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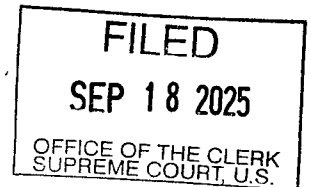
IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

KARYN M. KELLEY, THE KARYN M. KELLEY REVOCABLE TRUST
AGREEMENT OF JULY 13, 2016

Applicant / Petitioner,

v.



MARY E. FEENEY, COMMISSIONER ATTORNEY CHARLES A. RUSSELL,
GIOVANNI VERANI, JOHN POIRIER, DAVID P. MASCIARELLI, CHRISTY N.
MASCIARELLI, DAVID P. AND CHRISTY N. MASCIARELLI AS CO-TRUSTEES
DAVID AND CHRISTY MASCIARELLI REVOCABLE TRUST DATED MARCH 30,
2021, GRANITE STATE MORTGAGE CORPORATION

Respondent,

On Petition For A Writ Of Certiorari To
The Supreme Court Of New Hampshire

PETITION FOR A WRIT OF CERTIORARI

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September 18, 2025

D) QUESTIONS PRESENTED

I-(a) Did the court of appeals err in holding that the lower court violated Article 20, Part First, of the New Hampshire Constitution, which the parties timely demanded a jury trial under their rights, as a matter of law, which the requirement for due process under their rights is guaranteed by Statute, New Hampshire Constitution and the United States Constitution.

I-(b) Did the court of appeals err in holding that the lower court wrongfully denied a jury trial when the record established the parties timely and properly demanded a jury trial, which was granted.

I-(c) Whether the New Hampshire Constitution or the United States Constitution requires a jury trial upon timely demand by one of the parties in an action for damages.

I-(d) The court of appeals' decision warrants review for a wrongfully denied timely demanded jury trial that was granted, guaranteed by Statute and Constitutions in an action for damages.

I-(e) The court of appeals' decision warrants review for a violations of judge bias, impartiality, fraud on the court, subject matter jurisdiction, or miscarriage of justice.

I-(f) Did the court of appeals decide an important federal question in a way that conflicts with the decision of other court of appeals or conflicts with relevant decisions of this Court that had been settled

II) RELATED PROCEEDINGS

State of New Hampshire Supreme Court
Karyn M. Kelley et al v. Mary E. Feeney et al
Case No. 2024-0369
Decided March 25, 2025

Hillsborough Superior Court Northern District
Karyn M. Kelley et al v. Mary E. Feeney et al
Case No. 216-2023-CV-00370
Decided October 12, 2023

Hillsborough Probate Court Nashua Southern District
Karyn M. Kelley et al v. Mary E. Feeney et al
Case No. 316-2023-EQ-00268

III) TABLE OF CONTENTS

I.	Questions Presented	i
II.	Related Proceedings	ii
III.	Table of Contents	iii
IV.	Table of Authorities	v
	Petition for a Writ of Certiorari	3
V.	Opinions Below	3
VI.	Jurisdiction	3
VII.	Constitutional and Statutory Provisions Involved	4
VIII.	Statement of The Case	5
IX.	Summary of Argument	11
X.	Argument	11
XI.	Reasons For Granting The Writ	25
XII.	Conclusion	29
	Appendices	
	Appendix A: State of New Hampshire Supreme Court No. 2024-0369 Denied reconsideration on order dated March 25, 2025 Dated April 24, 2025	A-1
	Appendix B: State of New Hampshire Supreme Court No. 2024-0369 Affirmed trial court orders May 4, 2023, May 8, 2023, August 18, 2023, October 12, 2023, April 30, 2024, and May 31, 2024 Dated March 25, 2025	B-1
	Appendix C: Hillsborough Superior Court Northern District Denied motion to reconsider of order dated April 30, 2024 under concluded case #216-201-EQ-00193 Dated May 31, 2024	C-1

Appendix D:	Hillsborough Superior Court Northern District Order Partially Assented Motion to Pay over Funds Held by the Clerk under concluded case #216-2010-EQ-00193 Dated April 30, 2024	D-1
Appendix E:	Hillsborough Superior Court Northern District No. 216-2023-CV-00370 Order Denied motion to reconsider under concluded case #216-2010-EQ- 00193 Dated October 12, 2023	E-1
Appendix F:	Hillsborough Superior Court Northern District No. 216-2023-CV-00370 Order Dismissal and Sanctions under concluded case #216-2010-EQ- 00193 Dated August 18, 2023	F-1
Appendix G:	Hillsborough Probate Court Nashua Southern District No. 316-2023-EQ- 00268 Notice of Decision Granted Jury Trial; Transfer and Change of Venue Dated May 8, 2023	G-1
Appendix H:	Hillsborough Probate Court Nashua Southern District No. 316-2023-EQ- 00268 Notice of Decision Stay Deadlines Dated May 4, 2023	H-1
Appendix I:	Hillsborough Probate Court Nashua Southern District No. 316-2023-EQ- 00268 Verified Complaint Dated February 2, 2023	I-1
Appendix J:	Hillsborough Superior Court Northern District Default Order on Partition under concluded case #10-E-0193 Dated November 18, 2010	J-1

IV) TABLE OF AUTHORITIES

Beacon Theatres, Inc., v. Westover 359 U.S. 500 (1959)	11,23,25,28,29
Bostock v. Clayton County 590 U.S. ____ (2010)	26
Curtis v. Loether 415 U.S. 189 (1974)	25,28,29
Dairy Queen, Inc. v. Wood 369 U.S. 469 (1962)	11,23,24,25,28,29
Dimick v. Schiedt 293 U.S. 474 (1935)	23
Duncan v. Louisiana 391 U.S. 145 (1968)	25,29
Hazel-Atlas Glass Co. v. Hartford-Empire Co. 322 U.S. 238 (1944)	17,18
Ross v. Bernhard 396 U.S. 531 (1970)	29

Federal Court of Appeal

United States v. JB Williams Company, Inc. 498 F. 2d 414 (2 nd Cir. 1974)	28
---	----

