the above named Plaintiffs and for cause of action against all the above named Defendants and state as follows:

1. Plaintiffs incorporate the allegations of DIVISIONS I and II as though fully set out herein.

2. That Adrian Anderson is an officially designated State Officer for Historic Preservation of the State Office for Historic Preservation of the State Historical Department of Iowa and legally charged with the duty and responsibility of preservation of Old Brick as an officially designated Historic Site or Landmark and legally required to preserve the same.

3. That the aforesaid Defendants are acting and cooperating with each other in such a manner as to countermand the aforesaid legally designated responsibility to preserve Old Brick as one of the official Historic Sites of historic worth and heritage within the State of Iowa.

WHEREFORE Plaintiffs pray that said Defendants be enjoined

Plaintiff's legal responsibility, and relief ^{as prayed for} as prayed for
in DIVISION I hereof.

DIVISION IV

COME NOW the above named Plaintiffs and for cause of
action against all of the above named Defendants and state
to the Court as follows:

1. Plaintiffs incorporate DIVISIONS I, II and III by
reference as though fully set out herein.

2. That all of the aforesaid Defendants are collaborating
with one another for the reciprocal perpetration of the illegal
acts of the others.

WHEREFORE Plaintiffs pray for a relief as set forth in
DIVISION I hereof.

Respectfully submitted this ____ day of July, 1976.

NOLAN, LUCAS & NOLAN
405 Iowa State Bank Bldg.
Iowa City, Iowa 52240

By _____

John T. Nolan
Attorney for the Plaintiffs