Federal District Court

Rogers v. Loether 312 F. Supp. 1008 (E.D. Wis. 1970)	25,28
United States v. Pelzer Realty Company, Inc. 377 F. Supp. 121 (M.D. Ala. 1974)	28
Van Ermen v. Schmidt 374 F. Supp. 1070 (W.D. Wis. 1974)	28
Wood v. Intern. Bro. Of Teamsters, Etc., Local 406 565 F. Supp. 10011 (W. D. Mich. 1983)	28

New Hampshire Cases

412 S. Broadway Realty v. Wolters, 169 N.H.304, 313(2016)	19
Appeal of Silva, 172 N.H. 183 (2019)	18
Carlson v Latvian Lutheran Exile Church, 170 N.H. 299 (2017)	6
Chagnon Lumber Co., Inc. v. DeMulder, 121 N.H. 173, 175(1981)	17
Clark v. Neergaard, 121 N.H. 632,636(1981)	17
Cook v. Sullivan, 149 N.H. 774,777 (2003)	18
Ellis v. Candia Trailers & Snow Equip., Inc., 164 N.H. 457, 466 (2012)	20
Feeney v Kelley 10-E-0193	3,8,9,10,11,15,16,18,19
Frew v. Dasch, 115 N.H. 274, at 278 (1975)	16
Gray v. Kelly, 161 N.H.160, 164 (2010)	19,20
Hemenway v. Hemenway, 159 N.H. 680 (2010)	13,14
In the matter of Muller v. Muller, 164 N.H. 512 (2013)	14
Jarvis v. Prudential Ins. Co., 122 N.H. 648, 651, 448 A.2d 407, 409 (1982)	19
Kalman v. Hutcheson, 111 N.H.36 (1971)	16
Kelley et al v. Feeney et al #316-2023-EQ-00268	3,6,7,15
Kelley et al v. Feeney et al #216-2023-CV-00370	3,7,8,9,12,15
Kierstead v. Betley Chevrolet-Buick, Inc.,118 N.H.493,497 (1978)	17
North Hampton District v. Society, 97 N.H.219, 220 (1951)	16
Porter v. Coco, 154 N.H. 353 (2006)	6
Proctor v. Bank of NH 123 N.H. 395 (1983)	19
Rossini & Smith Companies, Inc. v. Locke, 139 N.H. 572, 573 (1995)	21,22
Sanborn v. Keroack, 103 N.H. 297,300 (1961)	16

Sorenson v. Wilson, 124 N.H. 751,758 (1984)	6
Seely v. Hand, 119 N.H.303,306 (1979)	17
State v. LaClair, 121 N.H. 74 (1981)	26
Woolsey v. Carmichael, 117 N.H. 1050 (1977)	16

U. S. Constitution

1 st Amendment	4,11,12
5 th Amendment	5,7,11,12,14,21,22,24,25,27
6 th Amendment	5,7,11,12,14,21,22,24,25,26,27,29
7 th Amendment	5,11,12,14,21, 23,24,25,27,28
14 th Amendment	5,7,11,12,14,21,22,24,25,26,27,29

New Hampshire Constitution

Article 20, Part First	4,7,11,12,14,21,22,25,27
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New Hampshire Statutes

NH RSA 498:5-a	4,5,6,9,12,13,16,19
NH RSA 547:11-d	4,7,11,12,13,14,21,22,24,25,26
NH RSA 547-C	4,6,9,15,19
NH RSA 547-C:11	4

New Hampshire Court Rules

Rule 2.3	9,10,12,22
----------------	------------

Other Resources

Blacks Law Dictionary 6 th edition	13
Doctrine of Res Judicata	9,12,17,18,22
Official Records for Hillsborough County Registry of Deeds	14,15,16,19

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Karyn M. Kelley et al, respectfully petitions for a writ of certiorari to the United States Court of Appeals for the First Circuit to review the judgment of The Supreme Court for the State of New Hampshire.

V) OPINIONS BELOW

The opinion of the court of appeals to review the merits appears at Appendix A and B to this petition. The Supreme Court for the State of New Hampshire, published in The New Hampshire Reports, under Case No. 2024-0369 issued on March 25, 2025 an Order that Affirmed, the lower courts, [New Hampshire Superior Court Northern District Orders, *Karyn M. Kelley et al v. Mary E. Feeney et al* (consolidated to concluded case *Mary E. Feeney v. Karyn M. Kelley* #10-E-0193), *Karyn M. Kelley et al v. Mary E. Feeney et al*, #216-2023-CV-00370 (transferred from New Hampshire Probate Court Nashua Southern District) and New Hampshire Probate Court Nashua Southern District *Karyn M. Kelley et al v. Mary E. Feeney et al* #316-2023-EQ-00268] orders. The Supreme Court for the State of New Hampshire, published in The New Hampshire Reports, under Case No. 2024-0369 denied rehearing or reconsideration on April 24, 2025 that affirmed the March 25, 2025 Order.

VI) JURISDICTION

The judgment of the court of appeals was entered on March 25, 2025. A copy of that decision appears at Appendix B. A timely petition for rehearing was thereafter denied on the April 24, 2025, and a copy of the order denying rehearing appears at Appendix A. On July 15, 2025, Justice Jackson extended the time within which to file a

petition for a writ of certiorari to and including September 21, 2015. The jurisdiction of this Court is invoked under *28 U.S.C. 1254(1)*.

VII) CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

NH RSA 498:5-a: provides an action may be brought in the superior court by any person claiming title to, or any interest in, real or personal property, or both, against any person who may claim to own the same . . . or in whom the land records disclose any interest, lien, claim, or title conflicting with the plaintiffs claim, title, or interest, whether or not the plaintiff is entitled to immediate or exclusive possession of such property . . . to clear up all doubts and disputes and to quiet and settle the title to the same, except that the court of probate shall have exclusive jurisdiction over disputes in title arising under RSA 547 and RSA 547-C . . .

NH RSA 547:11-d: provides in cases where a right to jury trial is guaranteed by the constitution or granted by statute . . . the matter shall be transferred to superior court.

NH RSA 547-C: provides for partition of real estate.

NH RSA 547-C: 11: provides any action may be brought in probate court by any person claiming title to, or any interest in, real or personal property, or both, . . . In any action brought under this provision, where applicable, the procedure set forth in RSA 498:5-b through 5-d shall be followed.

New Hampshire Const. Article 20 of Part First: addresses the right to a trial by jury in civil cases. It explicitly protects this right for parties involved in property disputes and other lawsuits between two or more people.

U.S. Const., Amend I: provides in relevant part: protects freedoms of religion, speech, the press, assembly, and the right to petition the government . . . the first amendment also

protects the right of people to peacefully assemble and to petition the government for a redress of grievances.

U. S. Const., Amend V: provides in relevant part: “No person shall . . . be deprived of life, liberty, or property, without due process of law [.]”

U.S. Const., Amend VI: provides in relevant part: “Guarantees fundamental rights . . . right to a speedy and public trial by an impartial jury . . . This amendment ensures a fair adversarial process, protecting individuals from unfair and prolonged confinement by providing them with a clear path to a defense.

U.S. Const., Amend VII: provides in relevant part: “Guarantees the right to a jury trial in federal civil cases that involve a dispute over a certain amount of money . . . it protects citizens’ right to have their civil disputes decided by a jury. . .

U. S. Const., Amend XIV: section 1 provides in relevant part: “Grants citizenship to all persons born or naturalized in the U.S., prohibits states from denying rights without due process of law, and requires states to provide equal protection under the laws”. The Due Process Clause states that no State shall deprive any person of life, liberty, or property without due process of law.

VIII) STATEMENT OF THE CASE

Plaintiffs, Karyn M. Kelley, and The Karyn M. Kelley Revocable Trust Agreement of July 13, 2016 (Kelley/Trust), Pro Se, pursuant to NH RSA 498:5-a, filed in good faith a Verified Complaint with Hillsborough Probate Court Nashua Southern District (Probate) on February 2, 2023. Defendants are Mary E. Feeney (Feeney), Commissioner Attorney Charles A. Russell (Russell), Giovanni Verani (Realtor Owner), John Poirier (Realtor), David P. Masciarelli (David), Christy N. Masciarelli (Christy), David P. and

Christy N. Masciarelli as Co-Trustees, David and Christy Masciarelli Revocable Trust dated March 30, 2021 (Masciarelli/Trust), Granite State Mortgage Corporation (Bank). Relief requested was for damages and to quiet title, Porter v. Coco, 154 N.H. 353 (2006), which, a claimant must find and name a party with a property interest adverse to theirs, Carlson v Latvian Lutheran Exile Church, 170 N.H. 299 (2017). Adverse interest may include an encroachment, easement, joint ownership, life estate, a lien or any other interest in the real estate.

A plaintiff has the burden of proving good title as against all other parties whose rights may be affected by the court's decree. Sorenson v. Wilson, 124 N.H. 751,758 (1984). Parties not named will not be bound by the court's judgment. Porter v. Coco, 154 N.H. 353 (2006). Some parties may not contest the action and can be dropped from the action, but naming them ensures the order will bind them. Probate has subject matter jurisdiction of this action pursuant to RSA 498:5-a, which the court of Probate shall exercise exclusive jurisdiction over disputes in title arising under RSA 547-C because the Plaintiffs alleged an interest and future interest in the real property located at 62 Indian Rock Road, Merrimack, New Hampshire (Property). *See Appendix G-1, Probate case summary #316-2023-EQ-00268, NH Brief App.29-35.*

All Defendants except Realtor Owner filed multitudes of motion(s) to include; jury trial; dismiss; change venue; res judicata; stay deadlines; and transfer to North more specifically to Judge Anderson. *See Appendix G-1, Probate case summary #316-2023-EQ-00268, NH Brief App. 38-41.*

On May 4, 2023, Plaintiffs filed motion(s) for Petition taken as Confessed against all Defendants except Realtor Owner. Plaintiffs filed motions for Default Judgment and Petition taken as Confessed against Realtor Owner. *See Probate case summary #316-2023-EQ-00268, NH Brief App. 38-41, 42-45.* Subsequently, after Plaintiffs filed Confessed motion(s) on May 4, 2023, Probate's Order was backdated or retroactively to April 21, 2023 that Stayed all deadlines. *See Appendix H-1, Probate case summary #316-2023-EQ-00268, NH Brief App. 38-41.*

Defendants requested a jury trial that was Granted and Noticed on May 8, 2023. *See Appendix G-1, Article 20 Part First of NH Const., NH Brief App. 38-41.* Pursuant to RSA 547:11-d, Probate transferred to superior court for a jury trial which Probate, upon Defendants motions, transferred to Hillsborough Superior Court Northern District (North) that lacked subject matter jurisdiction, jurisdiction and venue. Probate relied upon Defendants motions and not the normal procedure, which should have transferred to Hillsborough Superior Court Southern District (South), which the Town of Merrimack, New Hampshire is served by for proper jurisdiction. *See Appendix G-1.* A jury trial was granted as a matter of law, under New Hampshire Statute RSA 547:11-d, guaranteed by the New Hampshire Constitution. The jury trial was wrongfully denied that prejudice Plaintiffs. *See RSA 547:11-d, Article 20, Part First of the NH Const., US Constitution 5th, 6th, 14th Amendments, NH Brief App. 38-40, 59-65.*

Probate transferred their case #316-2023-EQ-00268 to North, which accepted the transfer and docketed as #216-2023-CV-00370. North failed to Notice all parties of the docketing.

On 06/08/2023, Attorney Proctor for Feeney prematurely filed a pleading titled CONSOLIDATED which on his own volition consolidated two cases, Probate or North to a tried to conclusion case whereby there was no open case to consolidate to under #10-EQ-0193, which Attorney Proctor is not a Judge moreover has no authority to consolidate cases, however seemed to think he could, “force the court to do what he wants” *See NH Brief App. 48-51*

On 06/12/2023, (5) days after Feeney’s CONSOLIDATED pleading, North docketed the transferred Probate Verified Complaint as #216-2023-CV-00370. *See North case summary #216-2023-CV-00370, NH Brief App. 59-65.*

06/21/2023 David, Christy, Bank, not parties in the years-old case, filed a motion to consolidate #216-2023-CV-00370 with #10-E-0193 that was tried to conclusion with no open case to consolidate to, which Plaintiffs filed an Objection. *See NH Brief App. 56-58.*

07/13/2023 Plaintiffs objected to David, Christy and Banks motion for special assignment to Justice Anderson. *See NH Brief App. 66-68*

07/20/2023 Plaintiffs objected to Feeney’s motion to freeze funds held by the court under #10-E-0193. *See NH Brief App. 69-71.*

07/26/2023 David, Christy, Bank requested a Hearing on motion to dismiss which a hearing failed to be held in this matter. *See NH Brief App. 72-74.*

07/30/2023 Plaintiffs filed a Motion to Transfer and Change Venue to South which the Town of Merrimack is served by South for proper jurisdiction, subject matter jurisdiction and venue. *See NH Brief App. 75-78.*

On 08/18/2023, almost 2 ½ months after Feeney's prematurely filed CONSOLIDATED pleading, North Judge Anderson consolidated #216-2023-CV-00370 filed under RSA 498:5-a, for damages and a quiet title action, filed in Probate on February 2, 2023, subsequently transferred for jury trial, that had (10) parties to a tried to conclusion case that had no open case to consolidate to under #10-EQ-0193 filed June 28, 2010 for real and personal property partition under NH RSA 547-C:1 with (2) parties, Feeney and Kelley. *See Appendix F-1-F-7.*

Judge Anderson had displayed bias towards plaintiffs in the past which in its order stated, "the court has recently characterized the history of this case as "tortured.", further misstated that, "Kelley has been found in contempt of this court's orders numerous times, and has expressly engaged in numerous acts of fraudulent conduct in her attempt to retain ownership of the Property, which is simply not true, which is not supported by the record. *See appendix F-1- F-7, north case summary #10-E-0193, Rule 2.3, NH Brief App. 79-85.*

The order further Grants the Probate Verified Complaint be Dismissed under the Doctrine of Res Judicata, which the movant bears the burden of proving, which no Hearing was held and Defendants failed to prove their burden. *See Doctrine of res judicata, NH Brief App. 48-51, 79-85.*

08/23/2023 Attorney Proctor for Feeney filed Affidavit in support of attorneys fees under order of 08/18/2023, which his client ledger dated 03/23/2023 states, "Lawyer:...revised pleadings following conversation with commissioner; dictate jury demand so probate court will be forced to transfer this matter to the superior court." *See NH Brief App.86-92.*

08/27/2023 Plaintiffs filed a motion to reconsider order of 08/18/2023. *See NH Brief App. 93-102.*

10/12/2023 North's order denied Plaintiffs motion to reconsider and granted Plaintiffs pays all defendants attorney's fees and Commissioner fees that further Denied Plaintiffs Affidavit in support of Rule 2.3 Bias. *See Appendix E-1-E2, Rule 2.3, NH Brief App. 103-104.*

10/31/2023 Plaintiff objected to pay all attorneys fees and attorney's fees for Commissioner Russell, which Russell had been previously denied to collect attorney's fees by the New Hampshire Supreme Court #2023-0341 Order of August 17, 2023 considering he is Pro Se with no counsel. *See Feeney v. Kelley #2023-0341, NH Brief App. 105-106.*

04/30/2024 North granted Plaintiffs to pay commissioner fees and attorney's fees. *See Appendix D-1-D-2, NH Brief App. 107-108.*

05/09/2024 Plaintiffs motion to reconsider order of 04/30/2024 which Feeney's funds held by the court were released on December 6, 2021 for \$78,077.72 while the writ of certiorari #21-7602 was pending filing on February 10, 2022 which the Judge Anderson failed to release \$46,107.72 to Kelley that showed Bias and prejudiced Kelley. *See Rule 2.3, NH Brief App. 109-117.*

05/31/2024 motion to reconsider was denied by North which stated improper information that Kelley was asked to file W-9 many times and failed to do so, which Feeney failed to file a W-9 however Feeney's funds were released while the Writ was pending, which the record supports. *See Appendix C-1-C-2, North case summary #10-E-0193, Rule 2.3, NH Brief App. 118-119.*

North wrongfully denied a jury trial, in the matter for damages and quiet title that was transferred from Probate under NH RSA 547:11-d, which a jury trial is guaranteed by Statute and Constitution. *See NH RSA 547:11-d, Article 20, Part First of the NH Const., US Const. 5th, 6th, 7th, 14th Amendments.*

IX) SUMMARY OF ARGUMENT

Where both legal and equitable issues are presented in a single case, any legal issue for which a trial by jury is timely and properly demanded must be submitted to a jury. *See Beacon Theatres, Inc. v. Westover* 359 U.S. 500 (1959), *Dairy Queen, Inc. v. Wood* 369 U.S. 469, 470-473 (1962). In this case, North wrongfully denied a trial by jury that was timely and properly demanded moreover guaranteed by Statute and Constitutions for which Probate granted the jury trial and transferred to North to submit for a jury trial.

X) ARGUMENT

A good faith Verified Complaint filed in Probate on February 2, 2023, with a prayer of relief of damages and quiet title amongst other requests, *See Appendix I-1-I-7, specifically I-6*, which Plaintiffs have a 1st Amendment right to petition the government for grievances which no law can prohibit this free exercise. Probate granted a jury trial on defendants timely filed demand for trial by jury motion(s), guaranteed by statute NH RSA 547:II-d, by Article 20, Part First of the New Hampshire Const. and by the United States Const., 5th, 6th, and 14th Amendments. *See Appendix G-1, Article 20, Part First of the NH Const., US Const. 5th, 6th, 7th, 14th Amendments, NH Brief App. 29-35, 46.*

Subsequently, Probate transferred under NH RSA 547:II-d to North to hold a jury trial granted by Probate, moreover Judge Anderson was assigned to the case that has

shown bias towards Kelley/Trust in the past. *See Appendix G-1, NH RSA 547:II-d, Article 20 Part First of the NH Const., Rule 2.3.*

Attorney Proctor for Feeney Forced Probate to transferred this case to North that lacked subject matter jurisdiction, jurisdiction and venue. *See Appendix G-1, NH Brief App.90.* North accepted and docketed the Probate transfer on June 12, 2023 as case #216-2023-CV-00370 that was assigned to Judge Anderson, which had not been impartial towards Plaintiff in a years old case from 2010. *See Rule 2.3, North case summary #10-E-0193.* North, Judge Anderson erred or overreached and consolidated the transferred Probate case #216-2023-CV-00370 with (10) parties to a tried to conclusion (13) years old case #10-E-0193 with (2) parties, whereby there was no open case to consolidate, which failed to meet the criteria to consolidate. Moreover the transferred Probate case has (10) parties with the Petition filed for damages and to quiet title under NH RSA 498:5-a subsequently, to be heard by a jury trial guaranteed by Statute and Constitutions. North, Judge Anderson wrongfully denied the granted trial by jury, upon defendant(s) motions when he Dismissed the Verified Complaint for res judicata that failed to meet the elements of the doctrine that the movant bear the burden of proof. *See Appendix F-1-F-7, Doctrine of res judicata, NH Brief App. 38-41, 59-65.* North, Judge Anderson wrongfully denied the granted jury trial requested by the parties moreover guaranteed by Statute, New Hampshire Constitution and the United States Constitution Due Process incorporation doctrine that prejudiced Plaintiffs. *See NH RSA 547:11-d, Article 20 Part First of the NH Const., US Const. 1st, 5th, 6th, 7th, 14th Amendments.*

The court that holds subject matter jurisdiction, jurisdiction and venue for the Town of Merrimack, New Hampshire is South, which subject matter jurisdiction may not

be waived. The Probate Verified Complaint was filed in good faith pursuant to RSA 498:5-a for title dispute with relief requested to quiet title to Property and damages. *See Appendix I-1-I-7.*

Jurisdiction is proper in Probate pursuant to RSA 498:5-a for title dispute or South for a jury trial pursuant to RSA 547:11-d. Subject matter jurisdiction is the requirement that a court have power to hear the specific kind of claim that is brought to that court. This Verified Complaint was filed pursuant to RSA 498:5-a, whereby Probate has exclusive jurisdiction unless a jury trial is requested then South would hold proper jurisdiction, subject matter jurisdiction and venue. The litigating parties cannot waive subject-matter jurisdiction. *See NH Brief App. 22-25.*

Venue is the particular county, or geographical area, in which a court with jurisdiction may hear and determine a case. Venue deals with locality of suit, that is, with question of which court, or courts, of those that possess adequate personal and subject matter jurisdiction may hear the specific suit in question. It relates only to place where or territory within which either party may require case to be tried. See Black's law dictionary 6th edition.

Subject matter jurisdiction term refers to court's power to hear and determine cases of the general class or category to which proceedings in question belong; the power to deal with the general subject involved in the action. See Black's law dictionary 6th edition.

"Subject matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things." Hemenway v Hemenway 159 NH 680, 683, 992 A.2d 575 (2010)

(quotation and brackets omitted). Subject matter jurisdiction constitutes “a tribunal’s authority to adjudicate the type of controversy involved in the actions.” *Id.* (quotation omitted). “Absent subject matter jurisdiction, a court order is void.” *Id.* at 684, 992 A.2d 575. “A party may challenge subject matter jurisdiction at any time during the proceeding, including on appeal, and may not waive it.” *Id.* (quotation omitted). “A court lacks power to hear or determine a case concerning subject matters over which it has no jurisdiction.” In the matter of Muller v Muller, 164 NH 512, 516-517, 62 A.3d 770 (2013) (quotation omitted).

Feeney attempted to bias this Court and prejudiced Plaintiffs with a litany of statements and lengthily case summary exhibit which failed to address the actual Verified Complaint for disputed title interest, quiet title and damages which by Court Order dated November 18, 2010 recorded in Hillsborough County Registry of Deeds at book 8807, page 2606 awarded Karyn Kelley sole ownership of 62 Indian Rock Road, Merrimack, New Hampshire. Said Order is valid, in full force and effect until vacated. North, Judge Anderson wrongly denied the granted jury trial guaranteed by Statute and Constitutions that would quiet title to the Property with a request for damages. *See Appendix J-1-J-3 specifically J-1 top right and J-2 #10, Hillsborough county registry of deeds book 8807, page 2606, NH RSA 547:11-d, Article 2- Part First NH Const., US Constitution 5th, 6th, 7th, 14th Amendments, NH Brief App. 26-28.*

The November 18, 2010 recorded Order has not been set aside or vacated, which said Order was clear and unambiguous that stated, “this order shall be recorded as a lien against the property located at 62 Indian Rock Road in Merrimack and the Petitioner (Feeney) shall transfer her interest to the Respondent (Kelley). The Respondent’s

(Kelley's) homestead interest shall not apply to such lien." *See Appendix J-1 top right, J-2 #10, J-3, Hillsborough county registry of deeds book 8807 page 2606, NH Brief App. 26-28 page 2, #10.*

The record supports there had never been a motion to set aside or motion to vacate recorded judgment that awarded Kelley her residence or Feeney et al would have attached such evidence to their lengthily motions. *See Appendix J-1-J-3, North case summary #216-2023-CV-00370, #10-E-0193, Probate case summary 316-2023-EQ-00268.*

The recorded judgment of November 18, 2010 was the last legal decision of the court regarding the partition decision, which determined the rights and liabilities of the person(s) involved, which is the Law that had never been vacated, which proper subject matter jurisdiction is held by South which serves the Town of Merrimack for deciding disputed property interest with the relief of damages and to quite title, however Probate transferred out of jurisdiction to North to hold the granted jury trial, which North wrongfully denied. *See NH RSA 547-C.*

The burden of proof in an action to quiet title to disputed property, is to prove good title against all other parties whose rights may be affected by the court's decree which failed to take place considering North wrongfully denied the granted jury trial.

The recorded court order had been the last in an unbroken chain of deeds purporting to convey the property 100% to Kelley that remains in full force and effect. *See Appendix J-1-J-3, Hillsborough county registry of deeds book 8807 page 2602.*

Appellants argue that "since they brought a [p]etition to quiet title against the [d]efendants, the burden they carry is only to prove superior title as against the

[d]efendant, by a ...balance of probabilities,' Frew v. Dasch, 115 N.H. 274, at 278 (1975). Such actions are intended "to clear up all doubts and disputes and to quiet and settle the title to" disputed property" RSA 498:5-a.

In order to construe or give consistent effect to the language of the deed, the finder of the facts must place himself as nearly as possible in the position of the parties at the time of the conveyance and gather their intention in light of the surrounding circumstances.

Sanborn v. Keroack, 103 N.H. 297,300 (1961); North Hampton District v. Society, 97 N.H.219, 220 (1951)

The interpretation of deeds is ultimately for this court; however, our determination of the terms of a deed is based on the parties' intentions as properly found by the trial court. Woolsey v. Carmichael, 117 N.H. 1050 (1977); Kalman v. Hutcheson, 111 N.H.36 (1971). In Feeney v. Kelley #10-E-0193 the parties' intentions as properly found by the trial court, which granted Kelley the Property 100% that was recorded at book 8807 page 2606 in the Hillsborough County Registry of Deeds, which said Order had never been set aside or vacate rendering the order is valid, in full force and effect, *See Appendix J-1-J-3, Hillsborough county registry of deeds* thereby Plaintiffs have an interest in said Property, which the good faith Complaint filed in Probate for damages and to quiet title should have been overturned and remanded by the court of appeals for a jury trial. All parties in an action to quiet title are to prove good title as against all other parties whose rights may be affected by the courts decree, which North wrongfully denied the jury trial that was granted by Probate.

There is other evidence in the record that might support the trial court's finding. We need not elaborate on the evidence any further, however, because we will not

overturn the trial courts findings of fact unless they are unsupported by the evidence or the court abused its discretion. Chagnon Lumber Co., Inc. v. DeMulder, 121 N.H. 173, 175(1981); Kierstead v. Betley Chevrolet-Buick, Inc., 118 N.H.493,497 (1978). The trial court's function was to "determine what the parties [to the Dieterick deed] intended at the time of the conveyance." Seely v. Hand, 119 N.H.303,306 (1979). The court has done so, and there is evidence to support its findings. Those findings must stand, and the judgment below is therefore Affirmed. See Clark v. Neergaard, 121 N.H. 632 (1981). In this matter Probate granted a jury trial, erred in the transfer to North that should have transferred to South for a jury trial in the proper jurisdiction, which North abused its discretion when Judge Anderson wrongfully denied the granted jury trial. Subsequently, North Judge Anderson Dismissed with Sanctions the Verified Complaint for Res Judicata, which the movants failed to meet their burden or the elements of the doctrine of res judicata could not be met. The court of appeals should have overturned and remanded this case for a jury trial in the proper jurisdiction to decide this case. See *Appendix F-1-F-7, G-1, Doctrine of res judicata.*

In this matter the Recorded Order is clear, Feeney gave all interest in Property to Kelley, which the record supports the recorded court order is valid, in full force and effect which had failed to be set aside or vacated. For Feeney to argue something completely different is fraud on the court and should be held liable for such fraud. See *Appendix J-1-J-3, Fraud on the court, Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238 (1944). A case is consolidated when two or more case is combined into one for a single hearing. This can happen when the case involves the same parties and facts, or when they raise common questions of law or fact.

In this case Feeney et al, plead this matter be consolidated with Feeney v Kelley, 10-EQ-0193, whereby there is no open case between the parties to consolidate moreover, Feeney untimely filed objection into a concluded case 10-EQ-0193 on February 13, 2023 stated in paragraph 1, “That any and all issues involving Kelley and Feeney, going back to the original Complaint filed in 2010 have been fully and finally litigated. *See case summary 10-EQ-0193 index #595.*

On March 30, 2023, Feeney by motion, now claimed there was an open case to consolidate with in North under #10-EQ-0193, which the previous month on February 13, 2023 Feeney claimed “that any and all issues involving Kelley and Feeney have been fully and finally litigated,” which is fraud on the court. The definition of Fraud on the Court is to argue something completely different from what you argued previous. *See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322. U.S. 238 (1944).*

The case in Hazel-Atlas Glass Co. involves the power of a Circuit Court of Appeals, upon proof that fraud was perpetrated on its by a successful litigant, to vacate its own judgment entered at a prior term and direct vacation of a District Court’s decree entered pursuant to the Circuit Court of Appeals’ mandate.

The doctrine of res judicata prevents parties from relitigating matters actually litigated and matters that could have been litigated in previous actions. Appeal of Silva, 172 N.H.183,190 (2019). Under res judicata, a final judgment by a court of competent jurisdiction is conclusive upon the parties in a subsequent litigation involving the same cause of action. Cook v. Sullivan, 149 N.H. 774,777 (2003). The doctrine applies if three elements are met; (1) the parties in both actions are the same or in privity with one another; 2) the same cause of action was before the court in both instances; and (3) the

first action ended with a final judgment on the merits. 412 S. Broadway Realty v. Wolters, 169 N.H.304, 313(2016). The elements of res judicata cannot be met. Same parties can not be met since the June 2010 parties were (2) parties Feeney v Kelley #10-E-0193 and Probate Complaint of February 2023 had 10 parties that Privity can not be met since the Order was November 18, 2010 which there was no substantive legal relationship between all 10 parties in the Probate Complaint which failed to have the same or nearly identical issues of fact and law. Cause of action can not be met whereby the June 2010 relief was to partition real and personal property under RSA 547-C and the Probate Verified Complaint cause of action was for damages and to quiet title under RSA 498:5-a. Final Judgment was met since the final judgment was recorded and never Vacated, as a matter of law, which recorded order is valid, in full force and effect. See *Appendix J-1-J-3, Hillsborough registry of deeds book 8807 page 2606*. Therefore, res judicata does not apply moreover movant failed prove its burden. *Gray v. Kelly*, 161 N.H.160, 164 (2010) which North abused its discretion or overreached.

In determining whether a motion to dismiss should be granted, all facts properly pleaded are assumed to be true, and the reasonable inferences therefrom are construed most favorable to the plaintiff. See *Proctor v. Bank of NH* 123 N.H. 395 (1983) quoting *Jarvis v. Prudential Ins. Co.*, 122 N.H. 648, 651, 448 A.2d 407, 409 (1982). If the plaintiff could recover upon any set of facts under the pleadings, the motion to dismiss as to the count should be denied. Id.

Plaintiffs were prejudiced by the Dismissed Complaint by North without hearing or wrongfully denied trial by jury granted by Probate, which the Plaintiffs could have recovered damages and quiet title to the Property. These decisions by the court lacked

evidentiary support or is erroneous as a matter of law which defendants failed to bear their burden to dismiss on the doctrine of res judicata. *Gray v. Kelly* 161 N.H. 160,164 (2010).

Judges have an essential but limited and carefully defined role in our system of government. They should work to apply the Constitution and Statutes based on the meaning of the words when they were written. Judges should be fair and impartial, judging cases and making decisions based on the facts and the law, not on personal opinions. Judges are bound by Oath or Affirmations to support the Constitution.

North's order granted this Consolidated matter Dismissed for res judicata that further unjustly ordered Kelley/Trust pay all defendants attorney's fees and commissioner fees which no commissioner was appointed in the Probate Verified Complaint. Judge Anderson unfairly released Feeney's funds held by the Court which failed to release Kelley/Trust funds held by the court which Judge Anderson will now take Kelley/Trust funds held by the clerk and pay defendants attorney fees and commissioner fees. Thus, to the extent that the courts order is premised upon erroneous, unreasonable and/or an unsustainable exercised of discretion. Basically, there is no legal basis for the requirement that the trial court impose here. Accordingly, the trial courts order here was based upon a legally erroneous premise, and, as such, reversal or vacating of the trial courts orders are warranted, which the court of appeals should have overturned and remanded for granted jury trial. As the finder of fact, the trial court was, or course, entitled to resolve "conflicts in testimony, assess[s] the credibility of witnesses, and determine[e] the weight of the evidence." *Ellis*, 164 N. H. at 466. In this matter, the trial court failed to apply the proper legal standard, failed to operate within the Rules of the

Court, the Statute, that violated due process that wrongfully denied timely demand for Hearing and granted jury trial. The court of appeals should have overturned and remanded for a jury trial in the proper jurisdiction. *See Appendix F-1-F-7, G-1, NH RSA 547:11-d, Article 20 Part First of the NH Const., US Const. 5th, 6th, 7th, 14th Amendments.* For example, as a matter of law, the courts violated procedure, Law, proper legal standard and due process, which the courts finding are unsupported by the record which a timely and proper demand for trial by jury was granted by Probate and transferred to superior to submit for jury trial that is guaranteed by Statute, NH Constitution and the United States Constitution which was wrongfully denied. *See NH RSA 547:11-d, Article 20 Part First of the NH Const., US Const. 5th, 6th, 7th, 14th Amendments.*

Accordingly, North's order is filled with factual omissions, inaccuracies and mischaracterizations that the trial court, nevertheless, relied upon in its order so as to conclude in defendants favor. Perhaps such was a function of the fact that North wrongfully denied a timely demanded hearing and jury trial in this matter which violated due process that directly effected and prejudiced the interest of all Parties which was unjust, whereby this right is guaranteed by Statute and Constitutions, moreover was granted by Probate and transferred to superior court for jury trial. Regardless of the reasoning, however, such was clearly erroneous and supported by the record presented before the trial court in pleadings only that violated due process, whereby All Parties had a constitutional right to a jury trial that was timely demanded. This is particularly so with respect the trial court bias that claimed bad faith actions taken by Kelley/Trust, including with respect to the volume of misstatements thereof. Thus, the trial courts order here, which relies upon such flawed factual findings, cannot stand. *See, e.g. Rossini & Smith*

Companies, Inc. v. Locke, 139 N.H. 572, 573 (1995) (“we will not disturb the trial courts findings unless it is unsupported by the evidence or erroneous as a matter of law.”). The court of appeals should have overturned and remanded for the granted trial by jury.

North failed to apply the appropriate legal standard when Probate transferred to North and not South which serves the Town of Merrimack. North abused its discretion when it consolidated the transferred Probate case to a tried to conclusion case moreover, wrongfully denied the granted jury trial then dismissed for res judicata which was untenable or unreasonable that prejudice Kelley/Trust for an extremely large financial loss, which lacked due process, subject matter jurisdiction, jurisdiction, venue, as a matter of law, and guaranteed by the Constitutions.

As set forth above, North wrongfully denied the jury trial which was granted by Probate upon timely demanded pleading in Probate under most defendants 1st pleading under their rights guaranteed by Statute and Constitutions, that further Plaintiff’s pleading stated in Probate and North that the granted jury trial wrongfully denied violated their guaranteed rights by Statute and Constitution. *See NH RSA 547:11-d, Article 20 Part First of NH Const., US Const. 5th, 6th, 14th Amendments*. Thus, and for the reasons discussed above, both trial courts orders, court of appeals orders must be vacated and remanded for a jury trial in the proper jurisdiction, which the court of appeals should have ordered.

The above supports Judge Anderson Bias towards Plaintiffs, defined by NH Court Rule 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

In Beacon Theatres, Inc., this Honorable Court held, the judgment of the Court of Appeals is reversed. Pp. 359 U.S. 501-511. We granted certiorari, 356 U.S. 956, because “Maintenance of the jury as a factfinding body is of such importance and occupies so firm a place in our history and jurisprudence that by seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.” *Dimick v. Schiedt*, 293 U.S. 474, 293 U. S. 486 (1935).

In Dairy Queen, Inc. v. Wood (1962), the U.S. Supreme Court held that a plaintiff cannot bypass the 7th Amendment right to a jury trial on legal issues by labeling a demand for money damages as an “accounting” and a purely equitable action. The Court

found that the district court erred by denying the defendant's jury demand, establishing that even when a case includes both legal and equitable claims, any purely legal claim, such as one for monetary relief, must be tried before a jury.

In Dairy Queen, Inc. this Honorable Court held, the District Judge erred in refusing petitioner's demand for a trial by jury of the factual issues related to the question where there has been a breach of contract or a trademark infringement, and the Court of Appeal should have corrected that error by granting the petition for mandamus. Pp. 369 U.S. 470-480. We conclude therefore that the district court judge erred in refusing to grant petitioner's demand for a trial by jury on the factual issues related to the question of where there has been a breach of contract. Since these issues are common with those upon which respondents' to equitable claims. The Court of Appeals should have corrected the error of the district court judge by granting the petition for mandamus. The judgment is therefore reversed, and the cause remanded for further proceedings consistent with this opinion.

In this case, North's judge erred in wrongfully denying the parties timely demand for a trial by jury guaranteed by Statute under NH RSA 547:11-d, by Article 20 Part First of the NH Const. and the 5th, 6th, 7th, 14th Amendments of the United States Constitution, which Probate granted a jury trial subsequently by must transfer to superior court for trial by jury under NH RSA 547:11-d. The court of appeals should have corrected that error of the superior court judge, reversed the judgment, and the cause remanded for further proceedings in South which holds proper subject matter jurisdiction to schedule a jury trial for the factual or legal issues related to damages and to the question of who has the best title to the Property in Merrimack, New Hampshire for quiet title and damages.

XI) REASONS FOR GRANTING THE WRIT

This case presents issues of importance to individuals who face potential violations of Constitutional Rights, Due Process if the Government deprives an individual of property, due process requires notice and an opportunity to be heard, the 5th, 6th, 7th, 14th Amendments state that no one shall be “deprived of life, liberty or property without the due process of law.”

The questions to be reviewed under writ of certiorari are important questions that were determined adversely by the Supreme Court of the State of New Hampshire. The decision conflicts with United States Supreme Court and Circuit Precedents, *Beacon Theatres, Inc. v. Westover* 358 U.S. 500 (1959), *Curtis v. Loether* 415 U.S. 189 (1974), *Dairy Queen Inc. v. Wood* 369 U.S. 469 (1962), *Duncan v. Louisiana*, 391 U.S. 145 (1968), *Rogers v. Loather*, 312 F. Supp. 1008 (E.D. Wis. 1970), the *New Hampshire Const. Article 20 Part First*, *U.S. Const. 5th, 6th, 7^t, 14th Amendment Jury Trials applied to the states under the incorporation doctrine*.

In this case, North wrongfully denied a jury trial guaranteed by Statute and Constitutions which Probate granted on timely filed demands for trial by jury, which by law must be transferred to superior court to submit for jury trial. Plaintiffs were wrongfully denied the process that was “due”; right to be heard, right to present evidence, right to present witness, right to cross-examine adverse witnesses, right to hearing, right to jury trial. *See NH RSA 547:11-d, Article 20 Part First of NH Const., US Const. 5th, 6th, 7th, 14th Amendments*.

Plaintiffs process that was “due” was violated whereby North wrongfully denied a jury trial guaranteed by Statute and Constitutions, which was granted by Probate and

transferred to North for a jury trial for damages and to quiet title on Property, the opportunity to be heard, submit evidence, cross-examine a witness, which the results would have been different had the Plaintiffs rights not been violated. The constitutional provision encompasses the fundamental right to cross-examine witnesses to impeach their credibility. *State v. LaClair*, 121 NH 74 (1981).

In a landmark case the United States Supreme Court stated that the Supreme Court “. . . normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, the words on the page constitute the law adopted by Congress and approved by the President. If Judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the peoples representatives.” Bostock v. Clayton County, 590 U.S. ____ (2020)

Although the Supreme Court in Bostock analyzed the application of Title VII of the Civil Rights Act, the statutory construction used: “. . . From the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex” applies to this case. Id

In this case using the formulation and statutory construction that “from the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges in the language listed below;

NH RSA 547:11-d: provides in cases where a right to jury trial is guaranteed by the constitution or granted by statute . . . the matter shall be transferred to superior court.

New Hampshire Const. Article 20 of Part First: addresses the right to a trial by jury in civil cases. It explicitly protects this right for parties involved in property disputes and other lawsuits between two or more people.

U. S. Const., Amend V: provides in relevant part: “No person shall . . . be deprived of life, liberty, or property, without due process of law [.]”

U.S. Const., Amend VI: provides in relevant part: “Guarantees fundamental rights . . . right to a speedy and public trial by an impartial jury . . . This amendment ensures a fair adversarial process, protecting individuals from unfair and prolonged confinement by providing them with a clear path to a defense.

U.S. Const., Amend VII: provides in relevant part: “Guarantees the right to a jury trial in federal civil cases that involve a dispute over a certain amount of money . . . it protects citizens’ right to have their civil disputes decided by a jury. . .

U. S. Const., Amend XIV: section 1 provides in relevant part: “ Grants citizenship to all persons born or naturalized in the U.S., prohibits states from denying rights without due process of law, and requires states to provide equal protection under the laws”. The Due Process Clause states that no State shall deprive any person of life, liberty, or property without due process of law.

Due Process and fairness dictates that and individual should not have to guess as to whether a court is going to give an alternative meaning to unequivocal language and directives of statutes, orders of the court, or Precedents of this Honorable Court.

The main reason to grant certiorari is the Supreme Court and Circuit Precedents guarantee of a jury trial is a fundamental right essential to due process, which is listed below;

Beacon Theatres v. Westover (1959) and Dairy Queen v. Wood (1962) are foundational Supreme Court cases that established the principle that when a case presents both legal and equitable issues, the right to a jury trial on legal issues must be preserved and cannot be infringed by the presence of equitable claims (Wood v. Intern. Bro. Of Teamsters, Etc., Local 406, 565 F. Supp. 10011 (W. D. Mich. 1983); Van Ermen v. Schmidt, 374 F. Supp. 1070 (W.D. Wis. 1974)). These cases emphasized that any curtailment of the jury trial right must be scrutinized with the utmost care.

Curtis v. Loether (1974) is a pivotal Supreme Court decision that clarified the application of the 7th Amendment to statutory rights. The Court held that the right to a jury trial applies to actions enforcing statutory rights when the statute creates legal rights and remedies, particularly when damages are sought (United States v. JB Williams company, Inc., 498 F. 2d 414 (2nd Cir. 1974); United States v. Pelzer Realty Company, Inc., 377 F. Supp. 121 (M.D. Ala. 1974)). This case superseded earlier circuit decision, such as Rogers v. Loether, by providing a definitive Supreme Court interpretation.

Plaintiffs Verified Complaint requests an Award of damages; it presents a claim, which is unquestionably legal. *See Appendix I-1-I-7, Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962), 473-479.*

Plaintiffs Verified Complaint requests an Award of quiet title; it presents a claim of equity along with legal in a single case, any legal issues for which a trial by jury is timely and properly demanded must be submitted to a jury. *See Appendix I-1-I-7, Beacon Theatres, Inc. v. Westover, 369 U.S. 500 (1959), Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962), 470-473.*